



Inland Revenue
Te Tari Taake

IR777
July 2019

Disputing a notice of proposed adjustment

What to do if Inland Revenue disputes your assessment

Introduction

While we make every effort to apply the tax laws fairly and correctly, there may be a time when you disagree with how we propose to assess your tax. If this happens, this guide explains what you need to know and what options you have to resolve the disagreement.

If we propose to adjust a return you've filed, we'll generally send you a notice of proposed adjustment (NOPA) first.

This guide tells you what to do if you receive a NOPA that you disagree with.

If you disagree with an assessment, and you didn't receive a NOPA first, there's a different procedure for disputing the assessment. See our guide *Disputing an assessment (IR776)* for information on what to do in that situation.

How to use this guide

This guide follows the disputes resolution process from when you want to dispute a proposed adjustment by Inland Revenue, to what happens after a challenge is settled in court. In Part 9 there is a summary of the time limits you must meet in the process, and some important points to remember.

The Inland Revenue Acts grant various powers and responsibilities to the Commissioner—not to Inland Revenue as an organisation. In practice, the Commissioner delegates powers and responsibilities to other Inland Revenue staff. That's why we've used "Inland Revenue" and "we" in this guide to describe action taken in the Commissioner's name. During the disputes process you may get letters or other documents that use the Commissioner as legal authority.

We issue standard practice statements that outline your rights and responsibilities in respect of disputes. These can be found at www.ird.govt.nz (keywords: disputes resolution).

If you need more information once you've read this guide, please call us on 0800 377 774.

www.ird.govt.nz

Go to our website for information and to use our services and tools.

- **Log in or register for myIR** - manage your tax and entitlements online.
- **Demonstrations** - learn about our services by watching short videos.
- **Get it done online** - complete forms and returns, make payments, give us feedback.
- **Work it out** - use our calculators, worksheets and tools, for example, to check your tax code, find filing and payment dates, calculate your student loan repayment.
- **Forms and guides** - download our forms and guides.

How to get our forms and guides

You can get copies of all our forms and guides by going to www.ird.govt.nz and entering the shoulder number in the search box. You can also order copies by calling 0800 257 773.

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Part 1 – The disputes resolution process and you

Introduction

If we intend to adjust your assessment, we may first send you a *Notice of proposed adjustment (IR770)*, setting out what we intend to change. You'll need to complete a *Notice of response (IR771)* if you disagree with this notice.

This applies to the following:

- assessments issued under tax legislation
- disputable decisions that are not assessments.

If you're a paying parent under the Child Support Act 1991, this procedure doesn't apply to you.

This process is designed to resolve disputes as quickly as possible by early identification of all issues, full disclosure of the facts and evidence, and consultation between you and us.

In this guide we explain the steps of the disputes resolution process and what you must do. If you wish to proceed with a dispute, we recommend you seek independent advice from an accountant or other professional tax advisor. This is especially important if complex issues are involved.

Note

There are time limits built into the process that apply to you and to us. If you don't respond within the time limits you'll have to pay the tax calculated. Part 9 of this guide has a summary of the time limits for disputing a notice of proposed adjustment (NOPA).

Steps in the disputes resolution process

The disputes resolution process normally goes through the steps set out on the following pages. However, sometimes special circumstances mean this isn't appropriate. We'll tell you if we consider the dispute should be handled differently and how you should proceed.

The chart on page 12 summarises these steps.

Postal addresses

Payments

Inland Revenue
PO Box 39050
Wellington Mail Centre
Lower Hutt 5045

Returns

Inland Revenue
PO Box 39090
Wellington Mail Centre
Lower Hutt 5045

General correspondence

Inland Revenue
PO Box 39010
Wellington Mail Centre
Lower Hutt 5045

For a full list of addresses select the "post" icon at www.ird.govt.nz/contact-us and choose from the dropdown options.

Notice of proposed adjustment (NOPA)

If it's our intention to change an assessment of tax, or impose shortfall penalties, we'll usually issue a NOPA detailing the proposed adjustment, and the basis in fact and law for the change.

The NOPA sets out:

- the items we propose to adjust
- a concise statement of the key facts and law in sufficient detail to inform you of the grounds for our proposed tax adjustments
- a statement of how the law applies to the facts.

If you agree with our proposed adjustment we'll ask you to confirm your agreement in writing. You cannot challenge in court any adjustment we proposed if you have agreed to it in writing.

If you disagree with any part of the proposed adjustment you must send us a notice of response within two months of the issue date on the NOPA. If you don't reply within two months of the date of issue you're considered by law to have accepted the proposed adjustment. We'll accept a late notice of response only if exceptional circumstances apply—see page 9.

Note

Time limits are important. The response period is two months from the date of issue of our NOPA. For example, where a NOPA is issued on 11 April 2011, the last day of the response period is 10 June 2011.

Notice of response (NOR)

Your notice of response (NOR) must give brief reasons why you reject the proposed adjustment and specify where possible how the proposed adjustment could be altered so you would agree with it.

You can't just state our proposed adjustment is unacceptable.

Your NOR must contain the following:

- the facts or legal arguments in the NOPA you disagree with
- why you consider those facts or legal arguments are wrong
- further facts and legal arguments you rely on
- how the legal arguments apply to the facts
- the quantitative adjustments referred to in the proposed adjustment that could change as a result of the facts and legal arguments you rely on.

Part 2 of this guide has more information about completing your NOR.

If we accept all the contentions in your NOR, the agreement will be recorded and we won't make the proposed adjustment. If we disagree with some or all of your contentions, we'll tell you. The dispute may then move to the conference stage.

Conference stage

The conference is held to identify and clarify the facts and issues and to allow any disputed facts to be resolved. A conference provides an opportunity for the parties to state the facts and define the issues clearly and concisely.

A conference may be in the form of a meeting (or series of meetings), or a phone call. The staff member you've been dealing with will contact you to arrange the conference and will generally offer to have a senior Inland Revenue staff member act as facilitator for the conference. The facilitator will have had no previous involvement with the dispute.

If no agreement is reached at this stage we'll usually issue a disclosure notice and statement of position. If all or some of the issues are resolved during the conference, agreement will be recorded and the assessment issued if necessary. A disclosure notice and statement of position will be issued to deal with the remaining issues in dispute.

Suspension of a dispute pending a separate test case

Your dispute can be suspended pending the outcome of a test case in the High Court providing you and Inland Revenue agree in writing. For such a dispute to be suspended, the facts and questions of law in the dispute must be significantly similar to those of the court proceeding designated as a test case.

Once agreement is reached, the dispute is suspended pending the outcome of the test case in the courts and you're not required to continue with the disputes procedures (for example, you don't have to file a statement of position, or have your dispute considered by our Adjudication Unit).

Your dispute is suspended until the earliest of the following occurs:

- the court makes its decision about the test case
- the test case is otherwise resolved
- your dispute is otherwise resolved.

If we suspend your dispute pending the outcome of a test case we'll advise you of the outcome. If that results in an amended assessment you may accept that assessment, or begin challenge proceedings.

Further information regarding test case court proceedings can be found in Part 6.

Disclosure notice

A disclosure notice requires you to send your statement of position to us within two months from the date of issue. Although the disclosure notice will usually be issued at the end of the conference stage, it may be issued at any time after the NOPA. You must respond to the disclosure notice within two months of the date of issue, unless an exception applies—see page 9. If you don't, you are considered to have accepted our statement of position and the assessment will be issued. If you are considered to accept the assessment, you can't challenge it in court.

Statement of position

When we issue the disclosure notice it will be accompanied by our statement of position, which will contain the following:

- an outline of the facts we intend to rely on
- an outline of the documentary evidence we intend to rely on
- an outline of the issues we consider will arise
- the propositions of law we intend to rely on.

Our statement of position will also detail any shortfall penalties we intend to impose.

When you respond with your statement of position you must do so in the prescribed form. Your statement of position must contain all the following:

- an outline of the facts you intend to rely on
- an outline of the documentary evidence you intend to rely on
- an outline of the issues you consider will arise
- the propositions of law you intend to rely on.

If your statement of position discloses matters we were not previously aware of, we have the right to amend our statement of position within two months of the date your statement of position was issued.

For more information about completing your statement of position, see Part 3.

Usually, if there's still disagreement on some issues at the end of the conference/disclosure stage, the case will go to our Adjudication Unit for consideration, regardless of the issue or amount of tax involved.

Exclusion rule

The issuing of a disclosure notice and the two statements of position brings into effect the "exclusion rule". This rule prevents issues and propositions of law not raised in the statements of position from being raised in any subsequent challenge, unless both sides agree. There is a provision in the rule that allows judicial discretion to admit previously undisclosed material in very limited circumstances.

Make sure we receive all your correspondence

Once you've written your NOR or statement of position, either deliver it or post it to us straightaway.

If you're posting either of these notices, send them to the staff member you've been dealing with. If you don't have a contact name or address, use one of the postal addresses on page 5.

Late actions (exceptional circumstances)

There are time limits throughout the disputes resolution process that must be met.

If you don't take the required action within the applicable timeframe you are considered by law to accept our proposed adjustment unless we consider exceptional circumstances apply. Exceptional circumstances are events entirely outside the control of you or your agent, that could not have been reasonably anticipated.

Exceptional circumstances may also arise if we consider the lateness is minimal, or results from one or more statutory holidays falling in the response period.

Late actions, such as filing a dispute document late, may be accepted providing you can show you intended to enter into, or continue with, a dispute and you send the required information to Inland Revenue as soon as reasonably practicable.

Adjudication

The adjudicator is an independent officer within Inland Revenue who will take a fresh look at the application of the law to the facts of the case. The adjudicator will consider the facts, evidence, propositions of law, and issues raised in the statements of position. The adjudicator isn't an investigator and will not search for missing facts or evidence.

Usually, the adjudicator won't contact you or the staff member involved in the dispute, except to clarify a point. If contact is made, the adjudicator will advise both parties and explain why the contact was necessary.

When the adjudicator reaches a decision a copy will be given to you and the staff member involved.

If you are dissatisfied with the adjudicator's decision you may start proceedings before the Taxation Review Authority (TRA) or the High Court. You have two months from the date of the notice of assessment to file proceedings.

The adjudicator's decision

At the end of the disputes process, the adjudicator must make a decision and let you know in writing. The decision will be accompanied by a written report giving the grounds for the decision.

If your dispute goes to the adjudication stage there are four possible outcomes.

1. The adjudicator fully agrees with your position

If the adjudicator agrees in full, the proposed adjustment won't be made.

2. The adjudicator partly agrees with your position

If the adjudicator agrees with your position in part, you'll receive a notice of assessment that reflects those parts of our proposed adjustment the adjudicator considers to be correct.

You may take further steps to continue with the part of your dispute the adjudicator has disagreed with. There are some specific actions you must take to continue with that part of your dispute—these are explained in Part 5.

3. The adjudicator disagrees with your position

If the adjudicator disagrees with your position, you'll receive an amended assessment that reflects the adjustment we proposed.

If you want to continue with your dispute there are some specific further actions you must take. These are explained in Part 5.

4. The adjudicator can't make a decision

If the adjudicator considers both parties have failed to consider an issue or section that could affect the outcome of the dispute, both parties will be advised and the file will be referred back to the staff member handling the case.

Continuing your dispute

If the adjudicator disagrees with all or part of your position, we'll send you a letter containing a section similar to this:

"If you wish to continue with your dispute, you must file proceedings before the Taxation Review Authority or High Court within two months of the date on the amended assessment.

The courts have limited authority to accept an application after two months have expired.

The only instance in which they may accept a late application is if your application is late due to circumstances beyond the control of you or your agent."

Parts 4 and 5 explain the different courts you can have your challenge heard in, and how to take your case to court.

Statutory time bars

Generally there are set time periods (time bars) for disputing an assessment. In most cases the law doesn't allow us to proceed with the dispute outside of these time periods.

However, time bars can be waived in some circumstances.

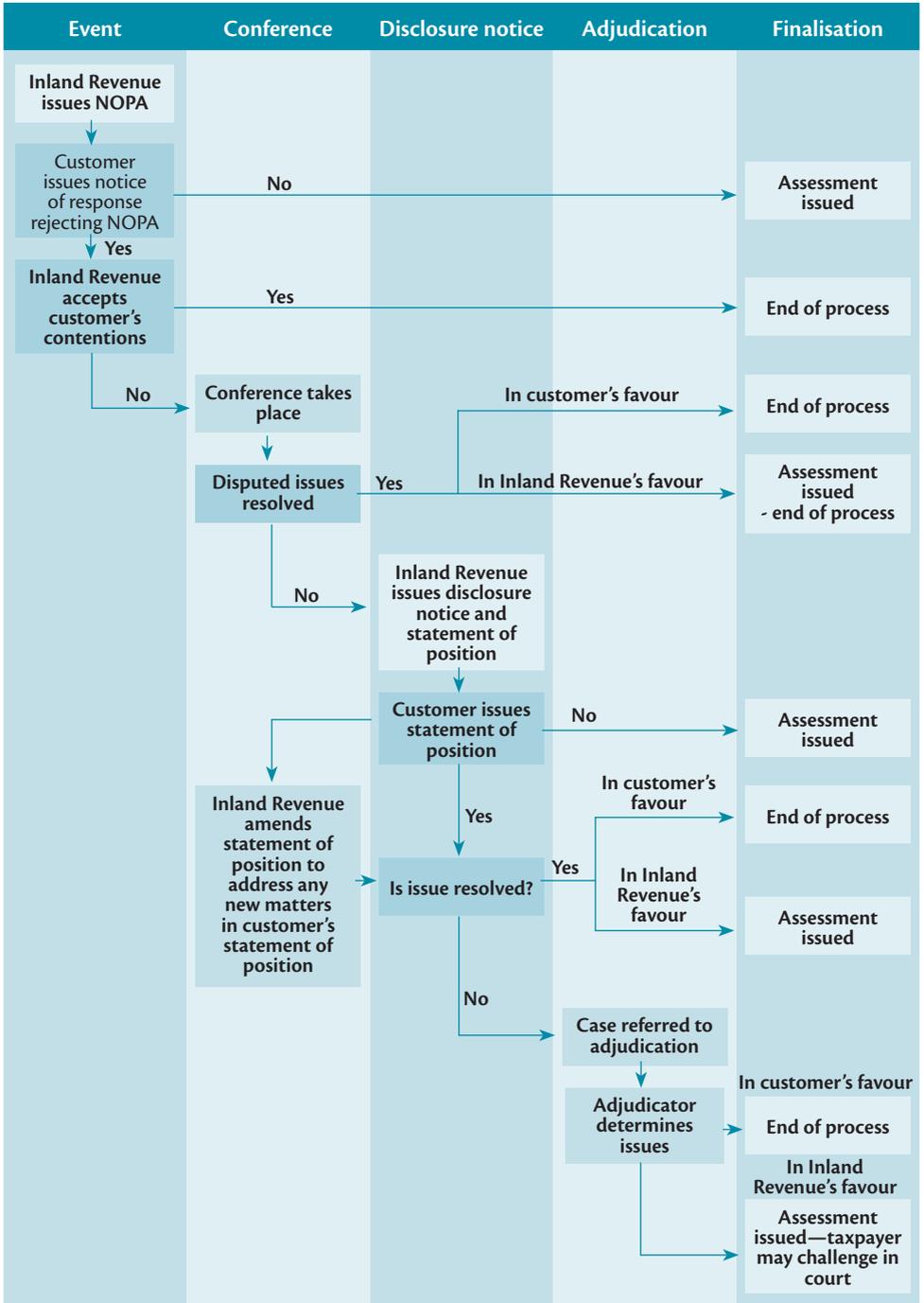
Waiving the time bar

The time bar can be waived for:

- a total agreed period or periods of up to 12 months after the expiry of the relevant four-year period
- a further six months from the end of the period referred to above on written notice being given by the taxpayer.

During the waiver period we must not investigate issues between you and us that weren't identified and known to both parties before the start of the period.

Disputes resolution process commenced by the commissioner



Part 2 – Completing your notice of response (NOR)

Purpose and format of the notice of response (NOR)

***We strongly recommend you get professional advice before completing your NOR.**

The NOR is your advice to us that you disagree with our NOPA and would like the issue reconsidered. It allows you to provide any information you may have to support your argument.

There's no prescribed format you must use for a NOR. You may use our *Notice of response (IR771)* form, but you are free to create your own NOR. However, we recommend you at least follow the format of our form to make sure you meet all the requirements.

Whichever option you choose, the NOR must contain the following details:

- the date of issue of the notice
- your name and IRD number
- your address and contact details (phone, email, fax or post).

The second part of the form must contain:

- the facts or legal arguments in error in the NOPA
- why you consider these facts or legal arguments are in error
- the facts and legal arguments you relied on
- how the legal arguments apply to the facts
- the quantitative adjustments to be made to the NOPA, due to the above.

If you're using our IR771 form you can add extra pages if you need more space.

Note

Include the cover sheet of the IR771 if you don't use the full form.

Completing the *Notice of response (IR771)* form

Date of issue

Show the date the notice of response is issued to us.

IRD number of taxpayer

Show your IRD number here. If the adjustment is for a company, partnership or other organisation, show the IRD number of the organisation.

Full name of taxpayer

Show your full name here. If the adjustment is for a company, partnership or other organisation, show the name of the organisation.

Address and contact details

Show your contact address, phone, email and fax numbers here. If the adjustment is for a company, partnership or other organisation, show the organisation's contact details.

If you have an agent or would like to be contacted at a different address from your postal address, show how and where you would like to be contacted.

The facts or legal arguments in error

Please identify the facts or legal arguments in the NOPA that you consider are in error.

Why the facts or legal arguments are in error

Please outline why you think any facts or legal arguments in the NOPA are in error, including references to any documents you are relying on.

Facts and legal arguments relied on

Often, these will be the same laws as in the NOPA, because the disagreement is about how they should apply in your particular circumstances. When this happens a comment such as "see NOPA" or "as stated by the Commissioner" is sufficient.

You may consider that laws (including tax laws) or facts other than those in the NOPA apply. If so, you should set out the provisions of the legislation that support your case. This could be a reference to a provision in the Income Tax Act 1994, Income Tax Act 2004, Goods and Services Tax Act 1985, Stamp and Cheque Duties Act 1971 or any other relevant Act.

How the arguments apply to the facts

Please state any legal arguments that provide legal support for your adjustment. This can be any information on the application of the law relating to your proposed adjustment(s), for example, references to laws, court decisions, publications or Inland Revenue policy statements. If you know of any case authorities that support your adjustment, include them here. A statement is more persuasive when supported by a recognised authority than if it is just a statement of your opinion.

Quantitative adjustments that result

Include the tax type, return period and the amount of tax payable or refundable, resulting from the adjustment. This figure should be as accurate as possible.

Finalising and sending your notice of response (NOR)

We strongly recommend you seek professional advice before finalising your NOR.

Once you've completed and dated your NOR, send or deliver it to the staff member you've been dealing with so they can consider it fully and get a reply back to you as soon as possible.

Note

You must issue your NOR to us within two months of the date the NOPA was issued. If you don't meet this deadline your NOR can't be considered unless exceptional circumstances apply - see page 9.

Once we receive your NOR

As soon as we receive your NOR and confirm it's valid we'll acknowledge it by letter. If it's not valid and the deadline hasn't passed, we'll contact you with details of the action you must complete before the deadline expires, to make your NOR valid.

The staff member reviewing your NOR will consider the points made to determine if the additional information means the adjustment initially proposed is correct under the legislation.

If they decide your position is correct, they'll tell you your NOR has been accepted and no new assessment will be issued.

If they don't agree with your position, the dispute will usually then pass to the conference stage.

You may contact the staff member to provide further information in support of your NOR, provided this is within the two-month response period.

Part 3 – Preparing your statement of position

Purpose of the statement of position

If we issue you with a disclosure notice, you must issue a statement of position. The statement of position is your formal and final notification of your argument. It's important because if the dispute can't be resolved and ultimately gets challenged, only the issues and propositions of law raised in the statements of position can be raised in the challenge. This is the exclusion rule mentioned earlier on page 8.

Format of the statement of position

We strongly recommend you get professional advice before completing your statement of position.

There is a prescribed format for a statement of position. You may use our *Statement of position (IR773)* form, or you may choose to create your own. However, we recommend you follow the format of our form to make sure you meet all the requirements.

The statement of position must contain the following details:

- the date of issue of the notice
- your name and IRD number
- your address and preferred contact details (phone, email, fax or post).

The second part of the statement of position must contain:

- an outline of the facts you intend to rely on
- an outline of the documentary evidence you intend to rely on
- an outline of the issues you consider will arise
- the propositions of law you intend to rely on.

Note

Your statement of position won't be valid without the IR773 cover sheet attached.

Completing the statement of position

Date of issue

Show the date the statement of position is sent to us. This date is important—it's so we know when to reply to you if further material is to be added to our statement of position as a result of exercising the right of reply.

IRD number of taxpayer

Show your IRD number here. If the adjustment is for a company, partnership or other organisation, show the IRD number of the organisation.

Full name of taxpayer

Show your full name here. If the adjustment is for a company, partnership or other organisation, show the name of the organisation.

Address and contact details

Show your contact address, phone, email and fax numbers here. If the adjustment is for a company, partnership or other organisation, show the details of the organisation.

If you have an agent or would like to be contacted at a different address from your postal address, indicate how and where you would like to be contacted.

The facts you intend to rely on

Provide a clear outline of the relevant facts.

Outline of the documentary evidence relied on

Set out the documentary evidence you would intend to rely on if the case were to proceed to court. State the type and date of the document (if known) and any other unique identifying factor. Where the evidence is oral, it's not necessary to give the name of the witness who may give evidence for you if the matter proceeds to court, but you should still identify the evidence the witness may be giving.

The issues you consider will arise

State the legal questions arising from the proposed adjustments (these are what the court is being asked to decide about) including the application of the tax laws the proposed adjustment is based on. State the relevant sections of the legislation if possible.

You may raise several issues about one proposed adjustment.

The propositions of law you intend to rely on

List any propositions of law that support your case along with any case authorities from which these propositions arise.

A proposition of law is a statement about the application or interpretation of the law. It may be based on statutes or case law, or other opinion. Propositions of law may also include a statement on the application or interpretation of law that hasn't been considered by the courts before.

Wherever possible you should state the authority for the proposition of law relied on, for example, the particular case it is drawn from.

Finalising and sending your statement of position

We strongly recommend you seek professional advice before finalising your statement of position.

When you've completed your statement of position send or deliver it to the staff member you've been dealing with so they can consider it fully. They'll send a reply back to you within the two-month response period.

You can add additional information to your statement of position at any time if we agree. We'll only approve this in limited circumstances, for example, the Commissioner will consider the materiality and relevance of the additional information and its capacity to resolve the dispute.

We may seek your agreement to add information to our statement of position at any time. An example of when we may do this is if there's been an additional conference after the statements of position have been issued.

Note

You must issue your statement of position within two months of the date we issued the disclosure notice. If you don't meet this deadline your statement of position can't be accepted unless there are exceptional circumstances - see page 9.

You may apply to the High Court for more time to reply to our statement of position if both of the following apply:

- You apply within the two-month response period for our statement of position.
- You consider it unreasonable to reply to our statement of position within the response period because the issues in dispute hadn't previously been discussed with you.

Once we receive your statement of position

As soon as we receive your statement of position we'll normally acknowledge it by letter.

We'll then consider the points made in your statement of position and determine if our proposed adjustment is correct under the legislation.

If we decide your position is correct, we'll let you know and no new assessment will be issued.

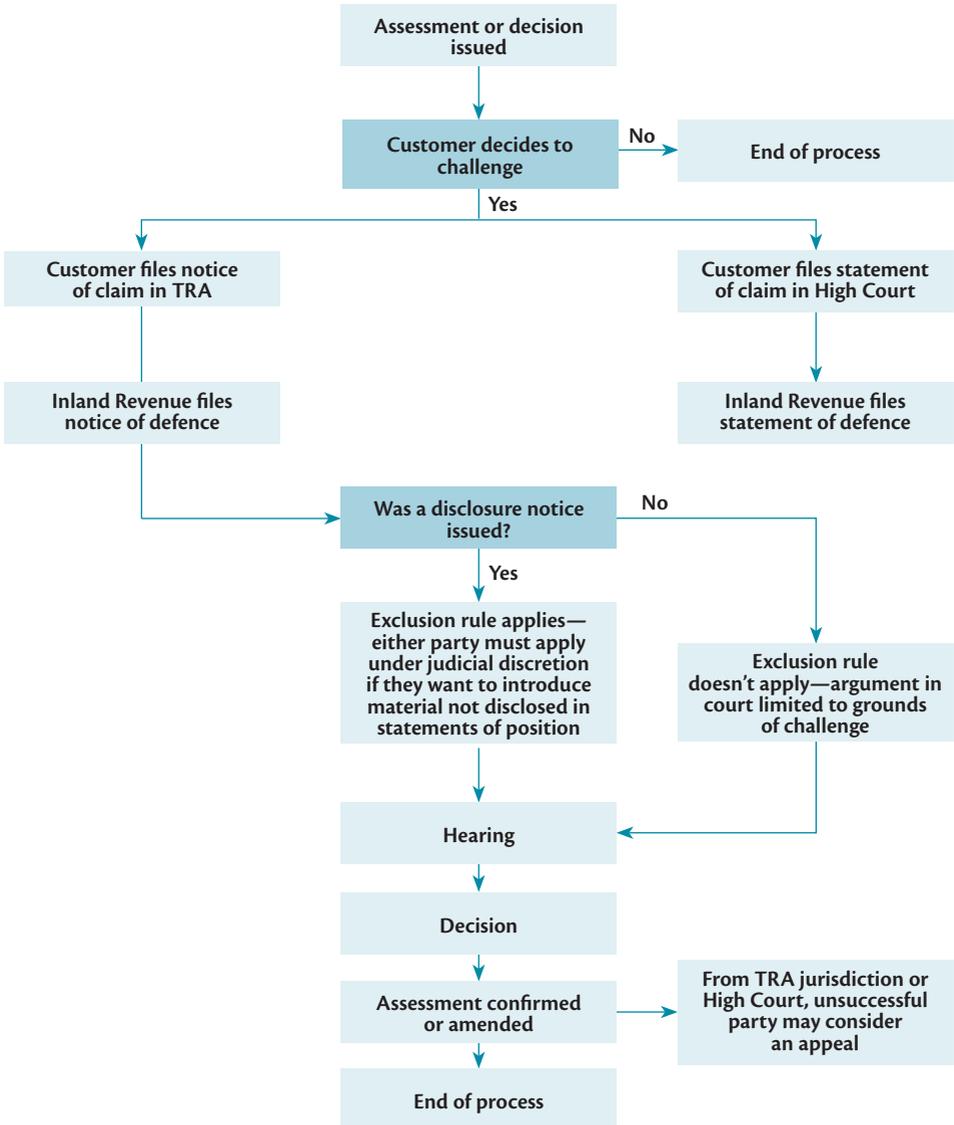
If we still don't agree with your position, your dispute will usually be sent to our Adjudication Unit for consideration.

Part 4 discusses the courts your dispute may go to if the adjudicator rejects your position.

Part 4 – The courts

Here we talk about the courts and tribunals which you may take your dispute to if you don't accept all or part of the adjudicator's decision. We also explain your rights of appeal if you disagree with a decision of the Taxation Review Authority (TRA) or High Court.

This chart shows an overview of court procedures.



The Taxation Review Authority (TRA)

The TRA is totally independent of Inland Revenue and based in Wellington, but travels to other areas so cases can be heard as close as possible to where you live.

Most people have their challenge heard before the TRA for the following reasons:

- The TRA is less formal than the High Court.
- The cost is generally lower than for hearings in the High Court.
- The less formal nature of the TRA means you may more easily present your challenge yourself.
- Costs are not usually awarded, but in certain circumstances the TRA is able to award costs to the parties involved in the dispute.
- TRA hearings are not open to the public.
- The TRA judges are tax specialists.
- In certain circumstances the filing fee may be waived, remitted or refunded in full or in part on application to the Registrar of the Authority.

After adjudication

You may want to challenge the adjudicator's decision. If so, you may take your challenge to the TRA or the High Court.

Features of challenging the adjudicator's decision through the TRA are:

- no limit on tax in dispute
- decisions are published without disclosing customer details
- decisions may be appealed.

There is a filing fee for lodging a notice of claim through this option.

The High Court

The High Court is more formal than the TRA. Hearings are open to the public and the court may award costs.

You may present your challenge to the High Court yourself but because the High Court is more formal and a knowledge of court procedures is important, we'd recommend you get legal advice. However, companies **must** always have a legal representative.

Decisions the TRA or High Court can make

After hearing your dispute, the TRA or High Court will make one of these decisions:

- to allow your challenge in full
- to allow it in part
- to disallow it
- to reduce the assessment.

Your appeal rights if the decision goes against you

If you disagree with the TRA, or a High Court decision, you may appeal against it to a higher authority if you have sufficient grounds. We have the same appeal rights.

Appealing a decision

TRA decisions

You can appeal a decision made by the TRA to the High Court, as long as it involves:

- a question of law, or
- a question of fact, if the amount of disputed tax, duty or tax credit is \$2,000 or more, or if the amount of disputed loss is \$4,000 or more.

If you want to appeal a TRA decision to the High Court, you must lodge a notice of appeal in the High Court within 20 working days after the date of the decision. Copies must be served on the TRA and Inland Revenue—see page 24.

If your case doesn't meet any of the conditions shown above then the TRA decision is final.

High Court decisions

You can appeal a High Court decision to the Court of Appeal. If you want to do this, you must lodge a notice of appeal in the Court of Appeal within 20 working days after the date of the decision. Copies must be served on the High Court and Inland Revenue—see page 25.

Court of Appeal decisions

An appeal to the Supreme Court is allowed only with the leave of the Supreme Court. There is no monetary limit, but leave will be granted only in matters of general public importance, or if it's of general commercial significance.

The final decision

The final decision is:

- a court decision that cannot be appealed, or
- a decision that neither you nor Inland Revenue decide to appeal within the required timeframes.

We explain the sequence and timing for appealing court decisions in the table on page 31.

Part 5 – Court proceedings

Filing proceedings before the TRA

If you challenge an assessment or a disputable decision that isn't an assessment under the TRA's jurisdiction, you must prepare and file a notice of claim outlining your case within two months of the issue date, of:

- the adjudicator's decision
- an assessment or amended assessment based on the adjudicator's decision as appropriate in your circumstances.

You must prepare your notice of claim in the format set out in the Taxation Review Authority Regulations 1998.

When you file the notice of claim under the TRA's jurisdiction, you must also provide three copies and pay a filing fee to the TRA—see page 24 for their contact details.

Once you have filed your notice of claim with the TRA you must also personally serve a copy of the notice on Inland Revenue—see "Service of proceedings" on page 25.

Directions conference and hearings in the TRA

Following the filing of your notice of claim, the filing of our notice of defence and before a TRA judge hears your case, there must be a preliminary directions hearing at a place and time appointed by the TRA. At this hearing the TRA will want to know various details, including how long Inland Revenue and you (or your agent) think the hearing will last.

Both you (or your agent) and Inland Revenue must attend the directions hearing. If you don't attend, your challenge is considered to be withdrawn unless you later obtain the leave of the TRA to proceed with the hearing.

The TRA may permit you and/or Inland Revenue to attend by telephone conference.

As soon as possible after the directions hearing, the TRA will send to your "address for service" a notice recording its directions. If no date for your challenge has been set at the hearing, either you or Inland Revenue may then ask the TRA to set a date for your challenge to be heard. The TRA will then send you a notice setting a time and date for the hearing.

You can present your challenge personally or be represented by a solicitor, accountant, or other person of your choice. However, the TRA suggests you have a professional present your challenge, especially if questions of law are involved.

TRA hearings aren't open to the public, and in most cases costs aren't awarded. The exception to this is if either party doesn't appear at the hearing, or abandons or settles the dispute without giving adequate notice. The TRA can also award costs if it dismisses a challenge as being frivolous, vexatious or for the purposes of delay. The TRA may also award costs for the filing fees in certain circumstances.

After a hearing the TRA will issue its written decision and send you a copy.

Filing proceedings in the High Court

High Court challenges must be filed within two months of the issue date of:

- the adjudicator’s decision
- an assessment or amended assessment based on the adjudicator’s decision as appropriate in your circumstances.

Your statement of claim must provide the full facts of your claim so both the Court and Inland Revenue are fully informed.

It’s not essential, but we strongly recommend you get professional legal assistance.

If we issued a disclosure notice as part of the disputes process, your statement of claim may not refer to any facts, propositions of law or issues that were not disclosed in the statements of position.

File your statement of claim in the Registry of the High Court closest to where you live.

A notice of proceeding, in the format prescribed by the High Court rules, must be filed along with every statement of claim. There is also a filing fee.

Once your statement of claim and notice of proceeding have been filed with the Court, you must personally serve a copy on the Legal Services of Inland Revenue—see “Service of proceedings” on page 25.

We must file a statement of defence and serve it on you within 30 days of the date of service of the statement of claim and notice of proceeding. The statement of defence either admits or denies the allegations of fact in the statement of claim. It also sets out any further facts we consider are relevant to the issues and the issues, we want the court to determine. We’re also limited to the issues and propositions of law disclosed in the statements of position under the disclosure notice procedure.

Proving your position

It’s up to you to prove your position. Whether you’ve taken your case to the TRA or the High Court, you must prove all of the following:

- the assessment or other disputable decision is wrong
- why the assessment or other disputable decision is wrong
- the amount the assessment or other disputable decision is wrong.

This is called the “burden of proof”.

If we issued a disclosure notice as part of the disputes process you can only refer to and rely on the issues and propositions of law you disclosed in your statement of position.

If your dispute is about shortfall penalties for evasion or a similar act we have charged, we have to prove the assessment is correct. In this situation our evidence is presented first at the hearing and it’s not your responsibility to prove our assessment is wrong.

Contact details for the Taxation Review Authority

Postal

Taxation Review Authority
Tribunals Unit
Private Bag 32-001
Panama Street
Wellington 6146

Delivery

Taxation Review Authority
Tribunals Unit
Level One
86 Customhouse Quay
Wellington 6011

Service of proceedings

All proceedings in the TRA and High Court must be served on the Inland Revenue in one of the following ways:

Postal

Legal Services
Inland Revenue
PO Box 2198
Wellington 6140

Delivery

Legal Services
Inland Revenue
Level 5
Asteron Centre
55 Featherston Street
Wellington 6011

Part 6 – Test cases

Sometimes, when there are several court proceedings about the same issue, we'll designate one of them as a test case to decide the issue for all of them.

If there are several cases similar to yours, we might designate your case as a test case to be heard in the High Court. If we decide to do this, we'll notify you of this decision and request the case be transferred to the High Court if filed in the TRA.

If you file proceedings for your case to be heard before the TRA or the High Court, we may tell you there is a test case already before the courts, and that we wish to "stay" (delay) your case until the test case is settled. This will only happen if we consider the test case is likely to determine all or most of the issues in your case.

Your case can only be stayed after you've filed your notice of claim or statement of claim with the TRA or High Court respectively. If you don't want your case delayed until the test case is decided, you can send us a letter to tell us you want your challenge to proceed. It will then carry on unless we get an order from the High Court.

If your case was delayed pending the outcome of a test case, we'll tell you the outcome of that test case. You may accept that decision, or you may continue with your challenge.

Part 7 – Paying the tax in dispute

When you have a dispute, the amount of your tax calculation will usually be different from the amount assessed. The difference between your calculation and the assessment is called the tax in dispute.

If you decide to take your case to court and we notify you that we disagree with your position before the due date to pay your assessment, you may defer payment while the dispute is being resolved. If you've already paid all of the tax (either directly to us or through your PAYE deductions), you can ask us to refund it to you.

Note

If you defer payment of tax in dispute, use-of-money interest continues to be charged and is payable should the assessment be confirmed.

The tax in dispute that you can put off paying until the TRA or the courts decide your challenge, is called deferrable tax. When writing to inform you they disagree with your position, the adjudicator may also advise you of the deferrable tax amount should you choose to challenge this decision.

If we consider there is a risk you won't pay the tax in dispute if your challenge in the court is unsuccessful, you can be required to pay it. If this applies, we won't refund any tax in dispute you've already paid.

Note

Provisional tax

If you're calculating your provisional tax for the following year based on your residual income tax (RIT) from the year for which you're making the challenge you can't reduce your provisional tax to take into account the tax in dispute. In this case you must base it on the calculation of your RIT.

Where we make an assessment to increase your RIT after the due date for payment, we will treat your assessment as not having been increased for provisional tax purposes.

Unsuccessful challenges

When the deferrable tax is due

If your challenge was unsuccessful you must pay the deferrable tax by the 30th day after what's called the "day of determination of final liability". This means the day on which the final result of your challenge is settled, and is the latest of:

- the day we receive written notice from you to say you're withdrawing your challenge
- the day the TRA, High Court, Court of Appeal or Supreme Court makes the final decision on the challenge
- the day you receive written notice from us to say we're withdrawing our defence to your challenge.

Interest payable

If your challenge is unsuccessful, any deferrable tax you haven't paid will have interest charged on it.

The amount of interest payable is calculated for each day in the interest period using this formula:

$$\frac{T \times R}{365}$$

Where:

T is the unpaid tax interest is payable on.

R is your paying rate applying on the day—see our website for the current rate.

Late payment penalties

If you haven't paid the deferrable tax plus the interest calculated under this formula 30 days after the day of determination of final liability, a further late payment penalty may be added to the outstanding amount.

We'll charge you a late payment penalty if you miss a payment, but if you have a good payment history with us we may contact you before we do this.

Otherwise, we'll charge an initial 1% late payment penalty on the day after the due date. We'll charge a further 4% penalty if there is still an amount of unpaid tax (including penalties) seven days after the due date.

Every month the amount owing remains unpaid a further 1% incremental penalty will be charged.

Employer monthly schedule non-payment penalty

From 1 April 2008, if your deferrable tax is from an *Employer monthly schedule (IR348)* which is subject to non-payment penalties, and isn't paid by 30 days after the day of determination of final liability, we'll send you a reminder letter. If the overdue amount isn't paid or an instalment arrangement agreed to, we'll charge you a 10% non-payment penalty (NPP).

Every month an amount remains outstanding a further 10% NPP will be charged. If, after we've imposed the penalty, you pay in full or enter into an instalment arrangement, the last NPP is reduced to 5%.

Successful challenges

Interest payable by Inland Revenue

If your challenge is successful, we refund any tax in dispute you've paid and also pay you interest on it.

Interest is calculated for each day in the interest period using this formula:

$$\frac{T \times R}{365}$$

Where:

T is the overpaid tax on which interest is payable

R is Inland Revenue's paying rate applying on the day—see our website for the current rate.

For all years, the interest period ends on the earlier of:

- the date the tax is refunded
- the date the tax is transferred to another account
- the date you can claim the refund.

Note

We won't pay or charge interest or penalties if the overpaid/underpaid amount is \$100 or less. Any interest you receive is taxable income, so you must include it in your tax return for the year you receive it. For more information on interest and penalties see our *Taxpayer obligations, interest and penalties (IR240)* guide.

Part 8 – Other assessments and decisions you may dispute

There are many types of decisions made by us that you can dispute—however we'll usually issue a NOPA before issuing either an amended assessment or a disputable decision you're likely to disagree with.

If you receive an assessment you disagree with, which we haven't previously issued a NOPA for the procedures are slightly different to those described in this guide. For more information, read our *Disputing an assessment (IR776)* guide.

Part 9 – Time limits for disputing a NOPA

The following table sets out the time limits for each step required in the disputes process. The earlier parts of this guide explain what you must do and how much time you have for each step.

Decision you wish to appeal	Action	Time limit you must meet	Where to lodge your action
Inland Revenue issues a NOPA	Issue a NOR	Two months from the date on the NOPA	Inland Revenue
Inland Revenue issues a disclosure notice and our statement of position	Send your statement of position	Two months from the date on the disclosure notice	Inland Revenue
Inland Revenue issues amended assessment after decision by adjudicator	You can file proceedings with the TRA or the High Court	Two months from the date on the notice of assessment	TRA or High Court, as appropriate
Decision of TRA	You can appeal a decision by the TRA to the High Court	Twenty working days from when the TRA issues its written decision	High Court
High Court decision	You can appeal the High Court decision to the Court of Appeal	Twenty working days from when the High Court delivers its written decision	Court of Appeal
Court of Appeal decision	You may be able to appeal the Court of Appeal's decision to the Supreme Court	Twenty working days from when the Court of Appeal issues its written decision	Supreme Court

Before you begin

Planning, preparation and presentation is very important. The points below will help you.

Make yourself clear

Prepare your notices in a way that's clear and easy to understand.

Know your purpose

The aim of your dispute should be to prove the proposed adjustment (or decision) is wrong. You must know:

- details of the items you consider are in error
- the laws you are relying on
- the facts you consider to be in error
- the legal issues arising in respect of the proposed adjustments
- the propositions of law relied on.

Know your time limits

You must meet the timeframes throughout the disputes resolution process. Late actions will be accepted only in exceptional circumstances - see page 9.

Know when your payments are due

Read Part 7 about paying the tax in dispute.

Progression

Check you've made all the necessary preparations for each step you decide to take in the disputes resolution process.

Professional help

We recommend you get independent advice from an accountant or other professional tax advisor if you wish to proceed with your dispute. This is especially important if complex issues are involved.

Because of the nature of the disputes resolution process, our staff can't help you to prepare your NOPA, NOR, statement of position or any other documents for use in a dispute.

For more help

If you require any help with the information in this publication, please call us on 0800 377 774.

0800 self-service numbers

This service is available to callers seven days a week except between 5am and 6am each day. Just make sure you have your IRD number ready when you call.

For access to your account-specific information, you'll need to be enrolled with voice ID or have a PIN. Registering for voice ID is easy and only takes a few minutes. Call 0800 257 843 to enrol.

Order forms and publications	0800 257 773
All other services	0800 257 777

When you call, just confirm what you want from the options given. If you need to talk with us, we'll re-direct your call to someone who can help you.

Privacy

Meeting your tax obligations means giving us accurate information so we can assess your liabilities or your entitlements under the Acts we administer. We may charge penalties if you don't.

We may also exchange information about you with:

- some government agencies
- another country, if we have an information supply agreement with them
- Statistics New Zealand (for statistical purposes only).

If you ask for the personal information we hold about you, we'll give it to you and correct any errors, unless we have a lawful reason not to. Call us on 0800 775 247 for more information. For full details of our privacy policy go to www.ird.govt.nz (search keyword: privacy).

If you have a complaint about our service

We're committed to providing you with a quality service. If there's a problem, we'd like to know about it and have the chance to fix it.

For more information, go to www.ird.govt.nz (search keyword: complaints) or call us on 0800 274 138 between 8am and 5pm weekdays.

If you disagree with how we've assessed your tax, you may need to follow a formal disputes process. For more information, go to www.ird.govt.nz (search keyword: disputes).

