Inland Revenue
Te Tari Taake

CASE SUMMARY

Taxpayer challenge to timeliness of Commissioner's Statement of Position (CSOP) dismissed by TRA.

Decision date: 08 March 2024

CSUM 24/02

CASE

[2024] NZTRA 002

LEGISLATIVE REFERENCES

Tax Administration Act 1994

Contracts and Commercial Law Act 2017

LEGAL TERMS

Issue.

Information System

FORUM

Taxation Review Authority

REVENUE TYPE(S)

Income Tax

TAX IN DISPUTE

Not applicable

DATE(S) HEARD

29 February 2024

RESULT

Win for the Commissioner

Summary

The Commissioner's Statement of Position (CSOP) was issued within the relevant response period even if it was not received within that response period.

In regard to email, these are received when the email leaves the information system of the sender and enters the information system of the recipient.

"Information system" is not confined to a specific part of an information system (such as an email address) but extends to the architecture needed to produce, send, receive, store, display, or otherwise process electronic communications.

Impact

For this challenge the decision means this challenge has not been resolved by the preliminary issue and the challenge to the CIR's assessments remains to be determined by the TRA.

More widely, this appears to be the first time any hearing authority has engaged with what s 213 and 214 of the Contracts and Commercial Law Act 2017 mean. This aspect of the decision may be more widely applied by the judiciary in the future.

Facts

The CIR assessed the Disputant for income tax on omitted income. The Disputant commenced a dispute to those assessments. On 21 October 2022 the Disputant issued a timely Taxpayer Statement of Position (TSOP) in response to the CIR's disclosure notice. This meant the CSOP had to be issued by 20 December 2022.

On 16 December 2022 the CIR's investigator issued an email with the CSOP attached. This was sent to the disputant's tax agent at his email address. This was the address for service provided by the Disputant. The CIR's email was issued at 2.56pm. After this the CIR's investigator left work ill with COVID 19. At 2.59pm a "bounce back" message was received from the tax agent's email server advising the CIR's email had not been delivered to the tax agents email address for an unspecified reason.

The "bounce back" email was not seen until the investigator returned to work on 21 December 2022. On that date the investigator re-issued the CSOP and this was received by the tax agent.

The Disputant argued the re-issued CSOP was issued outside the response period. He argued that the CIR was deemed to accept his TSOP and the dispute was concluded in his favour.

The CIR argued that the CSOP had been issued on 16 December 2022 and did not need to be received by the Disputant within the response period (as set out at s 89AB(5) of the TAA).

Issues

1. Did the CIR's email on 16 December amount to the "issue" of the CSOP for the purpose of s 89M(6BA) of the TAA?
2. Was the email on 16 December 2022 deemed to have been received by the Disputant?
3. What are the consequences if the 16 December 2022 email did not amount to the "issue" of the CSOP within the response period?

Decision

1. *Did the CIR's email on 16 December amount to the "issue" of the CSOP for the purpose of s 89M(6BA) of the TAA?*

The Authority found the CIR's email and attached CSOP were issued on 16 December 2022. The TRA accepted the CIR's submission that issue under s 89AB(5) did not require receipt by the Disputant (at [11] to [12]).

The Authority expressly declined to adopt the test found at s 213 of the Contracts and Commercial Law Act 2017 [CCLA] of when an electronic communication is dispatched. That test involves showing both the dispatch of an electronic communication and its delivery into an information system outside the control of the dispatching party. The Authority found this provision was not incorporated into tax law by s 14F(7) of the TAA (at [14]).

The Authority particularly relied upon the decision in *CIR v Abattis* (2001) 20 NZTC 17,013 (CA) [see at [15]). The Authority concluded the "bounce back" message was irrelevant in the absence of actual knowledge of that bounce back message (at [16]).

2. *Was the email on 16 December 2022 deemed to have been received by the Disputant?*

The Authority briefly summarised technical aspects of the relevant email systems (at [18] to [19]). Having done this the Authority concluded the reason the 16 December 2022 email was rejected was probably the default settings on the tax agent's email mailbox (that these were too low to accept the attached CSOP: at [20].

The Authority rejected evidence by the Disputant's expert witness that the designated information system (for the purposes of s 214 CCLA; incorporated into the TAA by s 145F(7) was confined to the tax agent's nominated email address's mailbox. The Authority considered this was a legal issue for the Authority to determine (at [21] to [22]).

The Authority considered the definition of an information system (found at s 213(2) for the purposes of s 214 of the CCLA):

> **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

The authority stated at [24]:

> The evidence established that the designation was an email address. It included a domain name that belonged to the Disputant's agent. Accordingly, any email addressed to that email address could only be delivered if the domain name service provider to which the disputant's agent subscribed provided DNS [Domain Name System] information for the specific email. I am satisfied that was the first part of the designated information system the first email [the CIR's email dated 16 December 2022] encountered. Without doing so, no email could be delivered to that email address.
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> …
>
> [25] … [T]he first email entered the "virtual server", which comprised the hardware and software services allowing the Disputant's agent to produce, send, receive, store, display and otherwise process electronic communications. That was, for the first email, the Microsoft Exchange system, and the Disputant's agent could direct and manage the email flow using that software. … I could not conclude that any part of the Disputant's agent exchange system as it related to emails was outside of the "information system" defined in s 213 for the purposes of the CCLA.

As such the Authority could not accept the Disputant's expert's opinion the information system was confined to the email address for the purposes of the CCLA (at [28]). The Authority continued at [30]:

> … the [CCLA] legislation is highly consistent with the despatch of a correctly addressed email. Which reaches any part of the architecture a user has for receiving email is deemed delivered when it enters the recipient's system. I cannot conclude it must reach a specific part of that system, that is not how the CCLA is expressed.

3. What are the consequences if the 16 December 2022 email did not amount to the "issue" of the CSOP within the response period?

Having concluded the CSOP was both issued and received within the response period, it was unnecessary for the TRA to consider what the consequences would be if the CSOP had not been issued in a timely manner.

Appeal Period

The Disputant has 20 working days to file an appeal.

About this document

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