

A limited peek behind the curtains of Inland Revenue's adjudications and private rulings

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After more than 25 years of the current disputes and ruling procedure, Inland Revenue began publishing technical decision summaries with respect to adjudications of disputes¹ with taxpayers and private rulings granted to taxpayers.² Inland Revenue's Tax Counsel Office (TCO) has released 40 technical decision summaries since late-2021.

Each technical decision summary (TDS) contains an outline of the facts and sufficient detail of the legal analysis (including a summary of alternative arguments and case authorities referred to) to help readers understand the background and why the decision was reached by the Commissioner. Technical decision summaries are now published alongside interpretation statements and standard practice statements on Inland Revenue's tax technical website as a resource available to the public.³

In announcing its intention to publish technical decision summaries, Inland Revenue explained:⁴

Publishing technical decision summaries will make our advice decisions and processes clearer and more transparent and will help taxpayer compliance. Awareness of our approach on technical issues helps taxpayers and their advisors “get it right from the start” and supports the integrity of the tax system.

*This is a welcome development and the 40 technical decision summaries published to date contain a wealth of guidance for taxpayers and their advisers regarding issues that had previously been hidden behind Inland Revenue’s strict interpretation of the secrecy obligations governing what information may be publicly disclosed.*⁵

In this paper, Tori Sullivan, EY Law New Zealand, and Mark Keating, tax barrister, explain why it took the Commissioner more than 25 years to finally publish the content of adjudication reports and private ruling when taxpayers and their advisers have been requesting their release for many years and consider the status these technical decision summaries have within the revenue regime if taxpayers chose to rely on them for guidance.

What took Inland Revenue so long?

There are many legitimate criticisms of the current disputes procedure in Pt [5A](#) of the Tax Administration Act 1994. The duration of that process (which even Inland Revenue’s officials confirm will take longer than a year for even the simplest dispute),⁶ the mandatory and prescriptive nature of the various steps which involve repetition of each parties’ position, and the cost incurred have been criticised for “burning off” taxpayers. As early as 2002, former chairman of PWC New Zealand, John Shewan, noted:⁷

[for] most taxpayers, unless the numbers involved are significant, the burden and resulting cost of participating in the dispute resolution procedure are sufficient to dissuade them from proceeding.

In 2005, barrister Greg Blanchard proposed substantial reform to the statutory disputes procedure, stating:⁸

The pre-litigation tax dispute resolution process in New Zealand is highly complicated. It has many stages and creates the potential for disputes to go on for long periods of time at significant cost. ... The disputes procedure is clearly unsatisfactory

In 2008, the Tax Committees of the New Zealand Law Society (NZLS) and the New Zealand Institute of Chartered Accountants (NZICA) made a rare joint submission to the Minister of Revenue strongly criticising the disputes process and recommending extensive reform.⁹ The NZLS/NZICA Joint Submission concluded that “the current disputes procedure is an abject failure ... [and] fails the majority of taxpayers” and therefore “fundamental changes are necessary to make the disputes resolution procedure achieve their objectives and operate in a workable way”.

That NZLS/NZICA Joint Submission noted:

[T]he disputes resolution process has led to increased costs for taxpayers, rather than reduced costs. The increased costs apply to taxpayers across the board — small claims and also those in larger cases. ... Taxpayers are choosing not to pursue disputes as a consequence. ...

... Our experience is that in effect Inland Revenue may issue questionable matters below \$25,000 with impunity, as Inland Revenue knows that it will cost the taxpayer more than that to proceed through the disputes resolution process and to challenge Inland Revenue’s position in Court. Effectively taxpayers are “burned off” by the high costs imposed by the disputes resolution procedures.

Apart from minor tinkering (including the enactment of s [89N](#) Tax Administration Act to make completion of the full procedure mandatory, which arguably made the process worse), no changes were forthcoming; and the current disputes procedure persists. The result has been that, while most tax disputes are now considered by Inland Revenue’s Disputes Review Unit (DRU), few cases come before the court or Taxation Review Authority. This has led to a dearth of tax judgments to which taxpayers may look for guidance.

This lack of judicial oversight of tax matters has been criticised by the judiciary. In 2009, Hon Sir William Young, then-President of the Court of Appeal, criticised the complexity and inefficacy of the disputes procedure:¹⁰

I see grounds for concern in the limited number of cases that are determined substantively by the courts. It means that taxation disputes are largely resolved within the IRD. ... [T]here is little scope for judicial development of the law — the sort of fresh look exemplified by the Supreme Court judgment in the *Trinity* case. Associated with all of this is the possibility that some (and perhaps many) taxpayers are burnt off by the costs of the process and the risks of litigation. The resulting practical unassailability of departmental opinions may be unhealthy in a society that subscribes to the rule of law.

Given that all disputes were obliged to navigate that procedure, and the lack of subsequent challenges to the Commissioner's decisions, the long-standing refusal by Inland Revenue to publish the adjudication reports or release its private rulings¹¹ was both inexplicable and inexcusable. Taxpayers and their advisers were largely kept in the dark as to what decisions were being made by Inland Revenue.

Only in those rare instances that taxpayers challenged the outcome did the wider tax community get to scrutinise those decisions — and sometimes the results highlighted the flaws in that process. For example, in the structured finance tax avoidance litigation, it was disclosed that the TCO had issued a favourable private ruling to one of the banks¹² with respect to arrangements virtually identical to those which were subsequently found by the High Court to constitute tax avoidance¹³ — but the existence, let alone the correctness, of that favourable private ruling would otherwise never have been known despite its obvious significance.

If sunlight is the best disinfectant, for more than 25 years the Commissioner's private ruling and adjudication function enjoyed almost complete darkness. That lack of transparency was long criticised by tax advisors who have repeatedly sought publication of adjudication reports and private rulings, even in redacted form. These decisions represent the Commissioner's considered view of the law on particular issues and therefore would provide guidance to taxpayers and their advisors.

While technically an adjudication report or private ruling represents the Commissioner's decision regarding a particular dispute or arrangement for the taxpayer concerned, in many instances the reasoning relied upon in that decision will have wider application and represent the Commissioner's current view of the law. As a result, access to adjudication reports was a reform proposed by the NZLS/NZICA Joint Submission in 2008:

We also note that Inland Revenue is able to and does utilise Adjudication Reports as precedents for future matters for internal staff, while taxpayers have no such access to those reports. ... These are currently used internally by Inland Revenue as legal guidance, and the release of these, in redacted form, would provide guidance as to Inland Revenue's view. This would promote voluntary compliance.¹⁴

NZICA made a similar submission in relation to the Taxation (Tax Administration and Remedial Matters) Bill in 2011:¹⁵

When an adjudication occurs, Inland Revenue should publish the adjudication report in redacted form so that taxpayers can understand the legal outcome and reasoning on those facts, while still protecting the identity of the taxpayer concerned.

Calls for release of redacted adjudication reports by the Inland Revenue were acknowledged by officials as follows:¹⁶

Given the increasing trend for tax disputes to be determined without public court hearings or decisions, the Commissioner should publish appropriately redacted adjudications reports to promote better information and transparency for taxpayers. Making this information available in forms that do not prejudice taxpayer confidentiality would better inform taxpayers about the basis of the Commissioner's views on a range of technical matters. Taxpayers would therefore be better informed in taking their own tax positions.

The Taxation Review Authority manages to publish each of its decisions while protecting confidential information about the taxpayer/s involved so it was always feasible for Inland Revenue to publish technical decision summaries. Nevertheless, Inland Revenue rejected NZICA's submission to publish technical decision summaries on the grounds that:¹⁷

... given that adjudication itself is not legislated for, there seems little benefit in legislating for publication of the subsequent reports. As such, officials consider this is a matter that is best dealt with through ongoing dialogue ...

Inland Revenue explained:¹⁸

The Commissioner is concerned to ensure that any publication would not elevate the status of adjudication decisions above what they are — which is that they are simply specific decisions on one taxpayer's facts, having regard to the arguments made in that single dispute, and they are not binding rulings.

But following the enactment of s 89N Tax Administration Act in 2004, which made it virtually mandatory for all disputes to complete the full procedure resulting in an adjudication report, it became more understandable that those decisions should carry weight with taxpayers. Certainly, the authors understand that these reports are relied upon as guidance by Inland Revenue officers. As M Keating previously noted:¹⁹

Only publication of those reports would inform taxpayers of what issues have previously been considered by the Adjudication Unit and whether that decision is applicable to them or can be validly distinguished. ... many taxpayer submissions have called for the release of these reports as advancing the integrity of the tax system.

It is hoped that the IRD will change its stance and permit the publication of redacted adjudication reports, which can then be relied upon by taxpayers as a guide to the Commissioner's expected interpretation of the law. This will allow for the reasoning of adjudication decisions to be scrutinised by both the participants and the wider tax community. Such publication would therefore both ensure consistency in decision-making by the IRD and promote voluntary compliance by taxpayers.

But after years of refusal and inactivity, it was a pleasant surprise when Inland Revenue unilaterally decided to begin publishing technical decision summaries. The rationale provided by Inland Revenue for that decision recognises the previous unsatisfactory approach:²⁰

Publishing technical decision summaries will make our advice decisions and processes clearer and more transparent and will help taxpayer compliance. Awareness of our approach on technical issues helps taxpayers and their advisors "get it right from the start" and supports the integrity of the tax system.

That belated decision is therefore welcome.

Who prepares the TDS

Technical decision summaries are prepared within the TCO, the unit which controls all technical decision-making by the Commissioner. Inland Revenue describes the TCO as separate from other units within Inland Revenue and therefore independent:²¹

The Disputes Review Unit is part of Inland Revenue's Office of the Chief Tax Counsel and represents the final step of the disputes process. The adjudicator's role is to review unresolved disputes by taking a fresh look at a tax dispute and the application of law to the facts in an impartial and independent manner and provide a comprehensive and technically accurate decision that will ensure the correctness of the assessment.²²

The technical decision summaries are, therefore, prepared by the same officers who determine disputes or issue private binding rulings (and draft Inland Revenue's other policies and statements). While that internal

separation does not completely alleviate the suspicion by taxpayers that Inland Revenue is allowed to “mark its own homework”, at least it can no longer do so in secret.

It is understood the TCO employs Inland Revenue’s most experienced and capable staff who are best qualified to record the Commissioner’s decisions. Their views on the technical aspects of disputes or private ruling applications provide a valuable insight into Inland Revenue’s concluded view on the subject matter.²³ The TCO explains its role in resolving disputes as follows:²⁴

A comprehensive adjudication report is produced and provided to the parties. In addition to providing the adjudication decision and the reasons for that decision, the report also sets out the facts of the dispute, the issues that need to be addressed, the analysis of the legal issues involved, the application of that legal analysis to the facts of the dispute and the conclusions reached on each issue. In some instances, it may also be necessary to resolve disputed facts where the parties have not agreed. These reports can sometimes be lengthy, but it is considered important for them to encapsulate the relevant information in a single document and provide full analysis and reasoning, including the reasons why any particular arguments were not accepted. It is intended that such detail will assist both parties in any decisions as to their next steps in the dispute or future dealings on similar issues.

To reflect this thoroughness, Inland Revenue explains:²⁵

Each TDS will contain an outline of the factual situation and sufficient detail of the legal analysis (including a summary of alternative arguments and case authorities) to help readers understand why the decision was reached.

In particular, each TDS will “contain the relevant reasons for the Commissioner’s decision, including arguments considered in reaching the decision”²⁶ and “to arrive at a concise and readable document, the preparer of the summary must decide what information should be excluded or summarised. The summary document must still be an accurate reflection of the underlying technical decision”.²⁷

Status of technical decision summaries?

Despite their undoubted technical merit, when publishing technical decision summaries, Inland Revenue make it clear they have no formal status.²⁸

A TDS cannot be relied on by taxpayers, customers or advisors, as it is a summary of an original technical decision (rather than being the decision itself) and is published for information only.

This caution is possibly justified. The courts have largely ignored DRU reports, which have no precedential value either for the Commissioner or for the taxpayers.²⁹ Likewise, the courts have stressed that only the individual taxpayer can rely upon the status of a binding ruling, and even then, only with respect to the specific arrangement under consideration and not for similar or even identical arrangements.³⁰

This lack of weight given to the TCO decision led one commentator to complain that “the adjudication stage serves no useful purpose ... where there are legal issues between the parties that will only be resolved by a Court decision and cases [where] there are factual disputes between the parties that will only be resolved by cross-examination ... it is less likely that the adjudication stage will resolve the matter”.³¹

This criticism identifies an inherent problem with the disputes process and the obvious limitation in the TCO that any attempt to resolve often complex factual and legal disputes based solely on the written disputes documents is flawed.

This limitation has been recognised by the TRA³² and caused the former President of the Court of Appeal to voice concern that “in cases that involve factual disputes, the utility of the adjudication phase (in which no attempt is made to resolve factual disputes) is well open to question”.³³ That limitation will, therefore, presumably extend to technical decision summaries which apply the Commissioner’s technical decision and reasoning to a summary of “the facts” as they find them, but which may remain disputed or nuanced in a way that cannot be adequately resolved.

Commissioner's official opinion?

It has long been known that neither the Commissioner nor taxpayers, let alone the courts, are bound by Inland Revenue policy.³⁴ Certainly the Commissioner may reassess a taxpayer in a manner contrary to previous practice or agreement,³⁵ and may depart from published Inland Revenue policy.³⁶ Likewise, taxpayers may cautiously flout Inland Revenue published policy with impunity provided their position has merit.

The High Court in *Easy Park Ltd v CIR* ([2017](#)) 28 NZTC ¶23-024 found the taxpayer will not necessarily be liable for a shortfall penalty even when knowingly adopting a position contrary to the Commissioner's published policy. While the Commissioner alleged the taxpayer's knowing disobedience of the published policy warranted the imposition of a shortfall penalty for adopting an unacceptable tax position,³⁷ the Court ruled:

[95] I find the present case a difficult one. As I have said, there was no authority which tells squarely against the position taken by Easy Park. Public Rulings are not binding on taxpayers and the very existence of a ruling arguably suggests that its subject matter may be difficult or controversial. Moreover [BR PUB 09/06](#) expressly acknowledged that arguments similar to those advanced before me (based on dicta in McKenzies) had previously been raised. ...

[96] ... But in any event it is clear that the course it took was not actuated by some desire to "slip one past" the Commissioner; indeed Easy Park's accountant specifically drew her attention to the issue. So it is difficult to see that Easy Park's actions here offended against the policy that shortfall penalties are designed to promote.

[97] On balance, therefore (and I do not forget that the onus is on the taxpayer) I consider that no shortfall should be imposed here.

But even if technical decision summaries are not binding on the Commissioner and cannot be relied upon by taxpayers, it seems Inland Revenue is attempting to go further and deny any status to technical decision summaries whatsoever. The disclaimer for each TDS includes:³⁸

Disclaimer – Technical Decision Summary (TDS) ... This document is made available for information only and is not advice, guidance or a "[Commissioner's official opinion](#)" (as defined in s 3(1) of the Tax Administration Act 1994). You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

This disclaimer anticipates and preemptively rebuts any argument by taxpayers that the TDS may constitute the "Commissioner's official opinion" on its subject matter. M Keating has written elsewhere about the scope and application of that category of Inland Revenue advice to taxpayers,³⁹ but in summary it provides a half-way-house position whereby certain non-binding statements by Inland Revenue may be considered the "Commissioner's official opinion".⁴⁰ Taxpayers who rely upon that opinion:

- cannot prevent the Commissioner from changing that opinion or consequentially reassessing their core tax in a contrary manner, but
- are protected from the imposition of use of money interest and/or shortfall penalties resulting from that retrospective change.⁴¹

The Commissioner thereby recognises that the integrity of the tax system is undermined if the taxpayer who honestly followed Inland Revenue guidance suffers penalties and interest as a result. Unfortunately, Inland Revenue is giving with one hand and taking with the other. While willing to pull back the curtain and publish its technical decisions, it lacks the confidence to stand by those published decisions in the event taxpayers attempt to rely upon them. It is difficult to understand how that treatment is consistent with Inland Revenue's pledge that:⁴²

Publishing technical decision summaries will make our advice decisions and processes clearer and more transparent and will help taxpayer compliance. Awareness of our approach on technical issues helps taxpayers and their advisors “get it right from the start” and supports the integrity of the tax system.

In practice, it is hoped Inland Revenue will stand behind the correctness of technical decision summaries and give them the same status as its other publications. Otherwise, it is difficult to understand how they may “help taxpayer compliance” or “support the integrity of the tax system”.

Technical decision summaries so far?

There are few details on the output of the technical decision summaries. Statistics are not routinely included in the Department’s Annual Report.⁴³ While the timeliness of decisions and rulings are provided,⁴⁴ the outcomes of those decisions are not known. By contrast, we are informed that in the 2022 year the Commissioner was wholly successful in litigation in only 71.4% of bases before the courts, down on previous years.⁴⁵

The last statistics from Inland Revenue the authors can locate on these decisions were published in August 2007 and explain:⁴⁶

The Disputes Review Unit completes approximately 55-80 adjudications every year. Given that there can be many issues involved in a dispute, decisions can be made fully or partly in favour of either party. Over the last few years, on average approximately 80% of the decisions made by the Disputes Review Unit were made predominately in favour of Inland Revenue’s position and 20% predominantly in favour of the taxpayer’s position.

It is worrying that it appears more up-to-date statistics have not been published by Inland Revenue for 15 years. For example, Inland Revenue advise that “it is intended that *most* technical decisions will be summarised and published”⁴⁷ but we do not know how many decisions and private rulings are made by Inland Revenue each year or their outcome. Therefore, it is impossible to know what proportion of private rulings or DRU reports are being published as technical decision summaries or whether they are representative of all decisions made by the TCO.

Since October 2021, Inland Revenue has published 40 technical decision summaries. All 6 technical decision summaries published in 2021 and all 22 technical decision summaries published in 2022 were DRU reports of disputes. Nine of the 12 technical decision summaries published in 2023 were DRU reports while 3 were private rulings. The primary issues considered in each TDS dispute and the outcomes can be broken down as follows:

Year	Number	Income Tax	GST	Admin*	CIR win
2021	6	1	3	2	5/6
2022	22	8	8	6	19/22
2023	12**	10	2	0	9/9

* Including the application of shortfall penalties, statutory time bar, tax residency and registration for GST or PAYE.

** As at 3 October 2023.

Assuming these technical decision summaries do not necessarily reflect all decisions made over that period, it is impossible to understand whether the Commissioner’s success rate in the published TDS is representative of all decisions being made.

As expected, the summary of facts within each TDS is deliberately generic (in keeping with the Commissioner’s concern to preserve taxpayer confidentiality) although those facts brush over what are likely to have been fundamental factual disputes with the taxpayer/s involved. Rather, for the reasons explained above, technical decision summaries generally reflect the Commissioner’s application of the law to the Inland Revenue view of those facts.

But despite that inherent flaw, the description of the legal issues and propositions of law included within technical decision summaries generally provide a good summation of the relevant statutory provisions and case law under consideration. In doing so, the technical decision summaries do provide a valuable insight into the Commissioner's approach regarding those issues.

A few technical decision summaries consider the application of the law to issues that have not previously been dealt with by case law or Inland Revenue policy. Therefore, where there is a lack of precedent, technical decision summaries provide taxpayers and their advisors with additional resources to assist with their own understanding of the law — even if they may choose not to adopt the approach taken in the technical decision summaries.

More practically, if technical decision summaries represent the Commissioner's view of how the law applies to those issues, it can reasonably be presumed that approach will be applied consistently to other taxpayers in similar circumstances. Other taxpayers are, therefore, made aware of that position and can then either:

- abandon an unwinnable dispute by adopting Inland Revenue's preferred approach, or
- appreciate that they must somehow distinguish that TDS to stand any chance of obtaining a different outcome, or
- recognise that they cannot prevail in the internal dispute before DRU so must steel themselves for a future challenge against the inevitable unfavourable decision.

In that event, a taxpayer may refer to the potentially applicable TDS to justify requesting Inland Revenue truncating the disputes process by agreement, under s [89N\(1\)\(viii\)](#) Tax Administration Act. While s [89N](#) generally requires the parties to complete the full disputes procedure, an exception applies where the parties agree in writing that completion of the disputes procedure is not required because "the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process". This exception provides for instances in which completing the full disputes process would be a waste of resources or unnecessary.

Inland Revenue's policy regarding opting out of the tax disputes procedure is contained in [SPS 23/01](#).⁴⁸ It explains that:⁴⁹

"The Commissioner and a taxpayer can enter into an agreement not to complete the disputes process, if they are satisfied the dispute can be more efficiently resolved by a hearing authority. This is known as opting out."

However, that policy is clear that the opt-out should seldom be exercised and only in narrow circumstances, including where:⁵⁰

"[the] dispute concerns facts and issues similar to those considered by the TCO if similar issues have been considered in a previous dispute ...".

But, as previously noted regarding this ground for "opt out":⁵¹

An obvious problem for many taxpayers when applying the final criteria is that generally taxpayers will not know what similar disputes have previously been considered by the [DRU]. As discussed ... the Commissioner refuses to publish even redacted versions of [DRU] reports, so taxpayers will invariably remain uninformed as to what similar matters have been considered in previous disputes involving other taxpayers. In the absence of taxpayers being able to access previous [DRU] reports, whether and to what extent their own dispute raises "similar issues" cannot possibly be determined. Accordingly, unless the IRD itself volunteers that information (which is unlikely, given that the policy expressly refers to the requirement to maintain secrecy in respect of other taxpayers' disputes), taxpayers have no way of knowing whether a matter in dispute has previously been considered. As such, that ground of opt-out for taxpayers appears largely hollow.

Therefore, the publication of technical decision summaries finally gives substance to that ground of opt out by informing taxpayers whether their own dispute is sufficiently similar to one previously considered by Inland Revenue and thus foreshadows the outcome of their own dispute. In fact, this knowledge may allow taxpayers to present or abandon arguments or even propose a compromise settlement that might otherwise have not been contemplated. The authors are aware of one instance when the audit of a taxpayer was

abandoned by Inland Revenue once the investigator was referred to a TDS that supported the taxpayer's position. Therefore, while taxpayers may not officially rely on technical decision summaries, they may still have a powerful influence over the activities of investigators who are obliged to follow and apply all decisions by the TCO.

Too much daylight?

Much effort is taken by Inland Revenue to preserve the confidentiality of the taxpayer involved in the dispute or private ruling. The Guidelines explain the TDS:⁵²

- excludes or rewords information that specifically identifies the taxpayer/customer
- excludes or rewords information that may enable the identification of any taxpayer/customer. This includes individual facts that in isolation may not identify a taxpayer/customer but which, when combined with other information, may allow the identification of the taxpayer/customer
- excludes or rewords information that may enable the identification of a third party
- excludes or rewords confidential, commercially sensitive or otherwise sensitive information.

For most technical decision summaries regarding disputes, such efforts to sanitise the facts are sufficient to preserve the taxpayer's secrecy. In fact, the authors have represented taxpayers involved in 2 different disputes that were then reported as a TDS so was intimately familiar with the facts and legal arguments involved in both; and still found the TDS so anonymised that it was a struggle to recognise the matter.

The Guidelines explain that draft technical decision summaries will be shared with taxpayers and their advisers before publication, allowing them "to review the TDS to ensure it does not breach confidentiality or include commercially sensitive information." However anonymized, publishing details of bespoke commercial structures publicly risks disclosing the taxpayer's intellectual property. As the individual taxpayer has funded both the underlying tax analysis and paid Inland Revenue's fees for reviewing and confirming the private ruling, they may be reluctant to have those details widely available.

It is difficult to see how this problem can be prevented unless taxpayers are permitted to veto the publication of the TDS of their dispute or private ruling. Otherwise, publishing such information against the taxpayer's wishes might, at the margins, make taxpayers reluctant to seek private binding rulings for commercially sensitive matters, which would undermine the efficacy of that regime.

Conclusion

Publication of technical decision summaries is both overdue and welcome. They draw back the curtain on decisions made by Inland Revenue regarding disputes and private binding rulings of which taxpayers would otherwise be entirely unaware. While Inland Revenue refuses to stand behind those decisions and will not grant them official status as the Commissioner's official opinion, on balance, they are still a useful insight into Inland Revenue's approach to a range of technical issues.

Given the lack of court decisions on many topics, they are often the only public consideration of those issues which can therefore guide taxpayers in their own tax treatment of similar issues — or at least forewarn them that their own approach is contrary to the Commissioner's position explained in the TDS. The technical decision summaries, therefore, provide an additional resource for taxpayers and their advisers to consider when dealing with Inland Revenue.

Last reviewed on 1 November 2023

Footnotes

- 1 Tax Administration Act 1994, Pt [4A](#).
- 2 Tax Administration Act, Pt [5A](#).
- 3 [Tax Technical — Inland Revenue NZ \(ird.govt.nz\)](#).

- 4 Inland Revenue: [Guidelines for publishing technical decision summaries \(ird.govt.nz\)](#) ([Guidelines for publishing technical decision summaries](#)), at [2].
- 5 Tax Administration Act, s [18](#).
- 6 Standard practice statement [SPS 16/05](#), “Disputes resolution process commenced by the Commissioner of Inland Revenue”, at [13] (withdrawn and replaced by [SPS 23/01](#), “Disputes process”).
- 7 J Shewan “Protecting the integrity of the Tax Act: the practitioner’s perspective”, paper presented at the Institute of Chartered Accountants of New Zealand 2002 Tax Conference, Christchurch, 11–12 October 2002.
- 8 G Blanchard “The case for a simplified tax dispute resolution process” (2005) 11(4) *New Zealand Journal of Taxation Law and Policy* 417.
- 9 Taxation Committee of NZLS and National Tax Committee of NZICA “Joint Submission: The Disputes Resolution Procedures in Pt IVA of the Tax Administration Act 1994 and the Challenge Procedures in Pt VIIIA of the Tax Administration Act 1994” (Wellington, August 2008) (NZLS/NZICA Joint Submission).
- 10 Hon Justice W Young “Tax disputes in New Zealand” (2009) 4(1) *Journal of Australian Tax Teachers Association* 1 at 14.
- 11 Tax Administration Act, Pt [5A](#).
- 12 *Westpac Banking Corp v C of IR* [2009] NZCA 24; [\(2009\) 24 NZTC 23,340](#).
- 13 *Westpac Banking Corp v C of IR* [\(2009\) 24 NZTC 23,834](#) (HC) and *BNZ Investments Ltd v CIR* [\(2009\) 24 NZTC 23,582](#) (HC).
- 14 Above n 9, NZLS/NZICA Joint Submission, at [3.35].
- 15 Taxation (Tax Administration and Remedial Matters) Bill, Officials’ Report to the Finance and Expenditure Select Committee on Submissions on the Bill (April 2011) at 59.
- 16 Above n 15, Officials’ Report at 29.
- 17 Above n 15, Officials’ Report at 59.
- 18 Above n 15, Officials’ Report at 29.
- 19 Mark Keating *Tax Disputes in New Zealand — A Practical Guide* (CCH, Auckland, 2012) at [1108].
- 20 Above n 4, [Guidelines for publishing technical decision summaries](#), at [2].
- 21 Above n 6, [SPS 16/05](#), at [252].
- 22 The role of the Disputes Review Unit (DRU) was explained by the Supreme Court as “to provide a specific and strong ‘focus on the correct and impartial application of tax law to the affairs of individual taxpayers’” in *Tannadyce Investments Ltd v C of IR* [2011] NZSC 158; [\(2011\) 25 NZTC ¶20-103](#) at [20].
- 23 [The Disputes Review Unit — its role in the dispute resolution process \(ird.govt.nz\)](#).
- 24 Above n 23, [The Disputes Review Unit — its role in the dispute resolution process](#).
- 25 Above n 4, [Guidelines for publishing technical decision summaries](#), at [5].
- 26 Inland Revenue [About technical decision summaries \(ird.govt.nz\)](#).
- 27 Above n 4, [Guidelines for publishing technical decision summaries](#), at [13].
- 28 Above n 4, [Guidelines for publishing technical decision summaries](#), at [7].
- 29 For example, see *Ch’elle Properties (NZ) Ltd v C of IR* [\(2004\) 21 NZTC 18,618](#) (HC) which ruled at [30]: “Regardless, I am satisfied that as a matter of law the Commissioner is not bound by the adjudication report and is free to depart from it in argument both before the Authority and on appeal.”
- 30 For example, see above n 12, [Westpac Banking Corp v C of IR](#).
- 31 G Blanchard “The case for a simplified tax dispute resolution process” (2005) 11(4) *NZJTL* 417 at 438.
- 32 Case X5 [\(2005\) 22 NZTC 12,076](#).
- 33 Hon Justice William Young, “Tax disputes in New Zealand” (2009) 4(1) *Journal of Australian Tax Teachers Association* 1.
- 34 *O’Neil v C of IR* [\(2001\) 20 NZTC 17,051](#) (PC).

- 35 *Brierley Investments Ltd v C of IR* ([1993](#)) [15 NZTC 10,212](#) (CA).
- 36 *C of IR v Ti Toki Cabarets (1989) Ltd* ([2000](#)) [19 NZTC 15,874](#) (CA).
- 37 Tax Administration Act, s [141B](#).
- 38 Above n 4, [Guidelines for publishing technical decision summaries](#), at [7].
- 39 See the discussion of that regime in M Keating, *Commissioner's Official Opinion: A "get out of gaol free card"?*, *NZJLTP*, Vol 21, Sept 2015.
- 40 Tax Administration Act, s [3\(1\)](#).
- 41 See Inland Revenue *Status of Commissioner's Advice*, 16 November 2012.
- 42 Above n 4, [Guidelines for publishing technical decision summaries](#), at [2].
- 43 See [Inland Revenue Annual Report 2022–23](#).
- 44 Above n 43, for example, in the [Annual Report 2022–23](#), in 2022, the percentage of adjudication cases completed within 10 weeks of receipt was 94.7%.
- 45 Inland Revenue [Annual Report 2021–22](#), at 85.
- 46 Above n 23, [The Disputes Review Unit — its role in the dispute resolution process](#).
- 47 Above n 4, [Guidelines for publishing technical decision summaries](#).
- 48 Above n 6, standard practice statement [SPS 23/01](#), "Disputes process", at [323]–[334].
- 49 Above n 6, [SPS 23/01](#), at [323].
- 50 Above n 6, [SPS 23/01](#), at [324].
- 51 Above n 19, M Keating *Tax Disputes in New Zealand*.
- 52 Above n 4, [Guidelines for publishing technical decision summaries](#).