

**PROTOCOL**

Access to Audit Working Papers

BETWEEN  
NEW ZEALAND INSTITUTE OF CHARTERED  
ACCOUNTANTS

AND  
INLAND REVENUE

## Introduction

This document records Inland Revenue's policy in respect of Inland Revenue's access to audit working papers maintained by an external auditor in relation to an audit assignment.

In drafting this statement the Inland Revenue has taken into account the views of the New Zealand Institute of Chartered Accountants (the Institute).

The policy statement is necessary because the provisions of the Tax Administration Act 1994 give the Department powers of access to audit working papers. In particular, these statutory powers override the important confidentiality aspect of an auditor's operating method, as set out in the Institute's Code of Ethics, formulated and published by the Institute and updated from time to time.

This policy statement also has regard to the provisions of sections 6 and 6A of the Tax Administration Act 1994 and the need to have regard to the role of the auditor, as set out below.

This statement does not address matters relating to working papers other than an auditor's working papers relating to the external audit of an entity. The distinction between audit working papers and other workpapers held by an external auditor in relation to any client is outlined below.

## Audit Working Papers

'Audit working papers' are materials that document matters which are important in providing evidence that the audit was carried out in accordance with the "Codified Auditing Standards" promulgated by the Institute. The extent of this documentation is decided by the auditor, but they will not include every observation, consideration or conclusion made. Audit working papers include management letters arising from the audit. These letters may be in the possession of the taxpayer. Working papers may be in the form of data stored on paper, film, electronic media or other media.

The audit working papers are the property of the auditor and not of the client.

The external auditor of an entity may well maintain working papers in relation to other work undertaken in relation to that entity. In this statement these are referred to as 'other working papers'.

'Other working papers' may include tax workpapers, such as papers compiled in order to complete the tax return or to provide tax advice.

Any such 'other working papers' form part of the taxpayer's records, whether they are held by the auditor, the taxpayer or a third party.

Audit working papers in relation to a client's tax positions and exposures which are prepared solely for audit purposes constitute 'audit working papers' and not 'other working papers'.

## The Law

The general information gathering powers of the Commissioner are set out in the Tax Administration Act 1994. Section references quoted in this document are to sections of that Act.

29 April 2008  
Access to Audit Working Papers  
Between NZICA and IRD

Broadly stated, relevant sections are:

- Section 16 - Commissioner has the power to inspect books and documents, and has the right of access to them.
- Section 16B - Power to Remove and Copy Documents.
- Section 16C - Power to Remove and Retain Documents for Inspection.
- Section 17 - Information required to be furnished to the Commissioner upon the request being made.
- Section 17A - Court orders for production of information or return.
- Section 18 - Inquiry before District Court Judge.
- Section 19 - Inquiry by the Commissioner.
- Section 20 - Privilege for certain types of legal communications.
- Section 20B-G - No requirement to disclose tax advice document.

Under section 6A of the Tax Administration Act, the Commissioner is charged with the care and management of the Inland Revenue Acts and certain other functions. If that statutory duty is to be properly discharged, the Commissioner must be able to obtain information from a wide variety of sources so as to enable the correct tax position of a taxpayer, or other persons, to be ascertained. However the Commissioner must exercise the powers in a manner that promotes voluntary compliance.

The sections of the Tax Administration Act 1994 which are customarily used for the purposes of gathering information are sections 16 and 17. In particular, section 17 is used to require information to be furnished from audit working papers.

Every person to whom a request is made in terms of section 17(1) is required to furnish in writing and produce for inspection such information as the Commissioner considers necessary or relevant for the performance of the Commissioner's duties under the Inland Revenue Department Acts.

Section 17 of the Act overrides any contractual, professional or other obligation not to produce the documents.

The Department notes that this position is supported under the Institute's Code of Ethics which states that the auditor must give access when there is a legal requirement to do so.

In short, audit working papers must be made available to the Commissioner upon the recipient of that request being satisfied that a valid request has been made in accordance with section 17.

The other information gathering powers contained in sections 16, 17A, 18 or 19 of the Tax Administration Act 1994 are very broad. Instances when these other powers are used for requesting information held by auditors would be very rare.

Generally audit working papers do not include tax advice documents. However where tax advice documents exist in the audit working papers the procedures set out in Standard Practice Statement SPS 05/07 – Non-disclosure right for tax advice documents are to be followed.

## The Role of the Auditor

The objective of an audit of financial statements is to enable the auditor to express an opinion on, in the case of a reporting entity (an issuer and a company other than an exempt company), whether those financial statements comply with generally accepted accounting practice and give a true and fair view of the matters to which they relate. The overall objective of the auditor in conducting the audit is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement. Financial information contained in the audit file is extracted from the client's records. The remainder of the audit file is the thought process in arriving at the audit opinion. The extracts and thought process may be misleading if applied for any other purpose.

In performing the audit and recording their conclusions, auditors are not acting as tax experts. The audit opinion is expressed about the financial statements as a whole, and not about any one part of those statements. This opinion is not expressed about the tax return or tax liability.

Even if statements recorded by the auditor are made about items that affect a client's tax provision, the correctness or otherwise of data reflected in the tax return cannot be inferred from statements recorded in the audit working papers. The question of correctness is one of fact and not one of inference or belief.

## The Policy

For the external auditors to be effective in performing their responsibilities to their clients and users of financial statements they must develop a relationship of candour with their clients. This policy is designed to be a practical guide to both external auditors and Inland Revenue staff that takes that relationship into account.

Requests for access to audit working papers will arise only in the course of enquiries conducted by Investigators of the Inland Revenue Department or in limited other special cases.

The circumstances will vary but a request for audit working papers will not be a routine part of Inland Revenue's investigations. In the first instance the information will be requested from the taxpayer. Requests to a taxpayer's auditor for access to audit working papers will only be made in exceptional circumstances.

This approach does not imply that audit working papers enjoy any privilege from disclosure unless they are tax advice documents.

A request for access to audit working papers will be made only after careful consideration, and only after obtaining the authorisation of the appropriate Area Manager-Assurance.

The authorising officer will have to consider if the information requested is "necessary or relevant" for the administration of the Tax Acts. In particular, they must be satisfied as to the adequacy of the investigator's actions in attempting to get the information required from the taxpayer, remembering that requesting the information from the auditor is the last resort.

Requests for audit working papers made pursuant to section 17 will be 'formal requests'. They will include details such as when and where the records are to be made available. They will state the penalties for non-compliance. They will comply with the Department's standard practices, currently represented by SPS 05/08.

The Department will always issue a section 17 request prior to resorting to the other information gathering powers contained in the Tax Administration Act 1994.

The auditor is expected to act with proper professional propriety in responding to the Department's request for information.

Where formal requests are made in accordance with this policy, the Department asks that the recipient auditor endeavour to reciprocate the Department's co-operation, and deal expeditiously with the request after taking into account their workload.

In appropriate cases, the auditor may find it necessary to seek professional advice before complying with requests. In this regard, the Department accepts particular documents on an audit file may properly be subject to legal professional privilege or subject to non-disclosure as tax advice documents.

Any request for information that is not made with the authorisation of the appropriate person should not be accepted. This complaint should be raised with the National Manager, Technical Standards Inland Revenue.

The removal and retention of audit working papers will be confined to photocopies or copies of electronic files. This is because audit working papers are an auditor's 'evidence files' should the auditor be involved in litigation.

In practice, it is unlikely that audit files will be removed from the auditor's premises. In most cases, providing facilities are available, the investigator will analyse and, if necessary, photocopy or copy records at the auditor's premises.

Further, investigators will examine the audit working papers as quickly as possible.

Because of the secrecy provisions of the Tax Administration Act 1994, it is not possible for an investigator to reveal the reasons for an access request to an auditor.

The procedures outlined in this policy will apply to audit working papers held by (or on behalf of) the external auditor, and to correspondence between the auditor and the taxpayer concerning matters arising in the course of the audit.

Opinions expressed by the auditor in either the audit working papers or communications between the auditor and their client will not be quoted back to the client (or representatives of that client). As noted previously, the auditor is not acting as a tax expert. The accounting conventions of consistency and materiality may mean audit advice is incompatible with tax requirements.

When an auditor holds both audit working papers and other working papers on a common file, on a valid request being made for files, the auditor is not expected to make available the audit working papers content of the file unless the procedures laid down in this statement have been followed. In appropriate cases, legal professional privilege or non-disclosure of tax advice documents may apply to some documents or information.

Nothing in this policy statement precludes an auditor or the audit client voluntarily providing to the investigator any audit working papers or copies thereof, should they wish to do this.

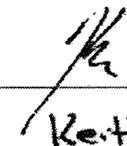
It is intended that this policy will be monitored regularly.

29 April 2008  
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Between NZICA and IRD

### Review

The Group Manager, Assurance, (or equivalent officer) and the Chief Executive of the New Zealand Institute of Chartered Accountants shall review this document periodically.

Signed on behalf of the  
New Zealand Institute of Chartered Accountants:

Signature:   
Name: Keith Wedlock  
Position: Acting Chief Executive  
Date: 29/4/08

Signed on behalf of Inland Revenue by:

Signature:   
Name: GRAHAM EVANS  
Position: GROUP MANAGER  
Date: 29/4/08