



# KPMG Tax Chat



## **KPMG TAX CHAT - MANAGING TAX DISPUTES**

*“You can have a Lord, you can have a King, but the man to fear is the tax collector.”* This ancient Mesopotamian quote is apparently 6,000 years old and demonstrates that for about as long as there has been human civilization, arguing with the tax man has never been a pleasant experience.

Taxpayers that have been in the unenviable position of going head-to-head with Inland Revenue will be well versed in the uncertainty, cost and disruption to business that stems from being embroiled in a tax dispute. While some disputes commence with Inland Revenue bursting through the door following months of covert surveillance, most begin far more humbly – such as from an inadvertent error in a tax return, a routine tax audit, or a voluntary disclosure.

The last few years have seen an upsurge in tax disputes in New Zealand, with a number of high profile cases being contested at various levels. This trend is set to continue so it is increasingly relevant for taxpayers and their advisors to consider how best to manage a dispute when it arises. This can be complex and time consuming, however there are a number of key tips to remember when managing a tax dispute.

### **1. Seek Rulings**

The best way to manage a tax dispute is to prevent one from arising at all. One of the most effective ways to achieve this is by obtaining a binding ruling from Inland Revenue. A binding ruling is essentially an agreement by Inland Revenue as to how the tax legislation applies to an arrangement entered into by the taxpayer.

It is worth noting that a binding ruling is not without risk and can be costly to obtain. However, seeking a ruling is often a valuable form of protection against changes in interpretation and application of tax legislation and may prevent a tax dispute from arising down the track.

### **2. Meet deadlines**

During the course of a dispute, Inland Revenue will inevitably request information, informally or formally. Taxpayers will be asked to provide the information within certain timeframes, and if the dispute has entered the formal statutory process, strict, non-negotiable deadlines apply. Many taxpayers and advisors underestimate the importance of meeting these deadlines. It is absolutely critical that requests and notices are responded to on time. Failure to do so will at best frustrate Inland Revenue, potentially colouring its view of the taxpayer and extend the time it will take to resolve the dispute. At worst, missing a deadline could hand Inland Revenue an automatic win.

If the dispute has not yet entered the formal statutory process, Inland Revenue is usually agreeable to extend deadlines for responding to its requests, however, as a general rule, the more you delay, the longer the dispute will take, the more uncertainty, and the more costly it will become.

### **3. Be polite and respectful**

It is fair to say that, rightly or wrongly, the experience of dealing with Inland Revenue during the course of a tax dispute can be heavily influenced by the officer in charge of the dispute. While some officers employ an officious approach, most are ordinary people doing their job in good faith. They may need help to understand the taxpayer's business and the arrangements that are the subject of dispute and that may take some time. However, many disputes can be resolved by calmly and unemotionally explaining the nature of the arrangements, how and why they were entered into and demonstrating that the taxpayer's obligations have in fact been met. A hostile approach is usually unhelpful and will only serve to build a level of distrust and suspicion.

### **4. Escalate where appropriate**

It is not uncommon for tax disputes to reach a deadlock, whereby the Inland Revenue officer and taxpayer cannot agree on the correct tax position or reach a compromise. In such a case, the taxpayer will usually be expected to back down, or Inland Revenue will initiate the formal statutory disputes process. In this situation, the taxpayer may be able to escalate the matter to a Case Director or Senior Solicitor within Inland Revenue's Legal and Technical Services team. The manner in which this is done needs to be managed carefully, as senior Inland Revenue officials are cautious not to undermine the investigating officer. However, if done properly, it is a useful way to have the dispute reviewed by a fresh pair of eyes and may prevent it from progressing into the formal statutory process.

### **5. Where possible, settle before litigation**

Litigation is time consuming and expensive and in New Zealand taxpayers have been losing in court more often than not. Challenging a tax assessment in court also carries a reputational risk for taxpayers. It is usually preferable to settle a dispute either before or during the formal disputes process. Settlements are confidential and the Inland Revenue can take a commercial approach to the negotiations. The ability to negotiate and settle on commercial terms means that settlement agreements will often have a broader result than if the matter was settled in court, such as agreeing to also apply the result to future years.

Dealing with a tax dispute is never fun. Just ask the Mesopotamians. Most taxpayers are simply trying to get on with running their businesses and dealing with their tax affairs as best they can. Tax disputes can often become costly, lengthy and stressful exercises and many taxpayers simply want them to "go away" as quickly and painlessly as possible. A bit of forethought and a pragmatic approach is the best way to achieve this.



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