

Commissioner's Statement CS 20/04

The Disputes Resolution Process and Fair Trial Rights

The purpose of a Commissioner's Statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter.

All legislative references are to the Tax Administration Act 1994 unless otherwise stated.

Introduction

1. Everyone who is charged with an offence (including offences under the Inland Revenue Acts) has the right to a fair trial. A taxpayer also has a number of other related rights in criminal proceedings.¹ For example, a defendant cannot "be compelled to be a witness or to confess guilt" and they are entitled to adequate time to prepare their defence.
2. The Disputes Resolution Process in Part 4A of the TAA (the Disputes Process) contains provisions that potentially compel a taxpayer to disclose his or her defence to criminal proceedings in the course of responding to the civil tax dispute.
3. This Commissioner's Statement sets out the broad approach that the Commissioner is taking to preserve a taxpayer's fair trial rights in criminal proceedings when there is a contemporaneous civil dispute.

Disputes Process

4. The Commissioner considers that it is important to ensure that once prosecution has commenced or is contemplated a taxpayer is not compelled to respond to an assessment or disputes document issued by the Commissioner.
5. The general approach is that when criminal proceedings have commenced or are contemplated the taxpayer will be advised of that position before they are next required to issue a disputes document to commence or continue the Disputes Process. For example, by issuing a NOPA in response to an assessment.
6. Under section 89K a taxpayer can issue a response outside the response period in "exceptional circumstances". They must issue the response to the Commissioner as soon as reasonably practicable after becoming aware of the failure to issue the response within the required timeframe.
7. The Commissioner accepts that preserving a taxpayer's rights in current or potential criminal proceedings is an "exceptional circumstance" which prevents a taxpayer from responding to the assessment or notice within the applicable response period.
8. The Commissioner considers that a taxpayer can elect not to file an outstanding disputes document until the question of prosecution is resolved. This will delay the requirement to respond and therefore either delay the start or pause the Disputes Process.

¹ Sometimes all these rights are described as the right to a fair trial.



9. Once the question of prosecution has been resolved then the Disputes Process can resume (or in some cases commence) and the Commissioner will advise the taxpayer of this. The taxpayer will need to issue their outstanding disputes document by the later of 2 months from date of this advice or the original due date for that outstanding disputes document.
10. Another way that taxpayer rights can be protected is by the parties agreeing to pause (sometimes known as "park") the dispute at the conference stage until after the question of prosecution has been resolved.

Voluntarily taking part in the Disputes Process

11. There is nothing that prevents the taxpayer from voluntarily deciding to engage in the Disputes Process even though prosecution is either contemplated or underway. They may choose to issue a NOPA, NOR or SOP or otherwise participate in the Disputes Process just as a taxpayer can choose to give evidence in a criminal proceeding even though not required to do so. If a taxpayer chooses to issue a dispute document in these circumstances, the Commissioner will treat the information contained in the dispute document (or that is subsequently provided during the Disputes Process) as being voluntarily provided and it may be used in any criminal proceedings.
12. If the taxpayer elects to continue the Disputes Process then the Commissioner will review the disputes document and potentially:
 - undertake further investigatory activities based upon the information provided;
 - use the information in any criminal proceedings.
13. Where a taxpayer elects to continue with the Disputes Process, despite being advised that they are not required to, they can at a later stage elect to not file subsequent documents until the question of prosecution has been resolved.

Outstanding tax

14. When an assessment has been issued by the Commissioner and a taxpayer advises within the response period that they intend to rely on the exceptional circumstance and to provide their dispute document when the question of prosecution has been resolved, the Commissioner will usually not take debt collection steps in relation to any disputed tax until after both the criminal proceedings and the Disputes Process has concluded.
15. However, where it is considered that a delay in collection will result in a significant risk that the tax will not be paid, the Commissioner may take steps that she considers necessary to ensure the payment of tax and/or prevent the dissipation of assets.

Time Bar

16. If pausing the Disputes Process means that it is likely that the Disputes Process will be unable to be concluded prior to the expiry of the time bar, there are options available to ensure that an assessment or challenge notice can be issued within the time bar period (eg the taxpayer can agree to an extension of the time bar (section 108B), the parties can agree to opt out of the disputes process (section 89N(1)(c)(viii)) or the Commissioner can file an application in the High Court for an extension of the time bar (section 89N(3) or section 89L(1B))).



Application

17. This Statement applies from the date of issue.

Tony Munt
National Advisor, Technical Standards

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