



ANALYSIS

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1994, No. 165

**An Act to consolidate the law relating to Taxation
Review Authorities**
[20 December 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Taxation Review Authorities Act 1994.

(2) This Act shall come into force on 1 April 1995.

PART I

PURPOSE AND CONSTRUCTION

2. Purpose of Act—(1) The purpose of this Act is to re-enact the law contained in the Inland Revenue Department Act 1974 as it relates to Taxation Review Authorities.

(2) The reorganisation of the provisions and the changes of style and language carried out by this Act in relation to provisions of the Inland Revenue Department Act 1974 are not intended to affect the interpretation or effect of those provisions as they are included in this Act.

3. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Co-operative company” is defined in section 17 (4) for the purposes of that section:

“Inland Revenue Acts” has the same meaning as in section 3 of the Tax Administration Act 1994:

“Legal personal representative”, in relation to any person, means—

(a) The executor, original or by representation, or an administrator for the time being of a deceased person:

(b) Any person who by order of Court has been appointed as guardian or manager of the estate of any person:

(c) Any other person who by order of Court administers the estate of any person:

“Taxation Review Authority”, or “Authority”, means a Taxation Review Authority established or deemed to be established under this Act:

“Widely-held company” is defined in section 17 (4) for the purposes of that section.

(2) As the context requires, words and phrases used in this Act have the same meanings as they have in the Tax Administration Act 1994 and the Income Tax Act 1994.

Cf. 1974, No. 133, s. 2

4. Construction of statutory references—Except where there is express provision to the contrary,—

(a) A reference in this Act to a particular Part or section is to be construed as a reference to a Part or section of this Act; and

- (b) A reference in this Act to some other particular element is to be construed as a reference to that element in its immediate context.

For example, a reference to paragraph (f) is to be construed as a reference to paragraph (f) of the section, subsection, definition, or clause in which that paragraph is contained.

PART II

TAXATION REVIEW AUTHORITIES

5. Establishment of Taxation Review Authorities—

(1) For the purposes of the Inland Revenue Acts there shall be established one or more Taxation Review Authorities.

(2) If more than one, any Authority may be given such distinctive designation as the Governor-General determines, and any such designation may from time to time be changed by the Governor-General.

(3) Every Authority shall consist of one person, being a District Court Judge or a barrister or solicitor of the High Court of not less than 7 years' practice.

(4) Every Authority shall be appointed by the Governor-General on the recommendation of the Minister of Justice.

(5) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Act 1956 by reason only of the person being an Authority.

Cf. 1974, No. 133, s. 23

6. Term of office of an Authority—(1) Except as otherwise provided in this Act, every person appointed as an Authority shall be appointed for such term, not exceeding 7 years, as the Governor-General thinks fit, and may from time to time be reappointed.

(2) Notwithstanding that the term of office of a person appointed as an Authority has expired, that person shall, unless sooner vacating office under subsection (3), continue to hold office until the person's successor comes into office.

(3) Any person appointed as an Authority may at any time be suspended or removed from office by the Governor-General for engaging in any occupation for reward outside the duties of that office, or for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign that office by writing addressed to the Minister of Justice:

Provided that, where the terms of appointment of any person appointed as an Authority permit the person to engage in any occupation for reward outside the duties of the person's office, the person shall not be liable to be suspended or removed from office under this subsection by reason of the person so engaging in any occupation for reward so permitted.

(4) Notwithstanding that the term of office of a person appointed as an Authority has expired or that the person has resigned that office, the person shall be deemed to continue to be an Authority for the purpose of—

- (a) Deciding any objection that was wholly heard before the expiration of the person's term of office or before the person's resignation took effect:
- (b) Stating any case on appeal to the High Court from a decision given while the person was an Authority or while the person was deemed to continue to be an Authority under paragraph (a).

Cf. 1974, No. 133, s. 24

7. Oath to be taken by an Authority—Before entering upon the exercise of the duties of his or her office, every person appointed as an Authority shall take and subscribe an oath before a Judge of the High Court that the person will faithfully and impartially perform the duties of that office.

Cf. 1974, No. 133, s. 25

8. Remuneration and travelling expenses—There shall be paid out of money appropriated by Parliament for the purpose to any person appointed as an Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if that person were a statutory Board within the meaning of that Act.

Cf. 1974, No. 133, s. 26

9. An Authority not personally liable—No person appointed as an Authority shall be personally liable for any act done or omitted to be done by the person in good faith in pursuance or intended pursuance of the person's powers and authorities as an Authority.

Cf. 1974, No. 133, s. 27

10. Employee of Crown appointed as an Authority—If any employee of the Crown is appointed as an Authority, that

employee's service as an Authority shall, for the purpose of determining the employee's existing and accruing rights under the State Sector Act 1988, the New Zealand Railways Corporation Act 1981, the Post Office Act 1959, or the Government Superannuation Fund Act 1956, be deemed to be Government service in New Zealand.

Cf. 1974, No. 133, s. 28

11. Registrars and other officers of an Authority—

(1) There shall from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, clerks, and other officers of an Authority as may be required, and one person may be appointed Registrar or Deputy Registrar or clerk or officer of 2 or more Authorities.

(2) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service.

Cf. 1974, No. 133, s. 29

12. Officers to maintain secrecy—Every person (other than a person appointed as an Authority) engaged or employed in connection with the work of any Authority who is not also an officer of the Department, shall, for the purposes of section 81 of the Tax Administration Act 1994, be deemed to be an officer of the Department, and shall make the declaration of fidelity and secrecy referred to in that section, and that section shall in every respect apply to that person as if the person were an officer of the Department.

Cf. 1974, No. 133, s. 30

13. Functions of an Authority—The functions of an Authority shall be to sit as a judicial authority for hearing and determining such objections to assessments of tax or duty or to decisions or determinations of the Commissioner as are authorised by the Inland Revenue Acts.

Cf. 1974, No. 133, s. 31

14. Seal—Every Authority shall have a seal which shall be judicially noticed in all Courts.

Cf. 1974, No. 133, s. 32

15. An Authority to be a Commission of Inquiry—

(1) Every Authority shall, within the scope of the Authority's jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to this Act

and any regulations made under this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

(2) An Authority, or the Registrar or Deputy Registrar purporting to act by direction or with the authority of an Authority, may issue summonses requiring the attendance of witnesses before the Authority or the production of any book or document, or may do any other act preliminary or incidental to the hearing of any matter by the Authority.

Cf. 1974, No. 133, s. 33

PART III

PROCEEDINGS BEFORE AUTHORITIES

16. Hearing of objections by an Authority—(1) The procedure for the institution, hearing, and determination of any proceedings before an Authority on an objection shall, subject to the provisions of the Act authorising the hearing and determination of the objection by an Authority, be in accordance with the provisions of this Act and with any regulations relating to those proceedings, and, subject to those provisions, an Authority may determine the Authority's own procedure.

(2) For the purpose of hearing and determining any objection, an Authority shall have all the powers, duties, functions, and discretions of the Commissioner in making the determination.

(3) In respect of any proceedings before an Authority—

(a) The objector and the Commissioner shall each be entitled to appear personally or be represented by a barrister or solicitor of the High Court or by any other person:

(b) Except as provided in section 22, no costs shall be awarded to or against the objector or the Commissioner.

(4) The hearing of an objection before an Authority shall not be open to the public.

Cf. 1974, No. 133, s. 34

17. Evidence in proceedings before an Authority—(1) An Authority may receive as evidence any statement, document, information, or matter that in the opinion of the Authority may assist the Authority to deal effectually with the proceedings before the Authority, whether or not the same would be otherwise admissible in a Court of law.

(2) Without limiting the generality of subsection (1), an Authority may receive, without formal proof—

(a) A copy, duly certified as correct by any responsible officer of a bank or of a widely-held company or co-operative company, of any person's account with that bank or company, and may take into consideration any entry or particular contained in that account:

(b) A copy, duly certified as correct by any responsible officer of a local authority or public authority, of any document in the possession of that authority, and may take into consideration any statement or particular contained in that document.

(3) Subject to the preceding provisions of this section, the Evidence Act 1908 shall apply to an Authority and to all proceedings before an Authority, as if an Authority were a Court within the meaning of that Act.

(4) In this section—

“Co-operative company” means a co-operative company registered as such under the Co-operative Companies Act 1956 or the corresponding provisions of any former Act, or a co-operative dairy company within the meaning of the Co-operative Dairy Companies Act 1949:

“Widely-held company” has the same meaning as in section OB 1 of the Income Tax Act 1994.

Cf. 1974, No. 133, s. 35

18. Grounds of objection and burden of proof—On the hearing and determination of any objection, the objector shall be limited to the grounds stated in the objector's objection, and, subject to section 190 (2) of the Tax Administration Act 1994, the burden of proof shall be on the objector.

Cf. 1974, No. 133, s. 36

19. Sittings of an Authority—(1) Sittings of an Authority shall be held at such times and places as the Authority from time to time appoints.

(2) An Authority may adjourn any sitting from time to time or place to place either before the time of the sitting or at the sitting.

(3) During the absence of the Authority or the Authority's inability to act, from any cause, the Registrar to the Authority or, where the Registrar is also absent or unable to act from any

cause, the Deputy Registrar to the Authority, shall have the same powers as the Authority to adjourn a sitting.

Cf. 1974, No. 133, s. 37

20. Power to proceed if either party fails to attend—

(1) If either the objector or the Commissioner fails to appear or be represented at the hearing of an objection before an Authority, the Authority may—

(a) Adjourn the hearing; or

(b) Determine the objection in the absence of the party so failing to appear or be represented; or

(c) Where it is the objector who fails to appear or be represented, dismiss the objection.

(2) Where under this section an Authority determines or dismisses an objection in the absence of any party, the Authority on the application of that party may, if the Authority thinks fit, grant a rehearing of the objection or, as the case may be, again set down the dismissed objection for a hearing. When such a rehearing is granted or new hearing set down, the determination of the Authority made on the initial hearing, or its dismissal of the objection, shall immediately cease to have effect.

Cf. 1974, No. 133, s. 38

21. Authority may dismiss frivolous or vexatious objections—An Authority may at any time dismiss any objection, if the Authority is satisfied that the objection is frivolous or vexatious or is made solely for the purpose of delay.

Cf. 1974, No. 133, s. 39

22. Power to order costs in certain cases—(1) Where—

(a) The Commissioner or an objector fails to appear at the time fixed for any hearing of an objection before an Authority, or fails to give adequate notice of the abandonment or settlement of the objection; or

(b) An Authority dismisses an objection under section 21 as being frivolous or vexatious or made solely for the purpose of delay,—

the Authority may order the Commissioner or the objector, as the case may require, to pay to the Crown such sum in respect of the costs of the Authority as the Authority considers reasonable.

(2) An order by an Authority under this section shall be subject to appeal under section 26 as if—

(a) The order were a determination of the Authority on an objection, or a part of any determination of the Authority on the objection in respect of which the costs were ordered; and

(b) The amount of costs ordered were an amount of tax or duty,—

and the provisions of sections 25 to 29 shall apply accordingly with any necessary modifications.

(3) For the purpose of enforcing any order of an Authority made under this section, a duplicate of the order may be lodged in a District Court, and shall be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.

Cf. 1974, No. 133, s. 39A

23. Proceedings not to abate by reason of death of objector—Proceedings before an Authority shall not abate by reason of the death of the objector, and the legal personal representative of the deceased objector shall be substituted in the objector's stead.

Cf. 1974, No. 133, s. 40

24. Stating case for High Court—(1) An Authority may at any time, before or during the hearing or before delivering the Authority's decision, on the application of either the objector or the Commissioner or of the Authority's own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Authority.

(2) The Authority shall give notice to the Commissioner and the objector of the Authority's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.

(3) Subsections (3), (4), (5), (6), and (7) of section 26 shall apply to a case stated under this section as if the case were an appeal to the High Court on a question of law in which the party on whose application the Authority intends to state the case, or the Commissioner where the Authority intends to state the case of the Authority's own motion, is the appellant, except that the time for submitting a case to the Authority shall be within 30 days after the date of the giving by the Authority of notice under subsection (2) of this section, or such further time as the Authority may allow.

(4) The High Court may order the removal into the Court of Appeal of any case stated for the opinion of the High Court under this section.

(5) The High Court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Authority.

Cf. 1974, No. 133, s. 41

25. Decision of an Authority—(1) On the determination of any objection an Authority shall give a decision in writing.

(2) Upon the request of the objector or the Commissioner made at the hearing or at the time when the decision is given, an Authority shall state in writing the Authority's findings of fact and any reasons in law for the decision.

Cf. 1974, No. 133, s. 42

PART IV

APPEALS

26. Appeals to High Court—(1) The determination of an Authority on any objection shall be subject to appeal to the High Court in any case where, not being an objection referred to an Authority under section 138 (1) of the Tax Administration Act 1994,—

- (a) The amount of tax or duty involved in the appeal to the High Court is \$2,000 or more; or
 - (b) The amount of credit of tax involved in the appeal to the High Court is \$2,000 or more; or
 - (c) The amount of loss involved in the appeal to the High Court is \$4,000 or more; or
 - (d) The appeal relates to questions of law only,—
- but shall be final and conclusive in all other cases.

(2) In the case of an appeal the appellant shall, within 30 days after the date of the giving by the Authority of the Authority's decision in writing in relation to the determination appealed from, file with the Authority a notice of appeal specifying the registry of the High Court in which the appellant intends to file the case on appeal, and, in the case of an appeal by an objector, shall give security for the costs of the appeal to such amount and in such form as may be fixed by the Authority.

(3) The appellant shall prepare a case setting forth the facts and the questions of law or fact arising for the determination of the High Court, and shall, within 9 months after the date of the giving by the Authority of the Authority's decision in writing relating to the determination appealed from, submit the case to the Authority whose determination is appealed from.

(4) An Authority may return to an appellant a case submitted to the Authority under subsection (3) or further submitted

under this subsection for such amendment as the Authority shall direct, and the appellant shall further submit the case to the Authority within such time as the Authority shall allow.

(5) Where an Authority accepts a case submitted or further submitted to the Authority under subsection (3) or subsection (4), the Authority shall sign the case and shall deliver the case so signed to the appellant.

(6) The appellant shall, within 14 days after the date of receipt of the case delivered by the Authority under subsection (5), transmit it to the Registrar of the High Court in the registry specified in the notice of appeal, and the Registrar shall then enter the appeal for hearing at the first practicable sitting of the Court.

(7) On the hearing of the appeal the High Court may, if it thinks fit, cause the case stated to be sent back to the Authority for amendment, and subsections (4), (5), and (6) shall, with any necessary modifications, apply as if the case had been submitted to the Authority under subsection (3).

Cf. 1974, No. 133, s. 43

27. Removal of appeal to Court of Appeal—The High Court may order the removal into the Court of Appeal of any case on appeal stated for the opinion of the High Court under this Act.

Cf. 1974, No. 133, s. 44

28. Appeal to Court of Appeal—The decision of the High Court on any case on appeal under section 26 or on any case stated for its opinion under section 24 shall be subject to appeal to the Court of Appeal.

Cf. 1974, No. 133, s. 45

29. Costs on appeal—(1) In respect of any proceedings before the High Court or the Court of Appeal on an appeal under section 26 from a determination of an Authority or on any case stated for the opinion of the Court under section 26, the Court may award such costs to or against either party as it thinks just.

(2) The Commissioner shall not be required to give security in any such proceedings before the High Court or Court of Appeal.

(3) All costs awarded against the Commissioner by the High Court or Court of Appeal shall be payable out of money appropriated by Parliament, and not otherwise.

Cf. 1974, No. 133, s. 46

PART V

MISCELLANEOUS PROVISIONS

30. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for the due administration of this Act and for the conduct of all persons concerned in its administration and generally for carrying this Act into effect.

(2) Without limiting the power to make regulations conferred by subsection (1), regulations may be made under that section for all or any of the following purposes:

- (a) Prescribing the procedure for the making of objections and the practice and procedure of Authorities in relation to those objections:
- (b) Making any provision which may be necessary or desirable to enable Authorities to exercise their functions or to publish their decisions and determinations:
- (c) Prescribing the practice and procedure in respect of appeals from decisions and determinations of Authorities.

(3) Regulations under this section may prescribe fines for offences against the regulations, not exceeding \$500 in any case.

Cf. 1974, No. 133, s. 48

31. Savings—(1) The continuity of the operation of the law contained in the enactments repealed by section YB 3 of the Income Tax Act 1994 shall not be affected by the substitution of the Income Tax Act 1994, the Tax Administration Act 1994, and this Act, for those enactments.

(2) Any person holding office immediately before the commencement of this Act as an Authority established under section 23 of the Inland Revenue Department Act 1974 shall continue in office as if, at the time of that person's appointment, that person had been appointed as an Authority established under this Act.

(3) Any person appointed as a Registrar, Deputy Registrar, clerk, or other officer of an Authority under section 29 of the Inland Revenue Department Act 1974 shall continue as such as

if, at the time of that person's appointment, that person had been appointed to the relevant position under section 5 of this Act.

(4) Every reference to a Board of Review in any Act, regulation, or other enactment shall, unless the context otherwise requires, be read as a reference to a Taxation Review Authority.

This Act is administered in the Inland Revenue Department.

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