

CASE SUMMARY

Disputant's claim struck out due to failure to follow the disputes process

Decision date: 13 March 2026

CSUM 26/02

CASE

A v CIR [2026] NZTCRA 01

LEGISLATIVE REFERENCES

Tax Administration Act 1994, ss 14F, 14G, 89AB, 89H, 89I, 89K, 113, 138B, 138C, 138D, 138E, and 138H.

Taxation Review Authorities Act 1994, s 21A.

LEGAL TERMS

Not applicable

LS SOLICITORS

Charles Walmsley
Vanessa Young

Summary

The disputant filed a challenge proceeding against tax assessments where the disputant had failed to issue a Notice of Response (**NOR**) within the response period and, later, had failed to challenge the Commissioner's refusal to treat a late NOR as having been issued within time. The disputant's claim was struck out as the TCRA had no jurisdiction to hear the claim as the statutory preconditions for commencing a challenge were not met.

Impact

The decision reconfirms that the TCRA has limited jurisdiction. Where the statutory gateways that enable jurisdiction are not met, a claim will be struck out.

Facts

On 8 March 2018, the Commissioner issued a Notice of Proposed Adjustment (**NOPA**) proposing adjustments to the disputant's income tax assessments for the 2014 to 2016 income tax years and to impose shortfall penalties. The NOPA was delivered by courier to the recorded contact address of the disputant.

The disputant did not issue a NOR within the two-month response period. As a result, in April 2019, the Commissioner issued notices of assessment on the basis that the disputant was deemed to have accepted the proposed adjustments.

On 22 May 2020, the disputant, through a lawyer, issued an out of time NOR and requested that the Commissioner treat the NOR as having been issued within the response period on the basis of exceptional circumstances under s 89K of the TAA. The exceptional circumstances relied on being the fact that the disputant's son had received the NOPA and not passed it on.

On 10 June 2020, the Commissioner refused to treat the NOR as having been issued within the response period (**the Refusal Notice**). The disputant did not challenge the Refusal Notice within the two-month period stipulated in s 89K(6) of the TAA.

On 19 July 2024, the Australian Tax Office issued a notice (**the ATO notice**) advising the disputant that a foreign revenue claim had been registered in respect of her New Zealand tax debt.

In May 2025, the disputant became aware of the ATO notice.

On 13 June 2025, the disputant asked the Commissioner to reassess her tax assessments.

On 21 July 2025, the Commissioner declined to make the reassessments. After further correspondence, on 12 August 2025, the Commissioner again declined to make the reassessments.

On 24 September 2025, the disputant filed a notice of claim in the TCRA. The claim expressed an appeal against the Commissioner's refusal to reopen the tax dispute.

Issues

- Whether the proceeding should be struck out under s 138H of the TAA.
- In the alternative, whether the proceeding should be struck out under s 21A of the Taxation Review Authorities Act 1994.

Decision

The disputant argued that she had not been validly served with the NOPA. The Authority held that s 14F of the TAA permitted the Commissioner to communicate by delivery to a person's contact address. The evidence for the Commissioner was that the NOPA was sent to the address recorded for the disputant. The disputant had not produced any evidence to establish that she had notified the Commissioner of a different contact address. The Authority accepted that the disputant may not have opened or reviewed the NOPA promptly, as she was residing overseas. However, the Authority was satisfied that the NOPA had been posted to the disputant's contact address, which was treated as having been given in accordance with s 14F(6) of the TAA.

Having failed to issue a NOR within the response period, the disputant was deemed to accept the proposed adjustments. In the circumstances, the statutory precondition to commencing a challenge under s 138B of the TAA was not met.

The Authority considered whether an extension of time could be granted to challenge the Refusal Notice. The Authority determined that there was no evidence of exceptional circumstances that provided for a reasonable justification for not challenging the Refusal Notice within time. The Authority noted that the disputant had been legally represented at the time the Refusal Notice was issued and the disputant had not identified any circumstance operating during the following two-month period that prevented her from filing a challenge. The Authority also held that a delay of five years in commencing a proceeding "cannot be said to have been commenced as soon as reasonably practicable after the cessation of any alleged impediment in the disputant's circumstances."

In so far as the disputant's claim may be advanced as an appeal against the Commissioner's refusal to amend assessments in 2025, the Authority held that such decisions are excluded from being subject to challenge under s 138E(1)(e)(iv) of the TAA.

In so far as the disputant raised issues of service and procedural fairness, the Authority held that they do not provide for a basis for a challenge. The Authority's jurisdiction is limited and is contingent upon satisfaction of the statutory gateways.

The Authority concluded that it had no jurisdiction to hear the claim, therefore the proceeding was struck out.

About this document

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