

CASE SUMMARY

AB Limited and Y Z Limited v Commissioner of Inland Revenue

Decision date: 5 June 2020

CSUM 20/06

Case

TRA 002/19 and TRA006/19 [2020] NZTRA 1

Legislative References

Tax Administration Act 1994, s 89K(4)

Legal terms

n/a

Summary

The disputants, AB Limited ("ABL") and Y Z Limited ("YZL") were parties to tax arrangements known as the Russell template devised by the late John George Russell. The Commissioner of Inland Revenue ("the Commissioner") issued a refusal notice to each disputant under s 89K(4) of the Tax Administration Act 1994 ("the TAA") refusing to accept late notices of proposed adjustment ("NOPAs") as having been given within the applicable response period under Part 4A of the TAA. Both disputants have issued proceedings challenging the Commissioner's decision and the proceeded on the basis that the challenges are viewed as test cases for claims by other companies in the Russell template.

Impact

Nil

Facts

The disputants asserted that they wrongly paid GST to the Commissioner in the late 1980s/early to mid-1990s. The amounts claimed to have been wrongly paid by ABL total \$136,670.62 while the amounts claimed by YZL total \$720,893.01. If successful in these proceedings, the disputants propose to seek repayment of these amounts. The disputants, in principle relied on the on events relating to other taxpayers, most particularly FB Duvall as a justification for not filing objections prior to the judicial review proceeding.

Issues

The issue for determination was confined to whether the criteria set out in s 89K have been satisfied so that the late NOPAs can be treated as having been given within the applicable response period

Decision

The Taxation Review Authority (The Authority) found that:

judicial review proceedings relating to other taxpayers does not provide an exceptional circumstance preventing ABL and YZL from issuing a NOPA's; and

even if ABL and YZL had been able to establish an exceptional circumstance as alleged, the NOPA's was not filed as soon as reasonably practicable after the disputants became aware of its failure to issue an objection/NO PA within the applicable response period.

For the reasons discussed above, the Authority found that ABL and YZL have failed to satisfy the requirements of s 89K of the TAA.

About this document

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