



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Adrian Sawyer, Professor at the *University of Canterbury* and National Reporter of New Zealand.

This set of questionnaires comprise the National Reporter's assessment on the country practice during 2019 in the protection of taxpayers' rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*" (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. *For Questionnaire # 1*, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers' rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers' rights in the country in 2019.
2. *For Questionnaire # 2*, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers' rights. In this regard, a summary of events occurred in 2019 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.

IBFD Observatory on the Protection of Taxpayers' Rights

Dear National Reporter,

On behalf of Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone, I would like to thank you for your participation in the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR).

As you are aware, the OPTR aims to keep track of the developments in the practical protection of taxpayers' rights around the world. We intend to do so through the valuable and timely information you are kindly supplying, as member of your country's group of experts. Practitioners, tax authorities, academics and the judiciary of each surveyed country form national groups, to obtain a neutral, balanced report on the situation of taxpayers' rights in these countries.

Following you will find two questionnaires, of twelve sections each, aiming to compile relevant information regarding the level of practical implementation of the minimum standards and best practices of 12 taxpayers' rights, as identified by Prof. Dr. Baker and Prof. Dr. Pistone in Basel, 2015. We kindly ask you to fill them out completely, according to the instructions provided at the beginning of each questionnaire.

We would be very grateful if you submit us this questionnaire, duly filled out, by no later than 17 January 2020. We remain at your disposal for any clarification you may need.

We look forward to your valuable contribution to what we believe is an extraordinary project!

Kind regards,

Prof. Dr. Carlos E. Weffe
Managing Editor
IBFD Observatory on the Protection of Taxpayers' Rights.

* Better if filled in using Google Chrome © or Mozilla Firefox ©

Email address *

adrian.sawyer@canterbury.ac.nz

Personal info

Name: *

Adrian Sawyer

Country: *

New Zealand

Affiliation *

Taxpayers / Tax Practitioners

Tax Administration

Judiciary

(Tax) Ombudsperson

Academia

Other:

Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.

2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.

3. For questions that require you to specify a period of time (namely, Q. 23 and Q. 44), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.
4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.
5. When completed, please submit the survey.
6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
8. An option to quit the survey and save your answers is provided at the end of each section.
9. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
10. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.
11. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

I. Identifying taxpayers and issuing tax returns

1. Do taxpayers have the right to see the information held about them by the tax authority? *

Yes

No

2. If yes, can they request the correction of errors in the information? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

3. In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only? *

Yes

No

4. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

5. Is it possible in your country for taxpayers to communicate electronically with the tax authority? *

Yes

No

6. If yes, are there systems in place to prevent unauthorised access to the channel of communication? *

Yes

No

7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

II. The issue of tax assessment

8. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them? *

Yes

No

9. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment? *

Yes

No

10. If yes, can the taxpayer request a meeting with the tax officer? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

III. Confidentiality

11. Is information held by your tax authority automatically encrypted? *

Yes

No

12. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs? *

Yes

No

13. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

14. Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information? *

Yes

No

15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data? *

Yes

No

16. Is information about the tax liability of specific taxpayers publicly available in your country? *

Yes

No

17. Is "naming and shaming" of non-compliant taxpayers practised in your country? *

Yes

No

18. Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)? *

Yes

No

19. Is there a system of protection of legally privileged communications between the taxpayer and its advisors? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

20. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IV. Normal Audits

21. Does the principle audi alteram partem apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)? *

Yes

No

22. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)? *

Yes

No

23. If yes, what is the normal limit in months? *

There is no limit (click here if you answered "No" to the previous question) ▼

24. Does the taxpayer have the right to be represented by a person of its choice in the audit process? *

Yes

No

25. May the opinion of independent experts be used in the audit process? *

Yes

No

26. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process? *

Yes

No

27. Does the principle ne bis in idem apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)? *

*

Yes

No

28. If yes, does this mean only one audit per tax per year? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

29. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)? *

Yes

No

30. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

V. More intensive audits

31. Is authorisation by a court always needed before the tax authority may enter and search premises? *

Yes

No

32. May the tax authority enter and search the dwelling places of individuals? *

Yes

No

33. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search? *

Yes

No

34. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)? *

Yes

No

35. Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)? *

Yes

No

36. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

37. If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority? *

Not applicable (click here if you answered "No" to question 35)

Yes

No

38. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised? *

Yes

No

39. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VI. Review and appeals

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary? *

Yes

No

41. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary? *

Yes

No

42. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing? *

Yes

No

43. Are there time limits applicable for a tax case to complete the judicial appeal process? *

Yes

No

44. If yes, what is the normal time it takes for a tax case to be concluded on appeal? *

There is no limit (click here if you answered "No" to the previous question) ▼

45. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)? *

Yes

No

46. If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

47. Does the taxpayer need permission to appeal to the first instance tribunal? *

Yes

No

48. Does the taxpayer need permission to appeal to the second or higher instance tribunals? *

Yes

No

49. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)? *

Yes

No

50. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals? *

Yes

No

51. Does the loser have to pay the costs in a tax appeal? *

Yes

No

52. If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

53. Are judgments of tax tribunals published? *

Yes

No

54. If yes, can the taxpayer preserve its anonymity in the judgment? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

55. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VII. Criminal and administrative sanctions

56. Does the principle ne bis in idem apply in your country to prevent either:

*

- The principle does not apply in my country
- The imposition of a tax penalty and the tax liability
- The imposition of more than one tax penalty for the same conduct
- The imposition of a tax penalty and a criminal liability

57. If ne bis in idem is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)? *

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty? *

- Yes
- No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VIII. Enforcement of taxes

59. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)? *

Yes

No

60. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IX. Cross-border procedures

61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request? *

Yes

No

62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information? *

Yes

No

63. If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information? *

Not applicable (click here if you answered "No" to either question 61 or question 62)

Yes

No

64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country? *

Yes

No

65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country? *

Yes

No

66. Does the taxpayer have the right to see any information received from another country that relates to him? *

Yes

No

67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated? *

Yes

No

68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

X. Legislation

69. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation? *

Yes

No

70. Is tax legislation subject to constitutional review which can strike down unconstitutional laws? *

Yes

No

71. Is there a prohibition on retrospective tax legislation in your country? *

Yes

No

72. If no, are there restrictions on the adoption of retrospective tax legislation in your country? *

Not applicable (click here if you answered "Yes" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XI. Revenue practice and guidance

73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law? *

Yes

No

74. If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

75. Does your country have a generalised system of advanced rulings available to taxpayers? *

Yes

No

76. If yes, is it legally binding? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

77. If a binding rule is refused, does the taxpayer have a right to appeal? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XII. Institutional framework for protecting taxpayer's rights

78. Is there a taxpayers' charter or taxpayers' bill of rights in your country? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

79. If yes, are its provisions legally effective? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Not applicable (click here if you answered "No" to the previous question)

Yes

No

80. Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country? *

Yes

No

81. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

82. If yes to a (tax) ombudsman, is he/she independent from the tax authority? *

Not applicable (click here if you answered "No" to question 80)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

Questionnaire 2 - Standards of protection

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. All questions are two or three-tiered (namely, either with parts "A" and "B" or "A", "B" and "C"). They comprise a minimum standard and /or a best practice, and a "summary of relevant facts in 2019", a space for providing a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way.
3. Please Indicate, by clicking on the corresponding button, whether there was an improvement or a decrease of the level of compliance of the relevant standard/best practice in your country in 2019. If there were no changes, please indicate so by clicking on the corresponding button.
4. In all cases, please refer the relevant novelties in the space provided under "summary of relevant facts in 2019", for each question. Please give a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. In case there is nothing to report for a given minimum standard/best practice, please indicate so briefly.

5. If any, make additional, non-judgmental commentaries at the space provided under "summary of relevant facts in 2019".
6. Back up your assertions with the relevant documentary materials, if possible. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcomed to send us these materials to our email: optr@ibfd.org and c.weffe@ibfd.org.
7. When completed, please submit the survey.
8. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
9. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
10. An option to quit the survey and save your answers is provided at the end of each section. This part of the survey has 12 sections.
11. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
12. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.
13. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

I. Identifying taxpayers and issuing tax returns

1 (A). Implement safeguards to prevent impersonation when issuing a unique identification number *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

1 (B). Summary of relevant facts in 2019

Complies with minimum standard.

Processes in place to correctly identify individual people before issuing Inland Revenue Department (“IRD”) numbers. Strict criteria and processes for verification and forms of identification documents that can be used. Part of this also includes that there will always be a ‘face to face’ when applying an IRD number, either by IRD or an approved provider.

Non-individual customers, when applying for an IRD number also need to provide verifying documents dependent on their form of entity (i.e. company, partnership, trust. Penalties apply for offenses

2 (A). The system of taxpayer identification should take account of religious sensitivities *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

2 (B). Summary of relevant facts in 2019

Standard is not complied with.

While the IRD says, correctly, that section 6 Tax Administration Act 1994 (“TAA”) requires that the Commissioner of Inland Revenue (“CIR” or “Commissioner”, the CEO of IRD and the statutory official responsible for administration of the tax system) protect the integrity of the New Zealand tax system. and specifically requires that taxpayers be treated fairly and “with no greater or lesser favour than the tax affairs of other taxpayers”, this does not address the standard directly

3 (A). Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

3 (B). Summary of relevant facts in 2019

NZ tax law does not empower the IRD to impose restrictions of this kind on third parties, but they are subject to obligations under the Privacy Act 1993

4 (A). Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax *

- No changes
- Shifted away from the best practice
- Shifted towards / match the best practice

4 (B). Summary of relevant facts in 2019

Best practice not complied with: where tax is withheld by third parties, the taxpayer is not necessarily excluded from liability if the third party fails to pay over the tax: section RA 8 of the Income Tax Act 2007

However in normal cases no action is taken to recover the tax unless there is evidence of collusion between the person withholding and the taxpayer

5 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

5 (B). Summary of relevant facts in 2019

Standard is complied with.

Pre-populated returns, known as Personal Tax Summaries in NZ, are sent out and the taxpayer requested to confirm the details.

Online Income Tax returns, IR3 information, can be pre-populated with income that has had tax withheld, for the taxpayer to see online ("MyIR"). This allows the taxpayer to see this information and correct it if required.

Taxpayers also have the ability to ask the IRD to exercise a discretion to amend an assessments to ensure its correctness

6 (A). Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

6 (B). Publish guidance on taxpayers' rights to access information and correct inaccuracies *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

6 (C). Summary of relevant facts in 2019

Both the minimum standard and best practice complied with.

The Privacy Act 1993 and the Official Information Act 1982 provide for rights to access taxpayer information and apply to correct inaccuracies. Organisations such as the Privacy Commissioner publish guidance on these rights.

IRD's practice is to release personal information to the taxpayer or their tax agent on request, with certain exceptions relating to internally generated reports, third party information etc.

7 (A). Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

7 (B). Summary of relevant facts in 2019

Minimum standard is complied with. Electronic communication and information has strict processes around it. MyIR is IRD's secure online service where communication can be accessed by logon. In MyIR customers then can access the secure electric mail part. Some letters can also be viewed here in image form. MyIR has been enhanced over the last couple of years.

If email communication is required, processes to obtain correct identity and to secure the information are in place.

8 (A). Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

8 (B). Summary of relevant facts in 2019

Largely complied with in practical terms.

The IRD's strategy is to support voluntary compliance by making it easy for taxpayers to comply with their tax obligations operates on a non-discriminatory and voluntary basis.

As part of a pilot programme, formal co-operative compliance agreements were entered into with three large taxpayers. However, although the three agreements continue, the pilot is now closed to new additions. Other active compliance regimes apply to certain other large taxpayers, however the criteria for these regimes to apply are determined by IRD and so are not available to taxpayers on a voluntary basis.

It is not clear what the future holds in this area

9 (A). Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

9 (B). Summary of relevant facts in 2019

Complies with minimum standard.

IRD Community Compliance provides much of this service if required based on need and availability.

However, there has been a shift away from counter appointments for complex enquires, to encouraging telephone and online. Mobile offices may be used, which can include using other agencies' buildings to meet with those in remote locations. In some cases tax officials will visit taxpayers with severe mobility issues. For those with different disabilities the IRD can also assist, including a deaf fax for those who are hard of hearing.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

II. The issue of tax assessment

10 (A). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms *

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

10 (B). Summary of relevant facts in 2019

This standard is complied with

New Zealand's tax system involves a full dispute process including a system of semi-mediation, prior to the amendment of assessments (except in the case of fraud etc). There is no form of alternative dispute resolution, such as mediation

11 (A). Use e-filing to speed up assessments and correction of errors, particularly systematic errors *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

11 (B). Summary of relevant facts in 2019

This standard is complied with

Considerable investment is being made in expanding digital access as part of IRD's business transformation programme (BTP)

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

III. Confidentiality

12 (A). Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced). *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

12 (B). Encrypt information held by a tax authority about taxpayers to the highest level attainable. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

12 (C). Summary of relevant facts in 2019

Minimum standard and best practice both complied with. IRD employees can be disciplined, dismissed and/or prosecuted for breaching taxpayer secrecy, a matter which is carefully monitored (and on rare occasions, applied)

13 (A). Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

13 (B). Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

13 (C). Summary of relevant facts in 2019

Minimum standard and best practice both complied with. This has become increasingly important as the IRD relies more heavily on electronic engagement with taxpayers through the BTP (using MyIR especially)

14 (A). Audit data access periodically to identify cases of unauthorised access. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

14 (B). Summary of relevant facts in 2019

This standard is complied with

15 (A). Introduce administrative measures emphasizing confidentiality to tax officials. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

15 (B). Appoint data protection/privacy officers at senior level and local tax offices. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

15 (C). Summary of relevant facts in 2019

Minimum standard and best practice complied with.

Privacy rules are also published to IRD staff and clear processes followed in protecting data. New employees also receive training on secrecy and confidentiality requirements. Before commencing duties every IRD employee is required to complete a statutory declaration of fidelity and secrecy which continues to bind them even if they cease to be an employee

16 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

16 (B). Summary of relevant facts in 2019

Process made easier through establishment of MyIR and enhanced accuracy in withholding.
Some 'teething' issues with BTP rollout

17 (A). If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges). *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

17 (B). Summary of relevant facts in 2019

Standard is partly complied with.
Investigations are carried out in-house by an IRD unit dedicated to the purpose and reporting outside the Service Delivery line.

18 (A). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

18 (B). Summary of relevant facts in 2019

Not clearly complied with.

Not covered in TAA 1994. Potentially section 107 Crimes Act 1961 (contravention of statute) provides a punishment for an IRD officer who, having become aware of an unauthorised disclosure of confidential information, neglects his/her statutory obligations to investigate or prosecute. Potentially also section 117(e) of the Crimes Act, attempts to pervert or obstruct the course of justice, could be applicable.

19 (A). Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

19 (B). Summary of relevant facts in 2019

Fully complied with at present.

However, changes being progressively implemented through BTP are gradually changing the TAA that increase sharing of taxpayer information held by the IRD with other government agencies. It is possible that the present specific list of exceptions will be replaced by general principles

20 (A). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer). *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

20 (B). Summary of relevant facts in 2019

This standard is not fully complied with.

While New Zealand has (subject to increasingly broad exceptions) taxpayer secrecy provisions (Part 4 TAA 1994), taxpayers in civil and criminal disputes with IRD do not (apart from in the specialist Taxation Review Authority ("TRA")) enjoy name suppression unless exceptional circumstances are made out. Results of tax disputes, including taxpayer names where they appear in the judgment, can be subject to IRD press releases. Disclosure is prevalent for cases involving tax evasion.

21 (A). No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

21 (B). Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

21 (C). Summary of relevant facts in 2019 *

Minimum standard is fully complied with

Best Practice is supported by New Zealand's Privacy Commissioner and Ombudsman, but no general process compliant with best practice exists in general.

22 (A). Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

22 (B). Summary of relevant facts in 2019

Standard is fully complied with.

Section 81 of the TAA 1994 generally prohibits release information to third parties, though no direct tribunal-based method of authorising disclosure exists in New Zealand

23 (A). If published, tax rulings should be anonymised and details that might identify the taxpayer removed. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

23 (B). Anonymise all tax judgments and remove details that might identify the taxpayer

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

23 (C). Summary of relevant facts in 2019

Minimum standard complied with for rulings issued by IRD. Best practice is not complied with, in that for first-instance hearings in the High Court and appeals from the specialist TRA (a taxpayer may file a first-instance tax challenge in either the TRA or the High Court) there is no anonymity unless a taxpayer applies for name suppression and establishes exceptional grounds.

24 (A). Legal professional privilege should apply to tax advice. *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

24 (B). Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure. *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

24 (C). Summary of relevant facts in 2019 *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Minimum standard complied with in that legal professional privilege applies to tax advice (s 20 TAA 1994).

Best practice complied with in that a tax advisor from an "approved advisor group" (at present, chartered accountants' associations and other accountancy institutes) can give confidential tax advice, which a taxpayer has a right not to disclose to the IRD (sections 20B to 20G TAA 1994) or in the litigation document discovery processes.

25 (A). Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege. *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

25 (B). Summary of relevant facts in 2019 *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Minimum standard complied with by separate IRD lawyers taking custody of potentially privileged material and evaluating for existence of privilege in consultation with taxpayer's lawyers. In practice this works fairly and robustly. Standard practice involves advice to a taxpayer that he/she may seek legal advice in private and without delay in conformity with the New Zealand Bill of Rights Act 1990.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IV. Normal audits

26 (A). Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

26 (B). Summary of relevant facts in 2019

Only partial compliance applies - see discussion accompanying the following questions.

27 (A). In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

27 (B). Summary of relevant facts in 2019

This standard is partly complied with.

The Commissioner may require production of any information that she considers “necessary or relevant” for any purpose relating to any matter of tax administration or enforcement but not otherwise. The Commissioner need not exhaust alternative investigatory powers before relying on more intrusive search powers. There is no requirement that the Commissioner’s consideration be objectively correct – at the time or in hindsight.

28 (A). In application of ne bis in idem the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

28 (B). Summary of relevant facts in 2019 *

Standard is not complied with.

There is no limit on the Commissioner's ability to revisit a taxpayer's liability, except for the four-year time bar in section 108 TAA 1994. That time bar is inapplicable in certain circumstances.

In practice a repeat audit for a period is very rare. Once an audit is finalised the IRD will only revisit if new evidence suggests full material facts were not known to the Commissioner at the time of the agreement or that avoidance, evasion or fraud has occurred.

29 (A). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

29 (B). Summary of relevant facts in 2019

This standard is not strictly complied with.

In general terms, in the course of an ordinary audit, such rights are granted. The provisions of Part 4A TAA 1994 formalise a reciprocal exchange of documents before most (but not all) disputed assessments are raised by the Commissioner. When the Part 4A process is used, these minimum standards are completely satisfied.

It is not complied with in terms of IRD's internal review of its processes ("escalation") even when such review directly concerns a specific taxpayer.

30 (A). In application of nemo tenetur, the right to remain silent should be respected in all tax audits. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

30 (B). Summary of relevant facts in 2019

This standard is not complied with.

There is no right to remain silent. Some provisions relating to compulsory provision of information (e.g. sections 17I, 17J and 17K TAA 1994) provide that answers are not admissible in criminal proceedings against the person answering. Other provisions (e.g. section 17 TAA) do not provide for that.

31 (A). Tax audits should follow a pattern that is set out in published guidelines. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

31 (B). Summary of relevant facts in 2019 *

This standard is not fully complied with.

While there are some published advice (especially on IRD's website) as to the process, the advice is vague and there is no obligation on IRD officials to follow it.

In practice, audits each have a plan but can take different courses depending on the subject matter and the nature of the client. IRD has published performance standards overall for the expected duration of audits in different categories.

An information memorandum is provided as best practice to any taxpayer who is audited. This spells out rights and describes the processes which will be followed.

32 (A). A manual of good practice in tax audits should be established at the global level. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

32 (B). Summary of relevant facts in 2019

This standard is not fully complied with.

However Best Practice Statements have been developed by IRD internally and checks are made to ensure investigators are applying them. IR has also issued Operational Statements that guide the use of some of its powers during audits (see OS 13/1 and OS 13/2, although these need updating for recent legislative changes)

33 (A). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

33 (B). Summary of relevant facts in 2019

This standard is not complied with.

A taxpayer may however seek a “binding ruling” of the tax position taken so as to obtain finality as to the application of the law to the facts. However, a taxpayer may not request a tax audit so as to obtain finality as to acceptance of those relevant facts.

There is a factual review "product" available to verify certain facts/assumptions in a binding ruling. However its application/uptake is limited.

Taxpayers may also issue a notice of proposed adjustment (NOPA) to commence the disputes process if they wish to have an issue determined though neither this process nor the binding ruling process are designed or intended to have the effect of triggering an audit.

34 (A). Where tax authorities have resolved to start an audit, they should inform the taxpayer *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

34 (B). Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

34 (C). Summary of relevant facts in 2019

Minimum standard and some aspects of best practice are complied with in most cases. However, if there is a suspicion that doing so may lead the taxpayer to hide information, remove assets, flee the jurisdiction etc., then it may not be.

Disclosure of tax authorities' evidence rarely takes place at the start of an audit.

35 (A). Taxpayers should be informed of information gathering from third parties. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

35 (B). Summary of relevant facts in 2019

This standard is not complied with and is not required by legislation.

36 (A). Reasonable time limits should be fixed for the conduct of audits. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

36 (B). Summary of relevant facts in 2019

This standard is not complied with.

General performance timeliness standards do exist, depending on the type of case.

37 (A). Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

37 (B). Summary of relevant facts in 2019

This standard is complied with in that a taxpayer may engage technical assistance at all stages of the audit.

38 (A). The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

38 (B). The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

38 (C). Summary of relevant facts in 2019

The minimum standard is complied with.

Best practice is not formally complied with: no requirement that this stage be undertaken unless the audit enters the Part 4A TAA 1994 dispute resolution process.

Taxpayer participation occurs at the pre-completion phase. Any agreed positions are set out in writing. The dispute resolution process provides ample opportunity to correct inaccuracies of fact and to express the taxpayer's view.

39 (A). Following an audit, a report should be prepared even if the audit does not result in additional tax or refund. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

39 (B). Summary of relevant facts in 2019

This standard is complied with.

An internal audit report is prepared in all instances. A final audit letter is issued to all taxpayers setting out any findings. An agreed adjustment form, setting out any additional amounts is sent to any taxpayers who do not go to dispute.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

V. More intensive audits

40 (A). More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

40 (B). Summary of relevant facts in 2019

There is no sharp distinction between “normal audits” and “more intensive audits” exists. Best practice complied with in that use of more intrusive search/seizure/information requisition powers is limited to cases where a risk of taxpayer non-compliance/criminality is perceived.

41 (A). If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

41 (B). Summary of relevant facts in 2019

Standard is not complied with.

See above as to limits to the right to silence. There is a general IRD practice of suspending civil tax dispute resolution procedures pending resolution of any criminal charges.

42 (A). Entering premises or interception of communications should be authorised by the judiciary. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

42 (B). Summary of relevant facts in 2019

Standard is partially complied with.

A warrant to enter domestic dwelling houses is required. A warrantless search of other premises is permissible. There is no current provision for the New Zealand revenue authorities to intercept communications.

43 (A). Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex-post ratification. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

43 (B). Summary of relevant facts in 2019

Standard is inapplicable.

As above, a warrant to enter domestic dwelling houses is required, but a warrantless search of other premises is permissible. No procedure exists for later judicial ratification of a search which would have required but did not have a warrant.

44 (A). Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

44 (B). Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

44 (C). Summary of relevant facts in 2019

Minimum standard partially complied with in that a judicial warrant is necessary.

Best practice not complied with: no “exceptional cases” standard exists, no provision for notice to the taxpayer exists and notice is almost never given.

In practice such searches are limited to perceived cases of serious non-compliance in which sound evidence of tax fraud or the equivalent exists, and are authorised at a high level with legal review. Specific training is required for all staff who are involved

45 (A). Access to bank information should require judicial authorisation. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

45 (B). Summary of relevant facts in 2019

Standard is not complied with.

46 (A). Authorisation by the judiciary should be necessary for the interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

46 (B). Summary of relevant facts in 2019

Not relevant: there is no current provision for the New Zealand revenue authorities to intercept communications.

47 (A). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

47 (B). Summary of relevant facts in 2019

Standard is not complied with.

Under section 17C TAA 1994 there is no “indispensable” precondition for seizure and a seized document may be retained “for so long as is necessary for a full and complete inspection” although a taxpayer may obtain a copy of the seized document.

48 (A). If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

48 (B). Summary of relevant facts in 2019

Standard is usually complied with.

A backup is generally made on site, whether or not in the presence of any advisers, though there are times when the hard drive needs to be removed, often with taxpayer agreement, to complete the task at IRD's offices. Published guidance explains the best practice.

49 (A). Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

49 (B). Summary of relevant facts in 2019

The only formal compliance with this minimum standard is the protection in the New Zealand Bill of Rights Act 1990 from unreasonable search and seizure. IRD practice is to consider a taxpayer's environmental factors, such as whether there are children present or hours of business operation to minimise disruptions. Management approval is required before action is taken.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VI. Review and appeals

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

50 (A). E-filing of requests for internal review to ensure the effective and speedy handling of the review process. *

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

50 (B). Summary of relevant facts in 2019

Standard is fully complied with.

51 (A). The right to appeal should not depend upon prior exhaustion of administrative reviews. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

51 (B). Summary of relevant facts in 2019 *

DStandard is not fully complied with.

IRD's agreement is needed to dispense with the later part of the internal "disputes resolution" (administrative review) process in Part 4A TAA 1994: section 89N(1)(viii) TAA 1994

52 (A). Reviews and appeals should not exceed two years. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

52 (B). Summary of relevant facts in 2019

Standard is not complied with.

Subject only to the time limit on reassessments under section 108 and the four-year limit for some classes of disputes in section 89P of the TAA 1994, there is no time limit on completion of the internal "disputes resolution" (administrative review) process in Part 4A TAA 1994. There is no time limit on the completion of judicial determination of tax disputes.

53 (A). Audi alteram partem should apply in administrative reviews and judicial appeals. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

53 (B). Summary of relevant facts in 2019

Standard is fully complied with.

The internal "disputes resolution" (administrative review) process in Part 4A Tax Administration Act 1994 involves an iterative series of steps during which the taxpayer has the full ability to set out the relevant facts and arguments

54 (A). Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

54 (B). An appeal should not require prior payment of tax in all cases. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

54 (C). Summary of relevant facts in 2019

Minimum standard is complied with.

Best standard complied with in that tax in dispute is not payable unless there is a perceived significant risk that the tax will not be paid should the taxpayer not succeed in the dispute (section 138I TAA 1994).

55 (A). The state should bear some or all of the costs of an appeal, whatever the outcome.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

55 (B). Summary of relevant facts in 2019

Standard is not complied with.

The other party's costs are not payable by either party in the specialist Taxation Review Authority. In the High Court and higher courts costs follow the event, with the losing party making a contribution to the winning party's costs. The Commissioner is in the same position as the taxpayer with regard to rights and liabilities to costs.

56 (A). Legal assistance should be provided for those taxpayers who cannot afford it. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

56 (B). Summary of relevant facts in 2019

Standard is partly complied with.

Legal aid may be available for taxpayers who are involved in disputes and cannot afford their own lawyer. People who get legal aid may have to pay a user charge and repay part or all of their legal aid costs. In practice very few tax disputes indeed result in eligibility for civil legal aid.

57 (A). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

57 (B). Summary of relevant facts in 2019

Complied with in respect of hearings in the specialist TRA.

Not complied with in that for first-instance hearings in the High Court and appeals from the TRA (a taxpayer may file a first-instance tax challenge in either the TRA or the High Court) there is generally no right to exclude the public. There is a general expectation in the High Court and higher Courts that “open justice” requires public access and reporting.

58 (A). Tax judgments should be published. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

58 (B). Summary of relevant facts in 2019

Standard is fully complied with.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VII. Criminal and administrative sanctions

59 (A). Proportionality and ne bis in idem should apply to tax penalties. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

59 (B). Summary of relevant facts in 2019

Standard is partially complied with.

Proportionality exists in that for both civil penalties and criminal proceedings a graduated series of sanctions exists depending on the level of knowledge, intent, and dereliction of obligations. As below, civil and administrative penalties may both be imposed. New Zealand criminal law recognises the rule against double jeopardy.

60 (A). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

60 (B). Summary of relevant facts in 2019

Standard is not complied with.

A taxpayer who has had a civil penalty imposed may not subsequently be prosecuted in relation to the same tax position, but the reverse does not apply: the taxpayer may be subject to a criminal penalty and then have a civil penalty imposed (section 149 TAA 1994). New Zealand Courts have mandated that where both civil and criminal actions are mandated, the criminal procedure should be completed before the civil litigation is commenced.

61 (A). Voluntary disclosure should lead to reduction of penalties. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

61 (B). Summary of relevant facts in 2019

Standard is fully complied with.

Voluntary disclosure pre-audit and post-audit results in differing levels of mitigation of civil penalties and either non-prosecution or mitigation of penalty.

62 (A). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

62 (B). Summary of relevant facts in 2019

Standard is fully complied with.

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VIII. Enforcement of taxes

63 (A). Collection of taxes should never deprive taxpayers of their minimum necessary for living. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

63 (B). Summary of relevant facts in 2019

64 (A). Authorisation by the judiciary should be required before seizing assets or bank accounts *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

64 (B). Summary of relevant facts in 2019

65 (A). Taxpayers should have the right to request delayed payment of arrears. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

65 (B). Summary of relevant facts in 2019

66 (A). Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

66 (B). Summary of relevant facts in 2019

67 (A). Temporary suspension of tax enforcement should follow natural disasters. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

67 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

IX. Cross-border procedures

68 (A). The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

68 (B). The taxpayer should be informed that a cross-border request for information is to be made. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

68 (C). Summary of relevant facts in 2019

69 (A). Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

69 (B). Summary of relevant facts in 2019

70 (A). Provisions should be included in tax treaties setting specific conditions for exchange of information. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

70 (B). Summary of relevant facts in 2019

71 (A). If information is sought from third parties, judicial authorisation should be necessary. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

71 (B). Summary of relevant facts in 2019

72 (A). The taxpayer should be given access to information received by the requesting state. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

72 (B). Summary of relevant facts in 2019

73 (A). Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

73 (B). Summary of relevant facts in 2019

74 (A). A requesting state should provide confirmation of confidentiality to the requested state. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

74 (B). Summary of relevant facts in 2019

75 (A). A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

75 (B). Summary of relevant facts in 2019

76 (A). For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

76 (B). Summary of relevant facts in 2019

77 (A). Taxpayers should have a right to request initiation of mutual agreement procedure. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

77 (B). Summary of relevant facts in 2019

78 (A). Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to the progress of the procedure. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

78 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

X. Legislation

79 (A). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

79 (B). Retrospective tax legislation should ideally be banned completely. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

79 (C). Summary of relevant facts in 2019

80 (A). Public consultation should precede the making of tax policy and tax law. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

80 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XI. Revenue practice and guidance

81 (A). Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

81 (B). Summary of relevant facts in 2019

82 (A). Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

82 (B). Summary of relevant facts in 2019

83 (A). Binding rulings should only be published in an anonymised form *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

83 (B). Summary of relevant facts in 2019

84 (A). Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

84 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XII. Institutional framework for protecting taxpayers' rights

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

85 (A). Adoption of a charter or statement of taxpayers' rights should be a minimum standard. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

85 (B). A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

85 (C). Summary of relevant facts in 2019

86 (A). A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

86 (B). Summary of relevant facts in 2019

87 (A). The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

87 (B). Summary of relevant facts in 2019

This content is neither created nor endorsed by Google.

Google Forms

Complaints process

At Inland Revenue we're committed to providing excellent service. If you aren't satisfied with our service, processes, or a policy decision, you can follow the complaints process.

What's on this page

- Making a complaint
- Who will look after my case
- How long will my complaint take to resolve
- Website feedback
- Disagreements with tax or child support assessments

Making a complaint

Your feedback is important and helps us improve. We'll do our best to fix your problem and make sure it doesn't happen again.

Before making a complaint, please try the following:

Step one: Talk to us. Contact our staff in the area that relates to your problem and tell them your concerns.

Step two: If you're not satisfied with the solution offered by a staff member, you can ask for your concerns to be escalated to a team leader or technical support staff member.

If your issue is not resolved by either of these steps, you can contact our Complaints management service:

- online
- by phone, or
- by post.

[Back to top](#)

Who will look after my case

Your case will be assigned a case management officer who'll liaise with the area(s) involved with your complaint.

They'll:

- keep you informed of the status of your complaint and the outcome, and
- contact you if we require more information.

[Back to top](#)

How long will my complaint take to resolve

We aim to resolve a complaint within 15 working days. However, the length of time to resolve a complaint depends on its complexity. Your case management officer will discuss this with you.

If your case is unable to be resolved to your satisfaction, you can ask the Office of the Ombudsmen to investigate.

[Back to top](#)

Website feedback

To help us make this website as easy to use and useful as possible, you can tell us your feedback.

We want to know:

- what works well
- what doesn't work for you.

[Give feedback about our website](#)

[Back to top](#)

Disagreements with tax or child support assessments

If you disagree with how we've assessed your or your client's tax or child support, this is a separate process. In this situation you may need to follow the disputes process.

Find out what to do if you disagree with a:

- child support decision or assessment
- disputable decision or tax assessment

How we will work with you

Inland Revenue collects money to pay for public services. We help people to meet their obligations and receive their entitlements. We work within the Inland Revenue Acts and other relevant laws, and our actions are consistent with the spirit of the Treaty of Waitangi.



How we will work with you

- We will be easy to deal with, prompt, courteous and professional.
- We will follow through on what we say we will do.
- We will be responsive to individual, cultural and special needs.
- The person you are dealing with will give you their name.
- We will value your feedback and use it to improve our services.



Reliable advice and information

- We will provide you with reliable and correct advice and information about your entitlements and obligations.
- We will assist you to get in touch with the right people for your needs.
- We will be well-trained and competent.
- We will keep looking for better ways to provide you with advice and information.



Confidentiality

- We will treat all information about you as private and confidential, and keep it secure. We will only use or disclose it in accordance with the law.



Consistency and equity

- We will apply the law consistently so everyone receives their entitlements and pays the right amount.
- We will take your particular circumstances into account as far as the law allows.



Your right to question us

- We will make it easy for you to question the information, advice and service we give you. We will inform you about options available if you disagree with us, and we will work with you to reach an outcome quickly and simply.

For this charter to work effectively, we rely on each customer to provide all relevant information when dealing with Inland Revenue.

Robert Russell
Commissioner of Inland Revenue

We're committed to good service

IR 614
March 2009

Our charter outlines the standards of service you can expect when dealing with Inland Revenue. If you believe we haven't met a service standard, we'd like to know about it and have the chance to make it right for you.

If you're not happy about the service you've received ...

The quickest and easiest way to resolve it is usually with the staff member you've been dealing with, or our customer service representatives. They're available from 8 am to 8 pm Monday to Friday, and 9 am to 1 pm Saturdays.

Call one of the 0800 numbers on this page and have your IRD number with you when you call, it will speed up the process.

If you're still not satisfied, or the complaint involves a staff member ...

Ask to speak to their manager.

At any stage, if you're not satisfied with the way your complaint has been dealt with ...

Our Complaints Management Service can take a fresh look. Call 0800 274 138 between 8 am and 5 pm weekdays.

If you prefer, send us your complaint in writing and include the following information:

- your contact details
- your IRD number
- a brief description of your complaint and any steps you've taken to try to resolve it
- copies of documents you think are relevant.

Send to the Complaints Management Service, Inland Revenue Department, PO Box 1072, Wellington.

If you disagree with how we're assessing your tax or child support...

You may need to follow a formal disputes procedure. You can discuss this with one of our customer service representatives. Just call one of the free 0800 numbers listed at the side of the page.

We're committed to dealing with your complaint promptly, fairly and fully ...

If we can't resolve your complaint immediately, we'll keep you informed of progress.

If we can't resolve it to your satisfaction, you can take your complaint to the Ombudsmen. You can call free on 0800 802 602 or write to the Office of Ombudsmen, PO Box 10-152, Wellington.

Numbers to call

Personal tax enquiries
0800 227 774

Business tax enquiries
0800 377 774

Child support enquiries
0800 221 221

Complaints Management Service
0800 274 138

Free calling does not apply to cellular calls

Tax Administration Act 1994 (NZ)

Part 4A Disputes procedures

Part 4A: inserted, on 1 October 1996, by section 11 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

89A Purpose of this Part

(1) The purpose of this Part is to establish procedures that will—

(a) improve the accuracy of disputable decisions made by the Commissioner under certain of the Inland Revenue Acts; and

(b) reduce the likelihood of disputes arising between the Commissioner and taxpayers by encouraging open and full communication—

(i) to the Commissioner, of all information necessary for making accurate disputable decisions; and

(ii) to the taxpayers, of the basis for disputable decisions to be made by the Commissioner; and

(c) promote the early identification of the basis for any dispute concerning a disputable decision; and

(d) promote the prompt and efficient resolution of any dispute concerning a disputable decision by requiring the issues and evidence to be considered by the Commissioner and a disputant before the disputant commences proceedings.

(2)

This Part does not apply with respect to any tax returns or notices of assessments that are, or become, subject to objection proceedings under Part 8.

(3) Despite section 1(2), this Part applies to disputable decisions made by the Commissioner for tax years before the 1994–95 tax year.

89AB Response periods

(1) This section applies for the purposes of Parts 4A and 8A to set the period for a notice in response to another notice (the *initiating notice*). The period is called the *response period*.

(2) When the initiating notice is a notice of proposed adjustment, the response period is a 2-month period starting on the date of issue of the notice, unless section 89AC applies.

(3) When the initiating notice is a notice of assessment issued by a taxpayer, the response period for a notice of proposed adjustment under section 89DA is—

(a) a 4-month period starting on the date of issue of the initiating notice; or

(b) if the notice of proposed adjustment relates solely to the amount of a tax credit under section LH 2 of the Income Tax Act 2007, a period starting on the date the initiating notice is

received in an office of the department and ending 2 years after the latest date to provide a return of income for the relevant tax year.

(4) When the initiating notice is either a notice of disputable decision or a notice revoking or varying a disputable decision that is not an assessment, the response period for a notice is—

(a) a 2-month period starting on the date of issue of the initiating notice, unless paragraph (b) or (c) applies; or

(b) for a notice of proposed adjustment to which paragraph (c) does not apply, a 4-month period starting on the date of issue of the initiating notice; or

(c) for a notice of proposed adjustment relating solely to the amount of a tax credit under section LH 2 of that Act, a period starting on the date the notice of proposed adjustment is received in an office of the department and ending on the later of—

(i) 4 months after the date of the initiating notice:

(ii) 2 years after the latest date to provide a return of income for the relevant tax year.

(5) When the initiating notice is a disclosure notice, a notice issued by the Commissioner rejecting an adjustment proposed by a disputant, or a disputant's statement of position, the response period is a 2-month period starting on the date of issue of the initiating notice, unless section 89AC applies.

(6) For the purposes of subsections (3)(b) and (4)(c)(ii), if the taxpayer is a member of an internal software development group to which section 68E applies, the latest date for providing a return means the latest date for any member of the group.

89AC Response period when initiating notice filed late

When the initiating notice is a notice of proposed adjustment referred to in section 89AB(2) or a statement of position referred to in section 89AB(5), and the disputant issues the initiating notice outside the applicable response period but the notice is treated as being issued within that period, the response period for the response to the initiating notice is a 2-month period beginning on the earlier of—

(a) the day on which the Commissioner issues a notice in favour of the disputant in accordance with section 89K(1):

(b) the day on which a challenge to the Commissioner's refusal under section 89K(4) is finally judged successful by the Taxation Review Authority or by a court, or the day on which the Commissioner concedes.

Notices of proposed adjustment

89B Commissioner may issue notices of proposed adjustment

(1) The Commissioner may issue 1 or more notices of proposed adjustment in respect of a tax return or an assessment.

(2) The Commissioner may issue one notice of proposed adjustment in relation to more than 1 return period, if, in the Commissioner's opinion,—

(a) the adjustments proposed to each tax return or assessment for the return periods relate exclusively to the same issues or arrangements; or

(b) the adjustments proposed to each tax return or assessment for the return periods relate substantially to the same issues, and the issue of one notice is likely to expedite the issue of the assessments for all of the returns.

(3) The Commissioner may issue a notice of proposed adjustment in relation to more than 1 return period, more than 1 issue, and more than 1 tax type.

(4) The Commissioner may not issue a notice of proposed adjustment—

(a) if the proposed adjustment is already the subject of a challenge; or

(b) after the expiry of the time bar that, under—

(i) sections 108 and 108B; or

(ii) sections 108A and 108B,—

applies to the assessment.

89C Notices of proposed adjustment required to be issued by Commissioner

The Commissioner must issue a notice of proposed adjustment before the Commissioner makes an assessment, unless—

(a) the assessment corresponds with a tax return that has been provided by the taxpayer; or

(b) the taxpayer has provided a tax return which, in the Commissioner's opinion, appears to contain a simple or obvious mistake or oversight, and the assessment merely corrects the mistake or oversight; or

(c) the assessment corrects a tax position previously taken by the taxpayer in a way or manner agreed by the Commissioner and the taxpayer; or

(d) the assessment reflects an agreement reached between the Commissioner and the taxpayer; or

(db) the assessment is made in relation to a matter for which the material facts and relevant law are identical to those for an assessment of the taxpayer for another period that is at the time the subject of court proceedings; or

(e) the Commissioner has reasonable grounds to believe a notice may cause the taxpayer or an associated person—

(i) to leave New Zealand; or

(ii) to take steps, in relation to the existence or location of the taxpayer's assets, making it harder for the Commissioner to collect the tax from the taxpayer; or

(eb) the Commissioner has reasonable grounds to believe that the taxpayer has been involved in fraudulent activity; or

(f) the assessment corrects a tax position previously taken by a taxpayer that, in the opinion of the Commissioner is, or is the result of, a vexatious or frivolous act of, or vexatious or frivolous failure to act by, the taxpayer; or

(g) the assessment is made as a result of a direction or determination of a court or the Taxation Review Authority; or

(h) the taxpayer has not provided a tax return when and as required by a tax law; or

(i) the assessment is made following the failure by a taxpayer to withhold or deduct an amount required to be withheld or deducted by a tax law or to account for an amount withheld or deducted in the manner required by a tax law; or

(j) the taxpayer is entitled to issue a notice of proposed adjustment in respect of a tax return provided by the taxpayer, and has done so; or

(k) the assessment corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer, and, at the time the Commissioner makes the assessment, the Commissioner has made, or is able to make, an assessment for that other taxpayer for the correct amount of tax payable by that other taxpayer; or

(ka) the assessment corrects a tax position taken by the taxpayer in relation to a tax position taken by a look-through company in a return of income under section 42B, and the Commissioner and the company have completed the disputes process for that return of income and that tax position; or

(l) the assessment results from an amendment made under section 22G(6); or

(lba) the assessment is of a penalty under section 142H or 142I; or

(lb) the assessment extinguishes all or part of a taxpayer's tax loss in accordance with section 177C(5); or

(m) the assessment includes a calculation by the Commissioner of a tax credit under the family scheme.

89D Taxpayers and others with standing may issue notices of proposed adjustment

(1) If the Commissioner—

(a) issues a notice of assessment to a taxpayer; and

(b) has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment, whether or not in breach of section 89C,—

the taxpayer may, subject to subsection (2), issue a notice of proposed adjustment in respect of the assessment except to the extent to which the assessment takes into account amounts arising under subpart HB of the Income Tax Act 2007.

(2) A taxpayer who has not furnished a return of income for an assessment period may dispute the assessment made by the Commissioner only by furnishing a return of income for the assessment period.

(2A) For the purpose of subsection (2), section 33(2) does not apply.

(2B) For a taxpayer who is an individual, when an assessment for a tax year is made as described in section 22I(3), the taxpayer may dispute the assessment only by making an adjustment to their final account for the tax year.

(2C) A taxpayer who has not provided a GST tax return for a GST return period may not dispute the assessment made by the Commissioner other than by providing a GST return for the GST return period.

(2D) For the purpose of subsection (2C), section 16(6) of the Goods and Services Tax Act 1985 does not apply.

(2E) If the Commissioner makes an assessment of an amount of research and development credit, a taxpayer who has not provided a statement under section 68D or 68E in relation to an assessment period may dispute the assessment only by providing a statement for the period within the time allowed under section 68D or 68E, as applicable.

(3) If the Commissioner—

(a) issues a notice of disputable decision that is not a notice of assessment; and

(b) the notice of disputable decision affects the taxpayer,—

the taxpayer, or any other person who has the standing under a tax law to do so on behalf of the taxpayer, may issue a notice of proposed adjustment in respect of the disputable decision.

(4) [Repealed]

(5) For a notice of proposed adjustment issued under this section to have effect, the notice must be issued within the applicable response period.

89DA Taxpayer may issue notice of proposed adjustment for taxpayer assessment

(1) A taxpayer may issue a notice of proposed adjustment in respect of an assessment made by the taxpayer for a tax year or a GST return period except,—

(a) to the extent to which the assessment takes into account amounts arising under subpart HB of the Income Tax Act 2007:

(ab) to the extent to which the assessment relates to an amount of research and development tax credit and the taxpayer has not filed a research and development supplementary return in relation to the credit within the time allowed under section 33E:

(b) if the Commissioner has previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment.

(2) A notice of proposed adjustment under this section is not effective unless it is issued within the response period for the notice.

(3) A taxpayer who makes an assessment of an amount of research and development credit but does not provide a statement under section 68D or 68E in relation to the tax year referred to in subsection (1), may dispute the assessment only by providing a statement for the tax year within the time allowed under section 68D or 68E, as applicable.

(4) A look-through company may issue a notice of proposed adjustment in respect of a return it makes under section 42B for a tax year if the Commissioner has not previously issued a notice of proposed adjustment to the taxpayer in respect of the return. For the purposes of section 89AB(3), the return is treated as a notice of assessment.

89E Election of small claims jurisdiction of Taxation Review Authority

[Repealed]

89F Content of notice of proposed adjustment

(1) A notice of proposed adjustment must—

(a) contain sufficient detail of the matters described in subsections (2) and (3) to identify the issues arising between the Commissioner and the disputant; and

(b) be in the prescribed form.

(2) A notice of proposed adjustment issued by the Commissioner must—

(a) identify the adjustment or adjustments proposed to be made to the assessment; and

(b) provide a concise statement of the key facts and the law in sufficient detail to advise the disputant of the grounds for the Commissioner's proposed adjustment or adjustments; and

(c) state how the law applies to the facts.

(3) A notice of proposed adjustment issued by a disputant must—

(a) identify the adjustment or adjustments proposed to be made to the assessment; and

(b) provide a statement of the facts and the law in sufficient detail to advise the Commissioner of the grounds for the disputant's proposed adjustment or adjustments; and

(c) state how the law applies to the facts; and

(d) include copies of the documents of which the disputant is aware at the time that the notice is issued that are significantly relevant to the issues arising between the Commissioner and the disputant.

89G Issue of response notice

(1) To reject a proposed adjustment, the recipient of the notice of proposed adjustment must, within the response period for the notice, notify the issuer that the adjustment is rejected by issuing a response notice.

- (2) A notice of response must state concisely—
- (a) the facts or legal arguments in the notice of proposed adjustment that the issuer of the notice of response considers are wrong; and
 - (b) why the issuer of the notice of response considers those facts or legal arguments to be wrong; and
 - (c) any facts and legal arguments relied on by the issuer of the notice of response; and
 - (d) how the legal arguments apply to the facts; and
 - (e) the quantitative adjustments to any figure referred to in the notice of proposed adjustment that result from the facts and legal arguments relied on by the issuer of the notice of response.

89H Deemed acceptance

- (1) If a disputant does not, within the response period for a notice of proposed adjustment issued by the Commissioner, reject an adjustment contained in the notice, the disputant is deemed to accept the proposed adjustment and section 89I applies.
- (2) If the Commissioner does not, within the response period for a notice of proposed adjustment issued by a disputant, reject an adjustment contained in the notice, the Commissioner is deemed to accept the proposed adjustment and section 89J applies.
- (3) Where—
- (a) a disputant does not, within the response period for replying to a notice from the Commissioner rejecting an adjustment proposed by the disputant, notify the Commissioner that they reject all or part of the Commissioner’s notice, the disputant is deemed to accept the matters specified in the Commissioner’s notice; or
 - (b) the disputant notifies the Commissioner that they accept all or a part of the Commissioner’s notice,—
- then, in those circumstances,—
- (c) section 89I applies as if the matters contained in the Commissioner’s notice were an adjustment or adjustments proposed by the Commissioner; and
 - (d) the Commissioner’s notice is deemed, for the purposes of section 89K, to be a notice of proposed adjustment.
- (4) If the Commissioner fails to issue a challenge notice in accordance with section 89P, the Commissioner is deemed to accept an adjustment proposed by the disputant or the disputant’s statement of position, and section 89J applies.

89I Circumstances where disputant may not challenge adjustment

- (1) A disputant may not challenge an adjustment proposed by the Commissioner if the disputant—

- (a) notifies the Commissioner that they accept the adjustment; or
 - (b) is deemed to accept the adjustment, and section 89K does not apply.
- (2) The Commissioner must include or take account of each proposed adjustment that is accepted or deemed accepted by a disputant in a notice of assessment issued to the disputant.

89J Where Commissioner accepts adjustment proposed by disputant

- (1)
- If the Commissioner accepts or is deemed to accept an adjustment proposed by a disputant, and section 89L does not apply, the Commissioner must include or take account of the adjustment in—
- (a) a notice of assessment issued to the disputant; and
 - (b) any further notice of assessment or further amended assessment issued to the disputant.
- (2) Despite subsection (1), the Commissioner does not have to issue a notice of assessment or an amended assessment that includes or takes into account an adjustment that the Commissioner has accepted, or is deemed to have accepted, if the Commissioner considers that the disputant in relation to the adjustment—
- (a) was fraudulent;
 - (b) wilfully misled the Commissioner.

89K Late actions deemed to occur within response period

- (1) Where—
- (a) the Commissioner—
 - (i) considers that an exceptional circumstance has prevented a disputant from doing 1 or more of the actions described in subsection (1B); or
 - (ii) considers that the disputant has a demonstrable intention to enter into or continue the disputes process at the time the disputant fails in doing 1 or more of the actions described in subsection (1B); and
 - (b) the disputant sends to the Commissioner—
 - (i) a notice—
 - (A) rejecting an adjustment proposed by the Commissioner in the notice of proposed adjustment referred to in subsection (1B)(a); and
 - (B) specifying the matters required by section 89G; or
 - (ii) a notice of proposed adjustment—
 - (A) in respect of a disputable decision referred to in subsection (1B)(b); and

(B) specifying the matters required by section 89F; or

(iii) a statement of position,—

as soon as reasonably practicable after becoming aware of the disputant's failure to reject the Commissioner's proposed adjustment or to issue a notice within the applicable response period, the Commissioner may issue a notice in favour of the disputant stating that—

(c) the disputant's rejection of the Commissioner's notice of proposed adjustment; or

(d) the disputant's notice of proposed adjustment; or

(e) the disputant's statement of position:

is to be treated for all purposes under this Part as if it had been given within the applicable response period.

(1B) For the purposes of subsection (1)(a), the actions are—

(a) rejecting, within the applicable response period, an adjustment contained in a notice of proposed adjustment issued by the Commissioner:

(b) issuing, within the applicable response period, a notice of proposed adjustment under section 89D or 89DA in respect of a disputable decision:

(c) issuing, within the applicable response period, a statement of position.

(2) Subsection (1) may apply even if the Commissioner has already issued a notice of disputable decision that includes or takes account of an adjustment that was proposed by the Commissioner; and, where subsection (1) applies, the notice of disputable decision is to be deemed not to have been issued.

(3) For the purposes of subsection (1),—

(a) an *exceptional circumstance* arises if—

(i) an event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment, or for not issuing a notice of proposed adjustment or statement of position, within the response period for the notice:

(ii) a disputant is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period:

(b) an act or omission of an agent of a disputant is not an exceptional circumstance unless—

(i) it was caused by an event or circumstance beyond the control of the agent that could not have been anticipated, and its effect could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

(ii) the agent is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period.

(4) If the Commissioner decides to not issue a notice in favour of the disputant under subsection (1), the Commissioner must issue a notice of that decision (the *refusal notice*) within 1 month of the disputant sending the relevant notice or statement under subsection (1)(b).

(5) If the Commissioner fails to issue a refusal notice in accordance with subsection (4), then, for the purposes of subsection (6), the Commissioner is treated as issuing such a notice on the day that is 1 month after the disputant sends the relevant notice or statement under subsection (1)(b).

(6) The disputant may challenge the Commissioner's refusal notice by filing proceedings, in accordance with the Taxation Review Authorities Regulations 1998, within 2 months of the notice's issue. For the purposes of this subsection, the Taxation Review Authorities Act 1994, and the Taxation Review Authorities Regulations 1998, the refusal notice is treated as a notice of disputable decision and the challenge is treated as a challenge under Part 8A.

89L Application to High Court

(1) The Commissioner may apply to the High Court for an order allowing the Commissioner to issue a notice rejecting an adjustment proposed by a taxpayer that the Commissioner has accepted, or is deemed to have accepted, if—

(a) the Commissioner considers that an exceptional circumstance applies or has prevented the Commissioner from rejecting the adjustment within the response period; and

(b) the Commissioner applies—

(i) before the Commissioner issues a notice of assessment including the adjustment; or

(ii) relying on section 108(2) or section 108A(3).

(1B) The Commissioner may apply to the High Court for an order allowing the Commissioner to issue a challenge notice past the 4 years provided in section 89P(1) if—

(a) the Commissioner considers that an exceptional circumstance applies or has prevented the Commissioner from issuing the challenge notice within the 4 years; and

(b) the Commissioner applies within the 4 years.

(2) The High Court may—

(a) make an order for the purposes of subsection (1) on such terms as the court deems fit; or

(b) decline to make an order.

(2B) The High Court may—

(a) make an order for the purposes of subsection (1B) on such terms as the court deems fit; or

(b) decline to make an order.

(3) For the purposes of subsection (1) or (1B), an *exceptional circumstance*—

(a) is an event or circumstance beyond the control of the Commissioner or an officer of the department that provides the Commissioner with a reasonable justification for not rejecting an adjustment proposed by a disputant within the response period.

(b) [Repealed]

Disclosure notices

89M Disclosure notices

(1) Unless subsection (2) applies, and subject to section 89N, the Commissioner must issue a disclosure notice in respect of a notice of proposed adjustment to a disputant at the time or after the Commissioner or the taxpayer, as the case may be, issues the notice of proposed adjustment.

(2) The Commissioner may not issue a disclosure notice in respect of a notice of proposed adjustment if the Commissioner has already issued a notice of disputable decision that includes, or takes account of, the adjustment proposed in the notice of proposed adjustment.

(3) Unless the disputant has issued a notice of proposed adjustment, the Commissioner must, when issuing a disclosure notice,—

(a) provide the disputant with the Commissioner's statement of position; and

(b) include in the disclosure notice—

(i) a reference to section 138G; and

(ii) a statement as to the effect of the evidence exclusion rule.

(4) The Commissioner's statement of position in the prescribed form must, with sufficient detail to fairly advise the disputant,—

(a) give an outline of the facts on which the Commissioner intends to rely; and

(b) give an outline of the evidence on which the Commissioner intends to rely; and

(c) give an outline of the issues that the Commissioner considers will arise; and

(d) specify the propositions of law on which the Commissioner intends to rely.

(5) If the Commissioner issues a disclosure notice to a disputant, the disputant must issue the Commissioner with the disputant's statement of position within the response period for the disclosure notice.

(6) A disputant's statement of position in the prescribed form must, with sufficient detail to fairly advise the Commissioner,—

(a) give an outline of the facts on which the disputant intends to rely; and

(b) give an outline of the evidence on which the disputant intends to rely; and

(c) give an outline of the issues that the disputant considers will arise; and

(d) specify the propositions of law on which the disputant intends to rely.

(6BA) The Commissioner must issue a statement of position, described in subsection (4), in response to the disputant's statement of position, unless—

(a) the Commissioner issued a statement of position when issuing a disclosure notice:

(b) on or before the date on which the Commissioner is required to issue the statement of position—

(i) section 89N(1)(c)(viii) applies:

(ii) any of section 89N(1)(c)(i) to (vi) and (ix) apply.

(6B) In subsections (4)(b) and (6)(b), *evidence* refers to the available documentary evidence on which the person intends to rely, but does not include a list of potential witnesses, whether or not identified by name.

(7) A disputant who does not issue a statement of position in the prescribed form within the response period for the statement of position, is treated as follows:

(a) if the Commissioner has proposed the adjustment to the assessment, the disputant is treated as having accepted the Commissioner's notice of proposed adjustment or statement of position:

(b) if the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.

(8) The Commissioner—

(a) may, within the response period for a disputant's statement of position, provide the disputant with additional information in response to the disputant's statement of position; and

(b) must provide the additional information as far as possible in the manner required by subsection (4).

(9) The additional information provided by the Commissioner under subsection (8) is deemed to form part of the Commissioner's statement of position.

(10) The Commissioner may apply to the High Court for more time to reply to a disputant's statement of position if—

(a) the Commissioner applies before the expiry of the response period for the disputant's statement of position; and

(b) the Commissioner considers it is unreasonable to reply to the disputant's statement of position within the response period, because of the number or complexity or novelty of matters raised in the disputant's statement of position.

(11) The disputant may apply to the High Court for more time within which to reply to the Commissioner's statement of position if—

(a) the disputant applies before the expiry of the response period for the Commissioner's statement of position; and

(b) the disputant considers it unreasonable to reply to the Commissioner's statement of position within the response period, because the issues in dispute had not previously been discussed between the Commissioner and the disputant.

(12) The High Court shall, in considering an application under subsection (11), have regard to the provisions of section 89A and the conduct of the parties to the dispute.

(13) The Commissioner and a disputant may agree to additional information being added, at any time, to either of their statements of position.

(14) The additional information provided by the Commissioner or a disputant under subsection (13) is deemed to form part of the provider's statement of position.

89N Completing the disputes process

(1) This section applies if—

(a) a notice of proposed adjustment has been issued; and

(b) the dispute has not been resolved by agreement between the Commissioner and the disputant; and

(c) none of the following applies:

(i) the Commissioner notifies the disputant that, in the Commissioner's opinion, the disputant in the course of the dispute has committed an offence under an Inland Revenue Act that has had an effect of delaying the completion of the disputes process:

(ii) the Commissioner has reasonable grounds to believe that the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:

(iii) the Commissioner has reasonable grounds to believe that a person who is an associated person of the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:

(iv) the disputant has begun judicial review proceedings in relation to the dispute:

(v) a person who is an associated person of the disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute:

(vi) during the disputes process, the disputant receives from the Commissioner a requirement under a statute to produce information relating to the dispute and fails to comply with the requirement within a period that is specified in the requirement:

(vii) [Repealed]

(viii) the disputant and the Commissioner agree, recording their agreement in a document, that they have reached a position in which the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process:

(ix) the disputant and the Commissioner agree, recording their agreement in a document, to suspend the disputes process pending a decision in a test case referred to in section 89O.

(2) If this section applies, the Commissioner may not amend an assessment under section 113 before one of the following occurs:

(a) the Commissioner or the disputant accepts a notice of proposed adjustment, notice of response, or statement of position issued by the other:

(b) the Commissioner considers a statement of position issued by the disputant.

(3) Despite subsection (2), the Commissioner may apply to the High Court for an order that allows more time for the completion of the disputes process, or for an order that completion of the disputes process is not required.

(4) The Commissioner must make an application under subsection (3) within the period of time during which the Commissioner would otherwise be required, under the Inland Revenue Acts, to make an amended assessment.

(5) If the Commissioner makes an application under subsection (3), the Commissioner must make an amended assessment by the last day of the period that—

(a) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment; and

(b) contains the total of—

(i) the number of days between the date on which the Commissioner files the application in the High Court and the earliest date on which the application is decided by the High Court or the application or dispute is resolved:

(ii) the number of days allowed by an order of a court as a result of the application.

89O Test cases

(1) This section applies if—

(a) a dispute between a disputant and the Commissioner has been identified; and

(b) the Commissioner has designated a separate challenge as a test case.

(2) The disputant and the Commissioner may agree, recording their agreement in a document, to suspend the proceedings in the dispute because there is significant similarity between the facts and questions of law in the dispute and the facts and questions of law in the challenge that has been designated as a test case.

(3) A suspension that is agreed under subsection (2) starts on the date of the agreement and ends on the earliest of—

(a) the date of the court's decision in the test case:

(b) the date on which the test case is otherwise resolved:

- (c) the date on which the dispute is otherwise resolved.
- (4) The Commissioner may make an assessment or perform an action in relation to a suspended dispute that is consistent with the resolution of the test case.
- (5) The Commissioner must make an amended assessment, or perform an action, that is the subject of a suspended dispute by the later of the following:
 - (a) the day that is 60 days after the last day of the suspension:
 - (b) the last day of the period that—
 - (i) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment, or perform the action; and
 - (ii) contains the same number of days as does the period of the suspension.

89P Challenge notice for taxpayer-initiated disputes

- (1) The Commissioner must issue a challenge notice to a disputant within 4 years of the disputant issuing a notice of proposed adjustment, unless—
 - (a) section 89L(2B)(a) applies:
 - (b) section 89J(2) applies.
- (2) Despite subsection (1), the Commissioner does not have to issue a challenge notice to the extent to which the dispute has ended.
- (3) A challenge notice may not be issued before the Commissioner issues a statement of position, unless 1 or more of section 89N(1)(c)(i) to (ix) apply.
- (4) A challenge notice must state that—
 - (a) the Commissioner will not be issuing an amended assessment that includes or takes into account the adjustment proposed by the disputant; and
 - (b) a challenge may proceed.

Part 8A Challenges

138A Application of this Part

(1) Despite section 1(2), this Part applies to—

(a) every notice of disputable decision issued by the Commissioner under a provision of the Inland Revenue Acts on or after 1 October 1996, irrespective of the period to which the notice of disputable decision relates; and

(b) any assessment, reassessment, or determination of the Commissioner if a notice of assessment or reassessment to which section 125A(2)(a) applies has been issued before 1 October 1996, irrespective of the period to which the notice of assessment or reassessment relates.

(2) This Part does not apply to any assessment or reassessment or determination or decision of the Commissioner to which Part 8 applies by virtue of subsection (1) or subsection (2)(b) of section 125A.

138B When disputant entitled to challenge assessment

(1) A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

(a) the assessment includes an adjustment proposed by the Commissioner which the disputant or their look-through company has rejected within the applicable response period; and

(b) where the assessment is an amended assessment, an adjustment proposed by the Commissioner that is included in the assessment—

(i) imposes a fresh liability (being a liability that was not included in an earlier assessment) in respect of a particular; or

(ii) increases an existing liability (being a liability that was included in an earlier assessment but to a lesser extent) in respect of a particular; and

(c) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High Court Rules 2016, within the response period following the issue of the relevant notice of assessment.

(2) A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

(a) the assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by notice within the applicable response period; and

(b) the disputant is subsequently issued with an amended assessment; and

(c) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High

Court Rules 2016, within the response period following the issue of the amended notice of assessment.

(3) Subject to subsection (4), a disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

(a) the assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by notice within the applicable response period; and

(b) the Commissioner has issued a challenge notice to the disputant; and

(c) the disputant files the proceedings, in accordance with the Taxation Review Authorities Regulations 1998 (or any regulations made in substitution for those regulations) or the High Court Rules 2016 within 2 months.

(4) Despite subsection (3), the disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

(a) the assessment was the subject of an adjustment (the *adjustment*) notified to the Commissioner specifying the adjustment and sufficient details to identify how the adjustment meets paragraph (c); and

(b) the Commissioner has issued a challenge notice to the disputant; and

(c) the adjustment—

(i) is in relation to a matter for which the material facts and relevant law are identical to those for another assessment for the taxpayer, for another period, that is at the time of proposing the adjustment the subject of court proceedings; or

(ii) corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer and, at the time of proposing the adjustment, the incorrect tax position taken by the other taxpayer is the subject of, or was the subject of, court proceedings; and

(d) the disputant files the proceedings, in accordance with the Taxation Review Authorities Regulations 1998 (or any regulations made in substitution for those regulations) or the High Court Rules 2016 within 2 months.

138C When disputant entitled to challenge disputable decision other than assessment

A disputant is entitled to challenge a disputable decision that is not an assessment by commencing proceedings in a hearing authority if—

(a) the disputable decision was the subject of an adjustment proposed by the disputant which the Commissioner has rejected; and

(b) the disputant files the proceedings in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High Court Rules 2016, within the response period for the notice from the Commissioner rejecting the proposed adjustment.

138D Challenge may in exceptional circumstances be commenced after response period

(1) If a hearing authority considers that exceptional circumstances apply, the hearing authority may, on application by a disputant, allow the disputant to commence a challenge to a notice of a disputable decision after the response period.

(2) For the purposes of subsection (1), an *exceptional circumstance* is an event or circumstance beyond the control of a disputant that provides the disputant with a reasonable justification for not commencing a challenge to a disputable decision within the response period; but an act or omission of an agent of a disputant is not an exceptional circumstance unless the act or omission was caused by an event or circumstance beyond the control of the agent—

(a) that could not have been anticipated; and

(b) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct.

138E Certain rights of challenge not conferred

(1) This Part does not confer a right of challenge with respect to—

(a) a decision of the Commissioner under a tax law to enlarge or extend the time for giving notice, making an application, furnishing a tax return, or doing any other act, matter, or thing; or

(b) a decision of the Minister under a tax law, or an act, matter, or thing done or omitted by the Minister under a tax law; or

(c) a matter in respect of which provision is made by a tax law—

(i) for a challenge or objection to the matter to be heard and determined by; or

(ii) for the matter to be inquired into, considered, reported upon, heard, decided, determined, or otherwise dealt with by; or

(iii) for the matter to be the subject of any recommendation of,—

a special committee, tribunal, or authority (other than a Taxation Review Authority) established in that behalf or a person or official (other than the Commissioner); or

(d) a valuation or apportionment made by the Valuer-General or a registered valuer under the Valuation of Land Act 1951 or the Income Tax Act 2007; or

(e) a matter which by a provision in—

(i) the PAYE rules; or

(ii) the provisional tax rules; or

(iii) any of sections CD 15, CD 19, HD 2, HD 3(2), HD 5(4), HD 15, HD 24, HD 26 to HD 29, LA 6 to LA 8, LJ 1 to LJ 7, RD 3, RM 2 to RM 4, RM 8, and RM 10 of the Income Tax

Act 2007 and sections 18K, 33, 92A, 139 (insofar as it applies to unpaid tax for periods before 1 April 1997) and 184 of the Tax Administration Act 1994; or

(iv) any of sections 17F, 17G, 18I, 21B to 23, 36 to 46, 58, 62, 63, 78B, 78C, 80, 89C, 89K, 89L, 89M, 89N(1)(c)(viii) and (3), 92, 106, 107, 108A, 108B, 109, 110, 111, 113, 114, 120A to 120U, 124ZH, Part 7B, 138I(2B), 138N, 139B, 142A, 142C, 146, 150A, 157, 160, 166, 166B, 167, 174AA, 176, 177, 177A to 177D, 183A, 183D, 183F, and 225B of this Act; or

(ivb) any of Parts 1 to 3 of the KiwiSaver Act 2006; or

(v) any of Parts 4, 6, 7 and 11 (other than section 76) of the Goods and Services Tax Act 1985—

is left to the discretion, judgment, opinion, approval, consent, or determination of the Commissioner; or

(ea) the Commissioner's interpretation of how a taxation law applies to a person, whether or not the person has come into legal existence, and to an arrangement, whether or not a single or a recurring arrangement, as set out in a binding ruling made under Part 5A; or

(eb) the Commissioner's interpretation of whether the amendment or repeal of a taxation law has changed the way that the law applies in a private or a product ruling, as set out in a status ruling made under section 91GA; or

(f)

a matter in respect of which a tax law provides that there shall be no right of objection or challenge to the decision of the Commissioner.

(2) Subsection (1) may be overruled by a tax law or other law that expressly confers a right of objection or challenge in respect of a decision made by any person.

138F Challenging disputable decisions which are not assessments

(1)

A disputant may challenge under section 138B an assessment made by the Commissioner that takes account of or relies on a disputable decision, whether or not the disputant has issued a notice of proposed adjustment in respect of the disputable decision.

(2) Subsection (1) does not apply if—

(a) the disputant has issued a notice of proposed adjustment in respect of the disputable decision; and

(b) the disputant's grounds for challenging the assessment are the same grounds, or substantially the same as the grounds, that were specified in the notice of proposed adjustment.

(3) In subsection (1), a *disputable decision* does not include an assessment.

Section 138F: inserted, on 1 October 1996, by section 42 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

138G Effect of disclosure notice

(1) Unless subsection (1B) or (2) apply, if the Commissioner issues a disclosure notice to a disputant, and the disputant challenges the disputable decision, the Commissioner and the disputant may raise in the challenge only the issues and the propositions of law that are disclosed in the Commissioner's and disputant's statements of position.

(1B) If the Commissioner did not issue a statement of position in response to the disputant's statement of position on or before the required date, and did not issue a statement of position when issuing a disclosure notice, subsection (1) does not apply to limit the issues or propositions of law that may be raised by—

(a) the Commissioner, if section 89M(6BA)(b)(i) applies:

(b) the Commissioner or the disputant, if section 89M(6BA)(b)(ii) applies.

(2) A hearing authority may, on application by a party to a challenge to a disputable decision, allow the applicant to raise in the challenge new propositions of law, and new issues, if satisfied that—

(a) the applicant could not, at the time of delivery of the applicant's statement of position, have, with due diligence, discerned those propositions of law or issues; and

(b) having regard to the provisions of section 89A and the conduct of the parties, the hearing authority considers that the raising of those propositions of law or issues is necessary to avoid manifest injustice to the Commissioner or the disputant.

(3) For the purposes of subsection (1), a *statement of position* includes any additional information that the Commissioner and the disputant agree (under section 89M(13)) to add to the statement of position.

138H Application to strike out proceedings

The Commissioner may apply to a hearing authority to strike out a challenge commenced by a disputant if the Commissioner considers that the disputant has failed to comply with any of the requirements of section 89M or section 138B.

138I Payment of disputed tax

(1) [Repealed]

(2) A disputant is not liable to pay—

(a) the deferrable tax relating to any tax in dispute; or

(b) a shortfall penalty, where the penalty is payable in respect of any tax in dispute; or

(c)

the interest accruing under Part 7 on that deferrable tax or that shortfall penalty—

until the due date for payment of that deferrable tax.

(2B) Despite subsection (2), the Commissioner may require a disputant to pay all tax in dispute that is the subject of the challenge if the Commissioner considers that there is a significant risk that the tax in dispute will not be paid should the disputant's challenge not be successful.

(3) The Commissioner must, after the day of determination of final liability, refund or pay to, or apply on behalf of, a disputant whose challenge is successful—

(a) the tax in dispute paid in accordance with subsection (2B); and

(b) interest accrued on the tax in dispute under Part 7.

(4) Part 7 applies to interest calculated on deferrable tax on and after 1 April 1997, irrespective of whether the challenge relates to a tax year before the 1997–98 tax year.

(5) If the challenge relates to the 1996–97 or an earlier tax year, interest must be calculated on deferrable tax on and after the date that the period of deferral starts.

138J Waiver of payment or security

[Repealed]

138K Determination of challenge not to affect other matters

The determination of a challenge by a hearing authority under this Part—

(a) relates solely to the matter that is the subject of the disputable decision being challenged; and

(b) does not affect the right of the Commissioner to make a disputable decision relating to a different matter and to amend the disputable decision being challenged in any way rendered necessary by the later disputable decision.

138L Challenging civil penalties

(1) A taxpayer assessed by the Commissioner for a civil penalty—

(a) may challenge the penalty in the same way as a taxpayer may challenge the assessment of tax to which the penalty relates; and

(b) has the same rights and obligations, in relation to proceedings concerning the penalty, as a person has in relation to proceedings concerning the tax.

(2) Notwithstanding subsection (1), a taxpayer has no right to challenge—

(a) a civil penalty imposed for—

(i) the late provision of a tax return; or

- (ii) the late payment of tax; or
- (ab) a civil penalty imposed under section 215 of the KiwiSaver Act 2006; or
- (b) the percentage applicable to the civil penalty.

138M Wrong PAYE withholding determination a ground for challenge

A disputant may—

- (a) dispute a notice of proposed adjustment; or
- (b) challenge an assessment—

that is issued by the Commissioner in relation to an amount of tax withheld on the basis of a determination under section RD 3(5) of the Income Tax Act 2007, on the ground that the determination is wrong, whether in fact or in law.

138N Proceedings may be transferred to different hearing authorities

- (1) If a disputant commences a challenge in the High Court,—
 - (a) the Commissioner may apply to the High Court to have the challenge transferred to a Taxation Review Authority; or
 - (b) the High Court may, of its own motion, transfer the challenge to a Taxation Review Authority.
- (2) If a disputant commences a challenge in a Taxation Review Authority, the Commissioner may apply to the High Court to have the challenge transferred to the High Court.
- (3) The High Court may order that any proceedings transferred to the High Court under this section are to be transferred into the Court of Appeal.

138O Transfer from small claims jurisdiction of Taxation Review Authority

[Repealed]

138P Powers of hearing authority

- (1) On hearing a challenge, a hearing authority may—
 - (a) confirm or cancel or vary an assessment, or reduce the amount of an assessment, or increase the amount of an assessment to the extent to which the Commissioner was able to make an assessment of an increased amount at the time the Commissioner made the assessment to which the challenge relates; or

(b) make an assessment which the Commissioner was able to make at the time the Commissioner made the assessment to which the challenge relates, or direct the Commissioner to make such an assessment.

(1B) If a taxpayer brings a challenge and proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, a hearing authority must reduce the taxpayer's assessment by the specific amount.

(2) If the challenge relates to a disputable decision that is not an assessment, the hearing authority—

(a) must not make or alter the disputable decision; and

(b) may direct the Commissioner to alter the disputable decision to the extent necessary to conform to the decision of the hearing authority with the effect the hearing authority specifies.

(3) Subject to subsection (4), the Commissioner must make or amend an assessment or other disputable decision in such a way that it conforms to the hearing authority's determination.

(4) The Commissioner is not required to make or amend an assessment or other disputable decision before the resolution of appeal procedures from the hearing authority.

(5) The time bars in sections 108, 108A, and 108B do not apply with respect to—

(a) a determination of a hearing authority made under subsection (1)(a) or subsection (1B) of this section or an amendment made by the Commissioner to an assessment for the purpose of conforming to such a determination; or

(b) an assessment made by a hearing authority under subsection (1)(b) or the Commissioner under subsection (3).

138Q Challenges designated as test cases

(1) The Commissioner may designate a challenge as a test case, if the Commissioner considers that determination of the challenge is likely to be determinative of all or a substantial number of the issues involved in 1 or more other challenges.

(2) Test cases are to be heard in the High Court.

138R Stay of proceedings for similar cases

(1) The Commissioner may stay proceedings by issuing a notice notifying a disputant that a challenge is to be stayed because a test case on a similar challenge or objection is to be heard by the High Court.

(2) The Commissioner may issue a notice staying proceedings under subsection (1) only if—

(a) the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the challenge proposed to be stayed; and

- (b) the challenge proposed to be stayed has not been determined by a hearing authority.
- (3) When a disputant receives a notice staying proceedings, the disputant may issue a notice requiring that there be no stay of proceedings that notifies the Commissioner that the disputant requires the challenge to be heard even though a test case is to be heard.
- (4) Within 14 days after the Commissioner receives a notice requiring that there be no stay of proceedings, the Commissioner may apply to the High Court for an order that the challenge be stayed pending the determination of the test case or the further order of the court.
- (5) If a challenge is stayed, the disputant or the Commissioner may apply to the High Court for an order that the challenge cease to be stayed.
- (6) A stay under subsection (1) lapses on the expiry of 14 days following the day on which any of the following occurs:
- (a) the expiry of the 14-day period specified in subsection (4), if the disputant has issued a notice requiring there to be no stay of proceedings and the Commissioner has not within the 14-day period made an application under subsection (4); or
 - (b) the making by the High Court of an order dismissing an application by the Commissioner under subsection (4); or
 - (c) the making by the High Court, on an application under subsection (5), of an order that the challenge cease to be stayed; or
 - (d) the determination of the test case which caused the challenge to be stayed by the expiration of all rights of appeal.
- (7) For so long as a challenge is stayed,—
- (a) any time limits or periods specified in or under this Act (other than in this section) in relation to the challenge are not to apply; and
 - (b) where the stay of a challenge lapses, any time limits or periods so specified are to be treated as if they were extended by the period commencing with the date of the notice staying proceedings, and ending with the day on which the stay lapses.
- (8) The Commissioner may give notices required by this section by formally notifying either the disputant or a solicitor who is authorised to accept service on their behalf at the contact address referred to in section 14G(c) or by effective delivery to an address supplied by the disputant.

138S Challenge to be heard before Taxation Review Authority

- (1) A challenge to a disputable decision made by the Commissioner under—
- (a) the Student Loan Scheme Act 2011, or any provision of this Act that applies in relation to an employer's obligation under the Student Loan Scheme Act 2011; and
 - (b) the Child Support Act 1991, or any provision of this Act that applies in relation to an employer's obligation under the Child Support Act 1991; and

(c) any other tax law, where that tax law or another tax law specifies that the disputable decision is to be determined by a Taxation Review Authority,—

is to be commenced, heard, and finally determined by a Taxation Review Authority.

(2) Subsection (1) prevails over any other section in this Part.

Tax Administration Act 1994 (NZ)

20 Privilege for confidential communications between legal practitioners and their clients

(1) Despite anything in the Search and Surveillance Act 2012, but subject to subsections (2) and (3), any information or document shall, for the purposes of sections 16 to 17E, 17H, and 17I, 143(1)(b), 143A(1)(b), 143B(1)(b), and 143F, be privileged from disclosure, if—

(a) it is a confidential communication passing between—

(i) a legal practitioner in the practitioner's professional capacity and another legal practitioner in such capacity; or

(ii) a legal practitioner in the practitioner's professional capacity and the practitioner's client,—whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(2) Where the information or document consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, the practitioner's client, or any other person), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.

(3) Where the information or document consists wholly or partly of, or relates wholly or partly to investment receipts (being receipts arising or accruing on or after 1 April 1975 from any money lodged at any time with a legal practitioner for investment) of any person or persons (whether the legal practitioner, the practitioner's client or clients, or any other person or persons), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.

(4) Except as provided in subsection (1), no information or document shall for the purposes of sections 16 to 17E, 17H, and 17I, 143(1)(b), 143A(1)(b), 143B(1)(b), and 143F be privileged from disclosure on the ground that it is a communication passing between one legal practitioner and another legal practitioner or between a legal practitioner and the practitioner's client.

(5) Where any person refuses to disclose any information or document on the ground that it is privileged under this section, the Commissioner or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purposes of determining any such application, the District Court Judge may require the information or document to be produced to the District Court Judge. An application under

this subsection may be made in the course of an inquiry under section 17J to the District Court Judge who is holding the inquiry.

(6) Subject to subsection (3), this section shall apply to information and documents made or brought into existence whether before or after the commencement of this Act.

(7) In this section, *legal practitioner* means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm or an incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

20B No requirement to disclose tax advice document

(1) Despite anything in the Search and Surveillance Act 2012, a person (called in this section and sections 20C to 20G an *information holder*) who is required under 1 or more of sections 16 to 17E, 17H, and 17I or under a discovery obligation to disclose information in relation to the information holder or another person is not required to disclose a document that is a tax advice document for the person to whom the information relates.

(2) A document is eligible to be a tax advice document for a person if the document—

(a) is confidential; and

(b) is created by—

(i) the person for the main purpose of instructing a tax advisor to act for the person by giving advice to the person, if the advice is to be about the operation and effect of tax laws:

(ii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor's firm, for the main purpose of recording research and analysis, if the research and analysis is performed for the main purpose of enabling the tax advisor to give advice to the person about the operation and effect of tax laws:

(iii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor's firm, for the main purpose of the giving of advice by the tax advisor to the person, or the recording of advice given by the tax advisor to the person, if the advice is about the operation and effect of tax laws; and

(c) is created for purposes that do not include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.

(3) A document is a *tax advice document* for a person if—

(a) the document is eligible under subsection (2) to be a tax advice document for the person; and

(b) the person makes a claim, under section 20D, that the document is a tax advice document; and

(c) the person satisfies the requirements of sections 20E and 20F for the document.

(4) A *tax advisor* is a natural person who is subject to the code of conduct and disciplinary process, referred to in subsection (5)(a)(ii) and (iii), of an approved advisor group.

(5) An *approved advisor group* is a group that—

(a) includes natural persons who—

(i) have a significant function of giving advice on the operation and effect of tax laws; and

(ii) are subject to a professional code of conduct in giving the advice; and

(iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and

(b) is approved by the Commissioner for the purposes of this definition.

20C Treatment of document

(1) This section applies to a document that is—

(a) included in a request for, or discovery obligation for disclosure of, information in relation to a person; and

(b) possibly eligible to be a tax advice document for the person.

(2) The document must be treated as being a tax advice document for the person—

(a) from the time of the request for, or discovery obligation for disclosure of, information:

(b) until the earlier of—

(i) the time by which the person is required by section 20D to claim that the document is a tax advice document for the person:

(ii) the time at which the person notifies the Commissioner that the person does not claim that the document is a tax advice document for the person.

(3) If the person makes a claim under section 20D that the document is a tax advice document for the person, the document must be treated as being a tax advice document for the person from the time of the claim until—

(a) the document is ruled not to be a tax advice document for the person by—

(i) the District Court:

(ii) a court or Taxation Review Authority, if the claim is made in response to a discovery obligation in proceedings before the court or Authority:

(b) the person notifies the Commissioner that the document is not eligible to be a tax advice document for the person:

(c) the person notifies the Commissioner that they withdraw the claim that the document is a tax advice document for the person:

(d) an approved advisor group informs the Commissioner that a tax advisor is not or was not a member of the approved advisor group at a time—

(i) at which the tax advisor is claimed by the person or the tax advisor to be a member of the approved advisor group; and

(ii) at which the tax advisor would be required to be a member of an approved advisor group for the document to be a tax advice document.

(4) If a document must be treated under this section as being a tax advice document for a person, a copy of the document must be held in a secure place for the periods referred to in subsections (2) and (3) by a tax advisor.

20D Claim that document is tax advice document

(1) A claim by a person that a document is a tax advice document for the person must be made by the person or by a tax advisor who is authorised to act on behalf of the person for the purposes of sections 20C to 20G.

(2) A claim that a document created by a person is a tax advice document for the person must contain the following information:

(a) a brief description of the form and contents of the document; and

(b) the name of the tax advisor for whom the document was intended; and

(c) the date on which the document was created.

(3) A claim that a document created by a tax advisor, or by an employee of a tax advisor's firm, is a tax advice document for a person must contain the following information:

(a) a brief description of the form and contents of the document; and

(b) the name of the tax advisor giving the tax advice in relation to which the document was created; and

(c) the approved advisor group to which the tax advisor belonged when the document was created; and

(d) the statute or other enactment and the type of revenue that was the subject of the tax advisor's advice in relation to which the document was created; and

(e) the date on which the document was created.

(4) A claim that a document is a tax advice document for a person must be made—

(a) if the requirement to disclose information is under section 17 or under section 17 or 17C—

(i) on the day on which the Commissioner or an officer of the department exercises the right of inspection or removal that leads to the claim:

(ii) by a later date to which the Commissioner agrees:

(b) if the requirement to disclose information is under section 17B or 17C, by the date that is the later of the following:

(i) the date that is given by the Commissioner in the request for disclosure of the information:

(ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information:

(c) if the requirement to disclose information is under section 17H, 17J, or 17K, by the date on which the court requires the production of information:

(d) if the requirement to disclose information is under section 17I, by the date on which the Commissioner requires the production of information:

(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.

(5) If a tax advisor acting on behalf of a person claims that a document is a tax advice document for the person, the claim must include notification by the tax advisor that the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G.

20E Document or part of document included in tax advice document

An information holder who is required to disclose information in relation to a person is required to provide a copy of a document or part of document that—

(a) is attached to a document that is eligible under section 20B(2) to be a tax advice document for the person; and

(b) is not eligible under section 20B(2) to be a tax advice document for the person.

20F Person must disclose tax contextual information from tax advice document

(1) An information holder who is required to disclose information relating to a person must disclose under subsection (2) a description of tax contextual information from a document that the person claims, under section 20D, to be a tax advice document for the person.

(2) A disclosure under subsection (1) of a description of tax contextual information from a document must be made—

(a) if the requirement to disclose information is under section 17 or under section 17 or 17C, by the date that is determined by the Commissioner:

(b) if the requirement to disclose information is under section 17B or 17C and the requirement is accompanied or followed by a requirement for disclosure of a description of tax contextual information, by the date that is the later of—

(i) the date that is given by the Commissioner in the requirement for disclosure of the description:

(ii) the date that is 28 days after the date of the requirement by the Commissioner for disclosure of the description:

(c) if the requirement to disclose information is under section 17H, 17J, or 17K, by the date on which the court requires the production of information:

(d) if the requirement to disclose information is under section 17I, by the date on which the Commissioner requires the production of information:

(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.

(3) *Tax contextual information* for a tax advice document for a person is—

(a) a fact or assumption relating to a transaction that has occurred or is postulated by the person creating the tax advice document:

(b) a description of a step involved in the performance of a transaction that has occurred or is postulated by the person creating the tax advice document:

(c) advice that does not concern the operation and effect on the person of tax laws:

(d) advice that concerns the operation and effect on the person of tax laws relating to the collection by the Commissioner of debts payable to the Commissioner:

(e) a fact or assumption relating to advice that is referred to in paragraph (c) or (d):

(f) a fact or assumption from, or relating to the preparation of,—

(i) financial statements of the person:

(ii) a document containing information that the person is required to provide to the Commissioner under an Inland Revenue Act.

(4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must be in a statutory declaration that—

(a) is made by a tax advisor who has not been barred under subsection (5) from making statutory declarations under this subsection; and

(b) states that the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G; and

(c) is in the prescribed form.

(5) The Commissioner may apply to a District Court Judge, or to a court or Taxation Review Authority in relation to a tax advisor making a statutory declaration considered in proceedings before the court or Authority, that a tax advisor be barred from making statutory declarations under this section, if the tax advisor is convicted of an offence under—

(a) section 111 of the Crimes Act 1961:

(b) section 143(1)(b):

(c) section 143A(1)(b) or (c):

(d) section 143B(1)(b) or (c):

(e) section 143H.

(6) An application under subsection (5) may be made in the course of proceedings before a court or Taxation Review Authority.

20G Challenge to claim that document is tax advice document

(1) If a person claims that a document is a tax advice document for the person, the Commissioner or the person may apply to a District Court Judge, or to the court or Taxation Review Authority hearing the proceedings giving rise to the claim, for an order determining whether—

(a) the document is a tax advice document for the person:

(b) information provided or withheld by the person is tax contextual information in relation to the document:

(c) the person should provide a more detailed or better description of tax contextual information in relation to the document.

(2) For the purposes of determining an application under this section, the District Court Judge, court, or Taxation Review Authority may require the document to be produced to the District Court Judge, court, or Taxation Review Authority.

(3) An application under this section may be made in the course of an inquiry under section 17J to the District Court Judge who is holding the inquiry.

(4) An application under this section may be made in the course of proceedings before a court or Taxation Review Authority.