



TAXATION REVIEW AUTHORITIES REGULATIONS 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 1998

Present:

THE RIGHT HON JENNY SHIPLEY PRESIDING IN COUNCIL

PURSUANT to section 30 of the Taxation Review Authorities Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Taxation Review Authorities Regulations 1998.

(2) These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

PART 1

PRELIMINARY

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Appeal” means a proceeding before an Authority under the Inland Revenue Department Act 1974 for the determination of an objection to an assessment of tax or duty or to a decision or determination of the Commissioner of Inland Revenue:

“Authority” means a Taxation Review Authority:

“Challenge” means proceedings brought under Part VIIIA of the Tax Administration Act 1994 challenging a disputable decision:

“Commissioner” means the Commissioner of Inland Revenue appointed or deemed to have been appointed under the Tax Administration Act 1994; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Commissioner:

“Commissioner’s statement of position” means the statement of position that the Commissioner issues under section 89M of the Tax Administration Act 1994 pursuant to a disclosure notice; and includes any additional information the Commissioner provides in respect of the statement under section 89M of the Tax Administration Act 1994 pursuant to a disclosure notice; and includes any additional information the Commissioner provides in respect of the statement under section 89M (8) or section 89M (11) of that Act:

“Disclosure notice” means a disclosure notice issued by the Commissioner to a disputant under section 89M of the Tax Administration Act 1994:

“Disputable decision” means—

(a) An assessment:

(b) A decision of the Commissioner under a tax law, not being a decision that a tax law prevents from being the subject of either an objection under Part VIII of the Tax Administration Act 1994 or a challenge under Part VIIIA of that Act:

“Disputant” means a person—

- (a) Who may issue a notice of proposed adjustment to the Commissioner; or
- (b) To whom the Commissioner issues a notice of proposed adjustment or an assessment; or
- (c) Who may challenge a disputable decision—
under a tax law:

“Disputant’s statement of position” means the statement of position that a disputant provides under section 89M (6) of the Tax Administration Act 1994 in response to a disclosure notice; and includes any additional information the disputant provides in respect of the statement under section 89M (11):

“Inland Revenue Acts” means the Acts specified in the Schedule of the Tax Administration Act 1994; and includes any Acts (whether repealed or not) that, before the commencement of that Act, were specified in the First Schedule of the Inland Revenue Department Act 1974:

“Interlocutory application” means an application to the Authority in any challenge or objection for an order relating to a matter of procedure; and includes an application for a rehearing under section 20 (2) of the Taxation Review Authorities Act 1994 and an application to review an order made, or a direction given, on any interlocutory application:

“Notice of claim” means a document in the form prescribed by regulation 7 for filing a challenge in the general jurisdiction or small claims jurisdiction of an Authority:

“Notice of proposed adjustment” means a notice of proposed adjustment issued by the Commissioner under section 89B of the Tax Administration Act 1994 or by the disputant under section 89D of that Act:

“Objector” means the person by whom any objection to an assessment of tax or duty or to a decision or determination of the Commissioner of Inland Revenue has been made:

“Registrar” means a Registrar or Deputy Registrar of an Authority:

“Response notice” means a response notice issued under section 89C of the Tax Administration Act 1994:

“Tax law” means—

- (a) A provision of the Inland Revenue Acts or an Act that an Inland Revenue Act replaces:
- (b) An Order in Council or a regulation made under another tax law:
- (c) A non-disputable decision:
- (d) In relation to an obligation to provide a tax return or a tax form, a provision of the Accident Rehabilitation and Compensation Insurance Act 1992 or a regulation made under that Act:

“Working day” means any day except—

- (a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
- (b) A day in the period commencing on 20 December in each year and ending on 15 January in the next succeeding year.

3. Bringing proceedings—A person may bring proceedings before an Authority—

- (a) Under Part VIII of the Tax Administration Act 1994 (which relates to objections) by serving a notice of the objector's points of objection; or
- (b) Under Part VIIIA of the Tax Administration Act 1994 (which relates to challenges) by filing a notice of claim.

4. Application of District Courts Rules 1992—To the extent that they are not inconsistent with these regulations, or the provisions of the Taxation Review Authorities Act 1994, or the Tax Administration Act 1994, the District Courts Rules 1992 apply to the commencement, interlocutory steps, and conduct of proceedings in the Authority as if those proceedings were civil proceedings in the District Court.

PART 2

GENERAL PROVISIONS RELATING TO CHALLENGES

5. Proceedings generally—This Part applies to proceedings in both the general jurisdiction and the small claims jurisdiction of an Authority.

6. Parties to challenge—The parties to a challenge are the disputant and the Commissioner.

7. Form—(1) A notice of claim filed in either the general jurisdiction or the small claims jurisdiction must be in form 1 in the Schedule.

(2) Variations to the notice of claim may be made if required by the circumstances of the challenge.

8. Notice of claim—(1) A notice of claim must contain,—

- (a) If the Commissioner issued a disclosure notice relating to the disputable decision being challenged,—
 - (i) The Commissioner's statement of position; and
 - (ii) The disputant's statement of position; and
 - (iii) Any written notice by the Commissioner of the disputable decision and the reasons for the disputable decision; and
 - (iv) The disputant's address for service; or
- (b) In any other case,—
 - (i) Any written notice by the Commissioner of the disputable decision and the reasons for the disputable decision; and
 - (ii) Such information as the disputant would have had to include in the disputant's statement of position, had such a disclosure notice been served; and
 - (iii) The disputant's address for service.

(2) The disputant must, within 10 working days of filing the notice of claim, serve a copy on the Commissioner.

9. Filing—A disputant must file 3 copies of a notice of claim with the Registrar of the Authority by delivering them to the Taxation Review Authority, Tribunals Division, Department for Courts, 5th Floor, District Court Building, 49 Balance Street, Wellington, or by posting to the Taxation Review Authority, Tribunals Division, Department for Courts, PO Box 5027, Wellington.

10. Filing fees—The fees payable to the Registrar on the filing of a notice of claim are as follows:

- (a) A filing fee of \$50 in respect of a notice of claim filed in the small claims jurisdiction; and
- (b) A filing fee of \$100 in respect of a notice of claim filed in the general jurisdiction.

11. Notice of defence—(1) If the Commissioner did not issue a disclosure notice, the Commissioner must file and serve a notice of defence containing such information as the Commissioner would have had to include in the Commissioner's statement of position, had such a disclosure notice been served.

(2) The notice of defence must be filed and served by the Commissioner,—

- (a) In the case of a challenge in the general jurisdiction, within 40 working days of service of the notice of claim; or
- (b) In the case of a challenge in the small claims jurisdiction, within 20 working days of service of the notice of claim.

12. Interlocutory applications—(1) A party to a challenge in the general jurisdiction of an Authority may make an interlocutory application at any time before a hearing.

(2) A party to a challenge in the small claims jurisdiction of an Authority may not make an interlocutory application, except as follows:

(a) The Commissioner may apply to the Authority to transfer a challenge to the general jurisdiction of the Authority under section 138N (2) (a) (i) or section 138O (1) (e) of the Tax Administration Act 1994:

(b) Either party may apply to the Authority for a rehearing under section 20 (2) of the Taxation Review Authorities Act 1994, which relates to the determination or dismissal of proceedings in the absence of a party.

(3) The applicant must file a written application with the Registrar and serve a copy on the other party.

(4) Subclause (3) does not apply to the issue of a notice to admit facts or the issue of a witness summons.

(5) An applicant for an order directing a party to supply further information to the applicant must satisfy the Authority that the order is justified in the circumstances and in light of the purposes of Part IV of the Tax Administration Act 1994.

(6) Subclause (5) is subject to section 138C of the Tax Administration Act 1994.

13. Personal service—Every notice, application, or other document required by these regulations to be served under this Part or Part 3 must be served,—

- (a) In the case of service on the Commissioner, by personally delivering the document to the Director, Litigation Management, Freyberg Building, Aitken Street, Wellington; or
- (b) In the case of service on the disputant, by personally delivering the document to the disputant.

PART 3

CHALLENGE FILED IN SMALL CLAIMS JURISDICTION

14. Proceedings in small claims jurisdiction—This Part applies to a challenge filed in the small claims jurisdiction of an Authority.

15. Transfer to general jurisdiction—If an Authority transfers a challenge to the general jurisdiction of the Authority under section 138N or section 138O of the Tax Administration Act 1994, the Authority may at that time make any order concerning the conduct of the challenge that it could make at a directions hearing for a challenge filed in the general jurisdiction of the Authority.

16. Hearing on written submissions—If the parties consent, an Authority may determine a challenge on the basis of the written information provided by the parties.

17. Hearing on oral evidence—(1) If regulation 16 does not apply, the Registrar must appoint a time and place for hearing the challenge, having due regard to the convenience of the parties.

(2) The Registrar must give reasonable notice to the parties of the time and place for hearing the challenge.

18. Decisions—(1) A decision of an Authority acting in its small claims jurisdiction must be based on—

(a) Tax laws and relevant case authorities, excluding a decision by an Authority in its small claims jurisdiction; and

(b) Any other legal principles that the Authority considers appropriate.

(2) An Authority acting in its small claims jurisdiction must endeavour to—

(a) Give a decision orally at the end of the hearing and issue a written minute as soon as practicable after the hearing; or

(b) Issue a written decision as soon as practicable after the hearing.

(3) The decision of an Authority acting in its small claims jurisdiction may contain—

(a) A brief summary of the facts; and

(b) The relevant tax laws; and

(c) The relevant legal issues; and

(d) The Authority's reasoning in reaching its decision.

(4) An Authority is not required to publish or authorise the publication of details of any challenge brought before the Authority in its small claims jurisdiction or any decision of a challenge given by the Authority in that jurisdiction.

(5) A determination of a challenge by an Authority acting in its small claims jurisdiction may not be—

(a) Appealed; or

(b) Cited as a precedent in any proceedings or for any other purpose.

PART 4

OBJECTION PROCEEDINGS

19. Parties to appeal—The parties to an appeal are the objector and the Commissioner.

20. Points of objection—(1) The points of objection must state with sufficient particularity so as to fairly inform the Commissioner and the Authority of—

- (a) The facts relied on; and
- (b) The propositions of law (if any) relied on; and
- (c) The issues the objector considers require to be determined.

(2) Copies of any documents on which the objector intends to rely must be annexed to the points of objection, except where the documents are numerous, in which case a list of those documents may be annexed instead of copies of the actual documents.

21. Service of points of objection—(1) A notice of the objector's points of objection must be served on the Commissioner.

(2) Service must be within 60 working days after—

- (a) The date the objector gives notice; or
- (b) If either of the parties has unsuccessfully sought to have the objection referred directly to the High Court, the date specified in subclause (3).

(3) If subclause (2) (b) applies, the date referred to in that subclause is,—

- (a) In the case where the objector sought referral of the objection to the High Court, the date on which the objector gave notice in writing to the Commissioner desiring the stating of a case for the High Court; or
- (b) In the case where the Commissioner sought direct referral of the objection to the High Court, a date agreed between the Commissioner and the objector (being a date not earlier than that on which the Commissioner notified the objector of the Commissioner's intention to seek referral to the High Court); or
- (c) Such other date specified by the High Court when declining leave for the objection to be heard and determined by that Court.

(4) If the objector fails to serve the points of objection on the Commissioner within 60 working days, or within such further period as may be allowed, the objection is deemed to be withdrawn.

22. Commissioner to state case—(1) The Commissioner must state and sign a case within 60 working days after the date of service of the points of objection or within such further period as may be allowed.

(2) The case must comprise of—

- (a) A notice in the prescribed form containing—
 - (i) Particulars of the assessment made by the Commissioner to which the objection has been made; and
 - (ii) The grounds of objection given by the objector; and
 - (iii) The question for the determination of the Authority; and
- (b) The points of objection served by the objector; and
- (c) A notice in the prescribed form stating—
 - (i) Any further facts which the Commissioner considers are relevant to the issues to be determined by the Authority; and
 - (ii) The issues which the Commissioner requires to be determined by the Authority.

(3) The case must be filed, together with 1 copy, with the Registrar.

(4) If the Commissioner fails to file a case within the time specified in subclause (1), or within such further time as may be allowed, the objector

may apply to the Authority for an order directing the Commissioner to allow the objector's objection, and the Authority—

- (a) Must make such an order accordingly, unless it is satisfied that there are reasonable grounds for the failure to file the case:
 - (b) May, if it refuses to make such an order, make such other orders as in the circumstances it thinks fit, whether relating to the filing of the case, or otherwise.
- (5) The contents of the case are not conclusive as to the matters contained in the case either against the objector or the Commissioner, except so far as agreed to in writing by or on behalf of the objector and the Commissioner.

23. Personal service—Every notice, case stated, application, or other document required under this Part to be served must be served,—

- (a) In the case of service on the Commissioner, by personally delivering the document to the Director, Litigation Management, Freyberg Building, Aitken Street, Wellington; or
- (b) In the case of service on the objector, by personally delivering the document to the objector.

24. Amendments before hearing—At any time before a case stated is set down for hearing,—

- (a) The Commissioner may file an amended case and serve a copy on the objector:
- (b) The objector may serve on the Commissioner amended points of objection.

25. Authority may extend time for service of points of objection or filing of case—(1) The Authority may, on the written application of the objector or the Commissioner,—

- (a) Extend the time for service by the objector on the Commissioner of the points of objection; or
- (b) Extend the time for the filing of the case by the Commissioner,—until such time as the Authority thinks fit, whether the application is made before or after the expiry of the time limit.

(2) If application is made for an extension of time more than 60 working days after the date for service of the points of objection or the date for filing the case, an order for extension of time must be made only in exceptional circumstances.

PART 5

DIRECTIONS HEARINGS

26. Directions hearing—This Part applies to challenge proceedings in both the general jurisdiction and small claims jurisdiction of an Authority and objection proceedings.

27. Requirement for directions hearings—(1) The Registrar must appoint a time and place for a directions hearing in respect of proceedings in the general jurisdiction of an Authority and objection proceedings.

(2) The Registrar may appoint a time and place for a directions hearing in respect of proceedings in the small claims jurisdiction of an Authority if the Authority considers that a directions hearing is appropriate.

(3) The Registrar must give the parties reasonable notice in writing of the time and place for the directions hearing.

28. Time for directions hearing—The time for a directions hearing must be,—

- (a) In the case of challenge proceedings in an Authority's general jurisdiction, the earliest practicable date, being a date not less than 90 working days after filing of the notice of claim or a date agreed by the parties; or
- (b) In the case of challenge proceedings in an Authority's small claims jurisdiction, as soon as reasonably practicable in all the circumstances; or
- (c) In the case of objection proceedings, as soon as practicable after the filing of the case by the Commissioner.

29. Directions hearing—At the directions hearing, the Authority may do all or any of the following (without limitation):

- (a) Obtain estimates of time for the duration of the challenge or objection:
- (b) Make any appropriate direction concerning the way in which evidence is to be given at the challenge or objection:
- (c) In the case of a directions hearing in relation to a challenge, make any appropriate direction concerning a fact, evidence, issue, or proposition of law that is not included in the Commissioner's statement of position or the disputant's statement of position but that the Commissioner or the disputant wishes to raise in the challenge:
- (d) Define the issues to be determined:
- (e) Make any appropriate direction arising from any interlocutory applications:
- (f) Make any appropriate direction appearing to promote the resolution of the proceedings in a just, expeditious, and economical way:
- (g) Fix a hearing date, if appropriate.

30. Attendance—(1) The Authority may permit a disputant or objector, or their legal representative, or any other person representing the disputant or objector, to attend the directions hearing by way of a telephone conference linkup and may direct whether the cost be met by the disputant or objector or by the Authority.

(2) If a disputant or objector fails to attend the directions hearing, the challenge or objection is deemed to be withdrawn and the disputant or objector may not proceed with the challenge or objection without the consent of the Authority under regulation 32 or regulation 33, as the case may be.

31. Recording of directions—As soon as practicable after the directions hearing, the Registrar must send to the parties a notice recording the directions made at the directions hearing.

32. Leave to proceed with challenge—(1) A disputant who has failed to attend a directions hearing may apply in writing to the Authority for leave to proceed with a challenge.

(2) The Authority may grant leave to proceed—

- (a) If the disputant satisfies the Authority that the disputant had a good reason for failing to attend the directions hearing, and the application is filed with the Registrar within 20 working days after the date fixed for the directions hearing; or

(b) If the disputant satisfies the Authority that exceptional circumstances apply.

(3) On receiving an application for leave to proceed with a challenge, the Registrar must deliver to the Commissioner at the National Office of the Inland Revenue Department at Wellington—

(a) A copy of the application; and

(b) Written notice of a date by which the Commissioner may make written submissions on the application.

(4) The date given in a notice required by subclause (3)(b) must be not less than 15 working days after the date of delivery of the notice.

33. Leave to proceed with objection—(1) An objector who has failed to attend a directions hearing may apply in writing to the Authority for leave to proceed with the appeal.

(2) The Authority may grant leave to proceed—

(a) If the objector satisfies the Authority that the objector had a good reason for failing to attend the directions hearing, and the application is filed with the Registrar within 20 working days after the date fixed for the directions hearing; or

(b) If the disputant satisfies the Authority that exceptional circumstances apply.

(3) On receiving an application for leave to proceed with a challenge, the Registrar must deliver to the Commissioner at the National Office of the Inland Revenue Department at Wellington a copy of the application.

(4) The Authority may, at the same time as granting leave to proceed with the appeal, appoint a new time for the directions hearing.

34. Time and place of hearing—(1) After the directions hearing, either or both parties may apply in writing to the Registrar to have the challenge or objection set down for hearing.

(2) After receiving an application, the Registrar must set a time and place for hearing the challenge or objection, having due regard to the convenience of both parties.

(3) The Registrar must give the parties reasonable notice in writing of the time and place of the hearing.

PART 6

MISCELLANEOUS PROVISIONS

35. Selection of Authority—(1) If there is more than 1 Authority, then the Commissioner must select the Authority that is to hear the challenge or appeal.

(2) When selecting the Authority, the Commissioner must have due regard to the convenience of the disputant or objector, as the case may be.

36. Reports of decisions—(1) An Authority may from time to time compile and publish reports of matters brought before it and of the Authority's decisions on such matters, and the Authority may authorise a person to compile and publish such reports.

(2) A report may not contain—

(a) The name of the disputant or objector; or

(b) Any other particular likely to identify the disputant or objector, unless the Authority considers that omission of the particular will affect the usefulness or value of the report.

(3) An Authority may at any time prohibit the publication of any report of a matter brought before it or any report of a decision if the Authority is satisfied that publication would enable the identity of a party other than the Commissioner to be ascertained.

(4) An order prohibiting publication may—

(a) Apply to the whole or part of a matter or decision; and

(b) Be subject to conditions at the discretion of the Authority; and

(c) Be revoked or varied by the Authority at any time.

(5) Neither the delivery to a publisher of a report authorised by this regulation nor the publication of such a report is a breach of section 81 of the Tax Administration Act 1994 or of any declaration of fidelity and secrecy given under that Act.

37. Revocation—The Taxation Review Authority Regulations 1994 (S.R. 1994/41) are consequentially revoked.

SCHEDULE
Form 1
NOTICE OF CLAIM

Reg. 7 (1)

In the Taxation Review Authority

No. / .

Jurisdiction [Specify General or Small Claims]

In the Matter of [Specify the appropriate Act(s), for example the Income Tax Act 1976, the Income Tax Act 1994, or the Goods and Services Tax Act 1985]

Between [Full name, address, and occupation]

Disputant

And **THE COMMISSIONER OF
INLAND REVENUE**

Defendant

NOTICE OF CLAIM

Dated: _____

If you are being represented by an agent (for example, a lawyer or accountant), include their details. It is recommended that the agent should prepare the notice of claim.

If you are not being represented by an agent, include your full name, address, occupation, and telephone number.

SCHEDULE—continued

Form 1—continued

NOTICE OF CLAIM—continued

CLAIM

The disputant says that:

1. *[Set out the claim in numbered paragraphs. Either give such particulars of time, place, amounts, names of persons, nature, and dates of instruments and other circumstances as will enable the Authority and the Commissioner of Inland Revenue to be sufficiently informed about the claim or, if statements of position have been issued under section 89M of the Tax Administration Act 1994, attach a copy of both the disputant's and the Commissioner's statements of position, and state which of the propositions in them are accepted and which are not accepted.]*
2. On *[Date]*, the Commissioner made a disputable decision, namely *[Provide details]*. A written notice of this disputable decision is attached.
3. The disputant challenges this disputable decision on the following grounds: *[Specify the grounds of challenge. Note that where a disclosure notice has been issued, section 138G of the Tax Administration Act 1994 prevents the introduction of facts, evidence, issues, and propositions of law which have not been disclosed in either the disputant's or the Commissioner's statement of position.]*

ATTACHMENTS

- A. Commissioner's statement of position *[If applicable]*.
- B. Disputant's statement of position *[If applicable]*.
- C. Commissioner's notice of disputable decision.

ADDRESS FOR SERVICE

This document is filed by *[Name]*, on behalf of the disputant whose address for service is *[Describe geographical address and any other acceptable arrangements for service, for example, PO box or fax number.]*

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, provide for challenge procedures. They also incorporate objection procedures which were previously provided for in the Taxation Review Authority Regulations 1994, which are consequentially revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 December 1998.

These regulations are administered in the Inland Revenue Department.