



KPMG Tax Chat



The secret to winning tax disputes?

Sorry to disappoint, but there is no silver bullet when it comes to disputing a tax position with Inland Revenue (at least not one that I have found yet). But the headline got you this far. In reality, statistics show us that it is rare for taxpayers to beat the Commissioner of Inland Revenue (“Commissioner”) at her own game.

A quick perusal of Inland Revenue’s 2017 Annual Report, and various statistics published on Inland Revenue’s website, tells us that:

- (a) Of the 52 cases considered by the Disputes Review Unit (the final stage of the formal pre-assessment statutory disputes process) in 2017, the Commissioner’s position was either fully or partially upheld in 49 cases (a 95% win rate for the Commissioner).
- (b) Inland Revenue wins 81% of cases that proceed to litigation;
- (c) On average, it takes 651 days to complete the formal disputes process, from start to finish (i.e. not including the initial investigation and any litigation); and
- (d) In 2017, Inland Revenue investigations gave rise to recoveries amounting to \$1.3 billion of tax not returned correctly.

One may argue that such success is a good thing, especially when you consider what \$1.3 billion could buy – training for 9000 additional police officers, half of Auckland’s proposed light rail link (on some estimates), or a salary increase of \$65,000 for every primary school teacher. One’s view probably depends on which end of the political spectrum you sit. New Zealand is built upon people having a go at enterprise, and an overzealous tax man could discourage such endeavours. On the other hand, without taxation, and indeed enforcing the tax laws, the Government is unable to fund essential public services, such as schools and hospitals.

But the real question is, why are the odds stacked so far in the Commissioner’s favour, and is it worth opposing her? To answer the former, in my view, it is because the Commissioner will usually proceed to a formal dispute where she considers her chances of winning are high. She also knows that the costs of disputing a tax matter can be crippling and that New Zealand businesses do not like to litigate their tax matters publically. The Commissioner uses that knowledge to her advantage very effectively. I have seen countless cases of that in practice. The Commissioner wields enormous power and if businesses or private citizens do not fall into line, or accept her version of events, the Commissioner can make their lives very difficult (just ask Dave Henderson – his battle with Inland Revenue was chronicled in the amusing book turned movie “We’re

Here to Help”). In many cases, even if the taxpayer has a strong case, a drawn out investigation or the prospect of a protracted and expensive formal dispute, can scare a taxpayer into submission (not all taxpayer’s have Mr Henderson’s courage to fight Inland Revenue for years, eventually win, purchase their South Island HQ and evict them!).

So does that mean that taxpayers should roll over and give in in the face of a tax dispute? Absolutely not. In the first instance, engaging with Inland Revenue and responding fully and robustly to the Commissioner’s position will often help to negotiate a favourable settlement. Depending on Inland Revenue’s response or behaviour, the taxpayer can also escalate the matter to a Case Director or Senior Solicitor within Inland Revenue’s Legal and Technical Services team (although 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.

Entering the formal dispute process, despite the potential costs and stacked deck, also has its advantages. It is a signal to the Commissioner that the taxpayer stands by its tax position, and provides a further opportunity to make submissions in preparation of a favourable settlement. The formal disputes process provides an opportunity to meet with Inland Revenue officials, with a facilitator present, to discuss the merits of the tax position. That can help to narrow the issues in dispute, or even get Inland Revenue to back down (remember the Commissioner tends to only pursue disputes she is confident of winning). Entering the formal disputes process also buys time, meaning that some years in dispute could be time barred, and therefore unable to be reassessed, by the time the dispute reaches its conclusion.

While the tax dispute cards are stacked against the taxpayer, and indeed there is no silver bullet to beat the Commissioner, pushing back on the power she wields is usually advantageous, even if the taxpayer has no desire to progress a matter to a full blown dispute. If you are facing a dispute with the Commissioner, consider your strategy carefully, and seek advice rather than simply rolling over in the face of challenging opposition.



Andrew Tringham

Senior Manager