

157. If there is no agreement and the parties' reasons for continuing the conference phase are considered to be insufficient, the conference facilitator can make a decision to end the conference phase and notify the parties of that decision. The following are examples of strong indicators that the conference phase has come to its end:
- (a) The taxpayer and/or the tax advisors stop contacting the Inland Revenue officers directly involved in the dispute for a few weeks.
 - (b) The parties did not exchange information notwithstanding that this had been agreed on at the conference meeting, thus leading to the exercise of the Commissioner's powers (eg section 17 notices).
 - (c) The parties agree to disagree with each other and express interest in progressing to the SOP phase.
 - (d) The taxpayer appears to be using delaying tactics at the conference phase when the issue in dispute is subject to an imminent time bar.
158. In rare situations, where conference facilitation is involved and the facilitator is concerned with the parties' decision to end the conference phase before achieving the objectives of the conference meeting, the facilitator may adjourn the meeting and discuss the concerns with the responsible Inland Revenue officers. The facilitator may also contact the taxpayer or the taxpayer's tax advisors to discuss whether the conference phase should come to its end. The facilitator will seek the parties' agreement as to whether or not the conference phase is complete.

Unfacilitated conference

159. Where no conference facilitation is involved, the taxpayer and the Inland Revenue officers will work out when to end the conference phase. They should consider whether the objectives of the conference phase have been achieved before reaching the agreement. If no agreement can be reached, the Investigations Manager will review the conduct of the parties during the conference phase and make a decision on whether the conference phase has come to an end.

After the conference phase

160. When a dispute remains unresolved after the conference phase has been completed, the Commissioner must issue a disclosure notice together with a SOP, unless the Commissioner and the taxpayer have agreed to the taxpayer opting out of the disputes process. The disclosure notice and Commissioner's SOP will generally be issued within three months from the end of the conference phase (see paragraphs 199 to 215 for further discussion on the timeframes for issue of the Commissioner's disclosure notice and SOP).
161. If the taxpayer seeks the Commissioner's agreement to opt out of the disputes process under section 89N(1)(c)(viii), they will be required to sign a declaration that all material information relating to the dispute has been provided to the Commissioner.

OPT OUT OF THE DISPUTES PROCESS

162. Section 89N(1)(c)(viii) provides that the Commissioner and a taxpayer can agree not to complete the disputes process if they are satisfied that the dispute can be more efficiently resolved at a hearing authority (referred to as "opt out").
163. A taxpayer may seek to opt out of the remainder of the disputes process. If they do, a decision on whether or not the Commissioner will enter into an opt-out agreement

179. A taxpayer may become aware of a current court case that concerns facts and issues that they consider to be similar to their dispute. The Commissioner will consider this position when deciding whether to agree to opt out. In considering whether to agree to opt out, Inland Revenue will advise the taxpayer of its views as to the similarity, but will not comment on the merit of the current court case or the plaintiff's tax affairs due to the secrecy provisions of the TAA.
180. In some cases, a taxpayer may not be aware at the time of issuing the NOR or during the conference phase of the existence of similar cases that are subject to court proceedings. The taxpayer may still seek to opt out of the disputes process without this knowledge. In considering whether to agree to opt out, the decision maker will consult with the Litigation Management Unit to determine whether there are any current court cases that concern facts and issues that are considered to be similar to the taxpayer's dispute.

(d) The dispute concerns facts and issues that are similar to those considered by the Disputes Review Unit

181. The opt-out process is available if the facts and issues relating to the dispute are similar to those already considered by the Disputes Review Unit. A taxpayer may seek to opt out of the disputes process because a previous adjudication decision was in favour of the Commissioner and they consider it would be unlikely that the Commissioner's view will change. In considering the taxpayer's request, Inland Revenue will advise the taxpayer of its views as to the similarity, but will need to bear in mind the secrecy provisions of the TAA.
182. In some cases, a taxpayer may not be aware of similar disputes that have been considered by the Disputes review Unit when the taxpayer issues the NOR or participates at a conference meeting. Inland Revenue officers may be aware of such other similar disputes, and may choose to advise the taxpayer that, should the taxpayer seek an opt out, Inland Revenue would be very likely to agree. However, Inland Revenue will need to bear in mind the secrecy provisions of the TAA when considering other disputes.

Grounds of assessment where the Commissioner has agreed to opt out

183. In agreeing to the taxpayer's request for opt out the Commissioner will make an amended assessment and issue a notice of assessment to the taxpayer. In doing so the Commissioner will have taken into account the information and legal arguments raised in the NOPA, the NOR and during the conference phase. The taxpayer can then challenge the assessment by commencing proceedings in a hearing authority within the applicable response period, ie two months of the issue of the notice of assessment.
184. In making an amended assessment, the Commissioner is not bound by the facts, issues, evidence and propositions of law stated in the NOPA and NOR, and the Commissioner is able to take into account information and arguments raised during the conference phase. The Commissioner's administrative practice is that grounds of assessment which have not previously been referred to in the Commissioner's NOPA and the taxpayers' NOR will not be relied on, if they have not been notified or sufficiently discussed during the conference phase.
185. Where the parties have agreed to opt out the Commissioner will send to the taxpayer at or near the time of the assessment, a letter confirming briefly the grounds of assessment.

194. However, care will need to be taken to ensure that the time bar will not be breached, and consideration should be given to obtaining a time bar waiver.
195. Again, as this approach requires the taxpayer to agree, the Commissioner can offer it to individual taxpayers but they still have the choice to progress the dispute through the full disputes process.
196. Taxpayers who agree to place their case "on hold" while the Disputes Review Unit considers the issues in question in relation to another taxpayer will not be bound by any decision reached by the Disputes Review Unit and will be free to continue with their dispute should they wish.

Situation 3: The Disputes Review Unit has previously looked at an issue and taken a view supporting the taxpayer

197. It is the Commissioner's policy that a finding for the taxpayer in the initial dispute will usually lead to the other disputes being withdrawn, particularly if the disputes are in respect of the same transaction.
198. However, in some situations further consideration of the issue is required at a national level before the Commissioner will apply the conclusions reached in a particular adjudication report more broadly to other taxpayers. In those cases, Inland Revenue officers may be advised that a specified or contrary approach (to that adopted by the Disputes Review Unit) is to be followed pending further consideration of the issue at a national level.

DISCLOSURE NOTICE

199. The Commissioner must issue a disclosure notice under section 89M(1), unless the Commissioner:
 - (a) does not have to complete the disputes process because any of the exceptions under section 89N(1)(c) applies (see earlier discussion), or
 - (b) does not have to complete the disputes process because the High Court has made an order that the dispute resolution process can be truncated pursuant to an application made by the Commissioner under section 89N(3), or
 - (c) has already issued to the taxpayer a notice of disputable decision that includes or takes account of the adjustment proposed in the NOPA pursuant to section 89M(2).
200. When issuing a disclosure notice the Commissioner must also provide to the taxpayer the Commissioner's SOP (as discussed below) and include in the disclosure notice a reference to section 138G and a statement regarding the effect of the issues and propositions of law exclusion rule pursuant to section 89M(3).
201. The Commissioner will usually advise the taxpayer two weeks before issuing the disclosure notice and SOP that these documents will be issued to them.
202. Where practicable, the Commissioner will contact the taxpayer shortly after the disclosure notice and SOP are issued to ascertain whether the taxpayer has received these documents.
203. If the taxpayer has not received the Commissioner's disclosure notice, for example, due to a postal error or an event or circumstance beyond the taxpayer's control, the Commissioner will issue another disclosure notice to the taxpayer. In this circumstance, the response period within which the taxpayer must respond with their

Inland Revenue officers involved, there might be occasions on which the disclosure notice and the Commissioner's SOP cannot be issued within the three-month timeframe. This might occur when:

- (a) the facts, issues, and law are complex, and/or
- (b) the case involves an important issue of precedent and/or the Litigation Management Unit or external advisors are involved in advising on the Commissioner's SOP.

215. If it is considered that an extension of the timeframe is needed:

- approval will first be obtained from an appropriate senior manager;
- the taxpayer will then be advised of the estimated date for issue of the Commissioner's SOP. Where the estimated date cannot be met, Inland Revenue will use its best endeavours to keep the taxpayer informed of the progress made in the completion of the Commissioner's SOP.

STATEMENT OF POSITION (SOP)

216. Pursuant to section 89M(3), when the Commissioner commences the disputes process, the Commissioner must issue a SOP to the taxpayer together with the disclosure notice.

217. When the disputed issue relates to a tax type that is subject to the statutory time bar (for example, income tax, GST) that falls within the current income year, the parties will endeavour to complete the disputes process before the time bar starts. The parties can agree to a statutory time bar waiver if they have issued a SOP to each other and there is insufficient time to complete the adjudication process.

218. However, if no such agreement is reached, section 89N(2)(b) allows the Commissioner to advance to the next stage if the Commissioner has considered the taxpayer's SOP and completed the compulsory elements of the disputes process. The Commissioner can amend the assessment by exercising the discretion under section 113.

219. Whether the Commissioner has adequately considered a SOP will depend on what is a reasonable length of time and level of analysis for that SOP given the circumstances of the case (for example, the length of the SOP and the complexity of the legal issues).

220. Thus a simple dispute could only take a couple of days to consider adequately while a complex dispute could take a few weeks. If the statutory time bar is imminent the Inland Revenue officer will consider the taxpayer's SOP urgently.

Contents of a SOP

221. The "evidence exclusion rule" was replaced by the "issues and propositions of law exclusion rule" as a consequence of the Taxation (Tax Administration and Remedial Matters) Act 2011, for disputes or challenges relating to a disclosure notice issued on or after 29 August 2011. In these disputes, the disputant and the Commissioner are confined in challenge proceedings to the issues and propositions of laws disclosed in their respective SOPs. In other words, additional facts and evidence not originally disclosed in the disputant's or Commissioner's SOP may be introduced in challenge proceedings.

Exception 5: Material facts and law identical to court proceeding

20. Section 89C(db) reads:

The assessment is made in relation to a matter for which the material facts and relevant law are identical to those for an assessment of the taxpayer for another period that is at the time the subject of court proceedings.

21. Pursuant to section 89C(db), the Commissioner can issue an assessment to the taxpayer in relation to the other period that is the subject of court proceedings, without first issuing a NOPA. The Commissioner does not have to follow the disputes process for the same issue in the other period because the matter is before the court to resolve. A dual process towards resolution does not need to be adopted. The Commissioner will also consider whether shortfall penalties are applicable.
22. However, a taxpayer who has been issued with an assessment in relation to another period under section 89C(db), can dispute that assessment by issuing a NOPA to the Commissioner under section 89D within the applicable response period.
23. Section 89C(db) is intended to reduce compliance costs. Notwithstanding this provision, the Commissioner can elect to issue a NOPA in respect of the other period in order to resolve the dispute through the disputes process.

Exception 6: Revenue protection

24. Section 89C(e) reads:

The Commissioner has reasonable grounds to believe a notice may cause the taxpayer or an associated person –

- (i) to leave New Zealand; or
- (ii) to take steps, in relation to the existence or location of the taxpayer's assets, making it harder for the Commissioner to collect the tax from the taxpayer.

25. This exception is intended to ensure that the revenue is protected in the relevant circumstances. Section 89C(e) does not require that the taxpayer has physical possession of their assets.
26. If Inland Revenue officers apply the exception under section 89C(e), this should be supported by evidence of the "reasonable grounds" relied on (for example, the taxpayer's correspondence with third parties, application to emigrate overseas and any transcripts of interviews with the taxpayer).

Exception 7: Fraudulent activity

27. Section 89C(eb) reads:

The Commissioner has reasonable grounds to believe that the taxpayer has been involved in fraudulent activity.

28. Pursuant to section 89C(eb), a taxpayer has been involved in a fraudulent activity if they have engaged or participated in, or been connected with, any fraudulent activity that would have tax consequences for them.
29. If the taxpayer has not been convicted of an offence relating to a fraudulent activity section 89C(eb) can still apply provided that the Commissioner believes on reasonable grounds that the taxpayer has been involved in a fraudulent activity.

30. If Inland Revenue officers apply the exception under section 89C(eb), this should be supported by sufficient evidence of the "reasonable grounds" relied on. The evidence does not have to be absolute proof but, merely sufficient to verify the "reasonable grounds".

Exception 8: Vexatious or frivolous

31. Section 89C(f) reads:

The assessment corrects a tax position previously taken by a taxpayer that, in the opinion of the Commissioner is, or is the result of, a vexatious or frivolous act of, or vexatious or frivolous failure to act by, the taxpayer.

32. If Inland Revenue officers apply this exception, this should be supported by documentation that evidences:
- (a) the action or inaction giving rise to the tax positions previously taken, and
 - (b) why that action is considered to be vexatious or frivolous and any shortfall penalties/prosecution consideration. Examples of a tax position taken as result of a vexatious or frivolous act are a tax position that is:
 - (i) clearly lacking in substance, for example, where the taxpayer continues to take the same position that has previously been finalised, or
 - (ii) motivated by the sole purpose of delay.
33. Where this exception applies, the Commissioner must also consider the imposition of shortfall penalties in respect of the taxpayer's tax position resulting from a vexatious or frivolous act.

Exception 9: Taxation Review Authority or court determination

34. Section 89C(g) reads:

The assessment is made as a result of a direction or determination of a court or the Taxation Review Authority.

35. For the purpose of section 89C(g), a direction or determination includes any court or TRA decision that affects the particular taxpayer in relation to a specific tax period and a court decision on a "test case" that applies to the taxpayer irrespective of whether they were a party to the test case.
36. The Commissioner must retain a copy of the direction or determination to support the application of this exception. In these circumstances, the Commissioner will endeavour to make an assessment including imposing shortfall penalties, within two weeks after receiving the written direction or determination. However, if the direction or determination relates to a test case the Commissioner can issue an assessment within the period specified under section 89O(5).

Exception 10: "Default assessment"

37. Section 89C(h) reads:

The taxpayer has not provided a tax return when and as required by a tax law.

38. If section 89C(h) applies because the taxpayer has failed to provide a tax return the Commissioner can make an assessment or amended assessment pursuant to section 106(1) (commonly known as a "default assessment").

39. Where a taxpayer seeks to dispute a default assessment through the disputes process, the taxpayer must, within the applicable response period (that is, four months from the date that the default assessment is issued):
 - (a) provide a tax return in the prescribed form for the period to which the default assessment relates (pursuant to section 89D(2C) for GST and section 89D(2) for all other tax types) notwithstanding that the tax return will not include the taxpayer's assessment, and
 - (b) issue a NOPA to the Commissioner in respect of the default assessment.
40. The requirement to provide a tax return in respect of a default assessment made under section 106(1) before issuing a NOPA is an additional requirement of the disputes process. This ensures that the taxpayer has provided the information that is required by the tax law before they are entitled to dispute the assessment.
41. If the Commissioner agrees with the taxpayer's NOPA and tax return, the Commissioner will generally amend the default assessment by exercising the discretion under section 113, subject to the statutory time bar in section 108 and any other relevant limitations. However, if the Commissioner does not agree with the taxpayer's tax return and NOPA the Commissioner can decide to not amend the default assessment and issue a NOR instead.
42. If a taxpayer cannot provide a NOPA because they are outside the applicable response period to dispute a default assessment or do not want to enter into the disputes process, they must still provide a tax return.
43. Although the Commissioner does not have to amend the initial assessment on receipt of the tax return from a defaulting taxpayer, the Commissioner can exercise the discretion to amend under section 113 subject to the time bar in section 108 or 108A and any other relevant limitations on the exercise of that discretion.
44. If the Commissioner decides not to exercise the discretion under section 113 the Commissioner can issue a NOPA in respect of the default assessment under section 89B(1) where, for example, new information received from the taxpayer suggests that the default assessment is incorrect.
45. The Commissioner is not precluded from further investigating an amended assessment issued on the basis of the taxpayer's tax return and, if necessary, issuing a NOPA to the taxpayer.

Exception 11: Failure to make or account for tax deductions

46. Section 89C(i) reads:

The assessment is made following the failure by a taxpayer to withhold or deduct an amount required to be withheld or deducted by a tax law or to account for an amount withheld or deducted in the manner required by a tax law.

47. This exception is intended to address a taxpayer's failure to withhold, deduct or account to the Commissioner for an amount of tax including PAYE, schedular payments to non-resident contractors and resident withholding tax ("RWT"). The Commissioner must also consider whether shortfall penalties are applicable.
48. The Commissioner may not apply this exception if there is a dispute that involves statutory interpretation (for example, whether a particular item attracts liability for RWT meaning that the taxpayer was required to withhold or deduct RWT) and/or shortfall penalties.

Exception 12: Non-assessed tax return

49. Section 89C(j) reads:

The taxpayer is entitled to issue a notice of proposed adjustment in respect of a tax return provided by the taxpayer, and has done so.

50. If a taxpayer proposes an adjustment in a NOPA with which the Commissioner agrees, an assessment can be issued without first issuing a NOPA. This exception only applies to an adjustment that the taxpayer has proposed in their NOPA under section 89DA(1) within the applicable response period.

Exception 13: Consequential adjustment

51. Section 89C(k) reads:

The assessment corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer, and, at the time the Commissioner makes the assessment, the Commissioner has made, or is able to make, an assessment for that other taxpayer for the correct amount of tax payable by that other taxpayer...

52. If transactions affect multiple taxpayers, whether in the same way or in related but opposite ways, the Commissioner can reassess any consequentially affected taxpayers under section 89C(k). This is notwithstanding that the consequentially affected taxpayers have not agreed to the amended assessments.

53. However, those taxpayers subject to the amended assessments may still issue a NOPA to dispute the consequential adjustment within the applicable response period. The Commissioner must also consider whether shortfall penalties are applicable.

54. Section 109(b) deems any assessment that the Commissioner makes to be correct. Therefore, the Commissioner can make any consequential amendment under section 89C(k). However, the Commissioner must be satisfied that there is a direct consequential link between the taxpayers before making any adjustment. For example:

- (a) Group loss offsets: if a loss company has claimed losses to which it is not entitled and the Commissioner has amended the loss company's loss assessment to disallow those losses, pursuant to section 89C(k), the Commissioner can also make a separate assessment for the profit company that had offset the loss company's losses against its profits.
- (b) GST: the supplier and recipient of a supply have incorrectly assumed that a transaction was GST-exempt. The Commissioner later agrees that the recipient was entitled to a GST input tax credit and issues an assessment to them allowing the credit. The Commissioner can also issue an assessment to the supplier under section 89C(k) in respect of the output tax on the value of the supply.

Exception 14: Look-through company

55. If an assessment will correct a tax position taken by the taxpayer in relation to a tax position taken by a look-through company in a return of income under section 42B, and the Commissioner and the company have completed the disputes process for that return of income and that tax position, the Commissioner can reassess under section 89C(ka) without first issuing a NOPA.

Exception 15: Income statement

56. Section 89C(l) provides that no NOPA is required if the assessment results from an income statement under Part 3A.

Exception 16: Write-off of outstanding tax for taxpayers with tax losses

57. Under section 177C(5), if the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner must extinguish all or part of the taxpayer's tax loss. Where the taxpayer is not a company, the amount written off is divided by 0.33, reducing the tax loss by that amount. Where the taxpayer is a company, the amount written off is divided by 0.28, reducing the tax loss by that amount.
58. Under section 89C(lb) the Commissioner does not have to issue a NOPA prior to issuing an assessment which extinguishes all or part of a tax loss in accordance with section 177C(5).

Exception 17: Tax credits arising from subparts MA–MF and MZ

59. Under section 89C(m) no NOPA is required if an assessment includes a calculation of working for families tax credits (identified in subparts MA to MF and MZ of the Income Tax Act 2007).

APPENDIX 2

SECTION 89N – EXCEPTIONS – WHEN AN ASSESSMENT CAN BE ISSUED WITHOUT COMPLETING THE DISPUTES PROCESS

1. If a NOPA has been issued and the dispute is unresolved, the Commissioner can issue an assessment without completing the disputes process under the following circumstances:

Exception 1: In the course of the dispute, the Commissioner considers that the taxpayer has committed an offence under an Inland Revenue Act that has had the effect of delaying the completion of the disputes process (section 89N(1)(c)(i)).

2. Section 89N(1)(c)(i) reads:
 - (i) the Commissioner notifies the disputant that, in the Commissioner's opinion, the disputant in the course of the dispute has committed an offence under an Inland Revenue Act that has had an effect of delaying the completion of the disputes process:
3. This exception applies where the Commissioner may need to act quickly to issue an assessment because it is considered that the taxpayer has committed an offence under an Inland Revenue Act that has caused undue delay to the progress of the dispute.
4. For example, in the course of a dispute a taxpayer obstructed Inland Revenue officers in obtaining information from the taxpayer's business premise under section 16. The Commissioner will advise the taxpayer in writing that it is considered that an offence has been committed under section 143H. The offence has the effect of delaying the completion of the disputes process meaning that the Commissioner does not have to complete that process and can amend the taxpayer's assessment under section 113.
5. Another example of when the exception may apply is where, in the course of a dispute, a taxpayer wilfully refuses to attend an enquiry made under section 19 on the date specified in the Commissioner's notice. In these circumstances, the Commissioner will advise the taxpayer in writing that that it is considered that an offence has been committed under section 143F that has had the effect of delaying the completion of the disputes process. The Commissioner can then exercise the discretion to amend the taxpayer's assessment under section 113 without completing the disputes process.
6. In order to apply this exception, Inland Revenue officers must form an opinion that is honestly and reasonably justifiable on the basis of the evidence available, that the disputant has committed an offence under an Inland Revenue Act. The Inland Revenue officer's decision must be clearly documented and stipulate the grounds and reasoning on which it is based.

Exception 2: A taxpayer involved in a dispute, or person associated to them, may take steps to shift, relocate or dispose of the taxpayer's assets to avoid or delay the collection of tax, making the issue of an assessment urgent (section 89N(1)(c)(ii) and (iii)).

7. If the Commissioner has reasonable grounds to believe that the taxpayer or a person associated with them ("associated person") intends to dispose of assets in order to avoid or defer the payment of an outstanding or pending tax liability, the Commissioner can urgently issue an assessment to the taxpayer. Section 89N(1)(c)(ii) and (iii) reads:

- (ii) the Commissioner has reasonable grounds to believe that the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:
- (iii) the Commissioner has reasonable grounds to believe that a person who is an associated person of the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:

8. In order to issue an assessment on the basis of either of the above exceptions, Inland Revenue officers must record any relevant correspondence and evidence (for example, the directors' written instructions to shift the company's assets overseas, evidence of electronic wiring of funds to overseas countries, transcripts of interviews with the taxpayer, etc) or other grounds for the reasonable belief.

Exception 3: The taxpayer involved in a dispute or a person associated with them involved in another dispute involving similar issues has begun judicial review proceedings in relation to the dispute (section 89N(1)(c)(iv) and (v)).

9. Section 89N(1)(c)(iv) and (v) reads:

- (iv) the disputant has begun judicial review proceedings in relation to the dispute:
- (v) a person who is an associated person of the disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute:

10. These exceptions apply to any judicial review proceedings that are brought against the Commissioner. In judicial review proceedings, the parties' resources are likely to be directed away from advancing the dispute through the disputes process.

11. For the purpose of section 89N(1)(c)(v), an associated person of a taxpayer may be involved in a similar issue to the taxpayer even if the issue relates to a different revenue type. For example, if the dispute between the Commissioner and taxpayer relates to PAYE issues, but the dispute between the Commissioner and person associated with the taxpayer relates to income tax the taxpayer may still be involved in similar issues to the person associated with them.

12. Even if the two disputes relate to the same revenue type, section 89N(1)(c)(v) will not apply in some circumstances. For example, the dispute with the taxpayer relates to the tax treatment of entertainment expenditure, whereas the dispute with the person associated with the taxpayer relates to the capital and revenue distinction of merger expenditure. The Commissioner would not regard these two disputes as involving similar issues.

Exception 4: The taxpayer fails to comply with a statutory requirement for information relating to the dispute (section 89N(1)(c)(vi)).

13. Section 89N(1)(c)(vi) reads:

- (vi) during the disputes process, the disputant receives from the Commissioner a requirement under a statute for information relating to the dispute and fails to comply with the requirement within a period that is specified in the requirement:

14. Generally, a taxpayer provides information to Inland Revenue voluntarily. However, when this does not occur the Commissioner can seek information from the taxpayer under a statutory provision, for example sections 17 or 19. (The Commissioner's practice regarding section 17 is currently set out in OS 13/02: *Section 17 Notices*.) The requirement for statutory information will specify the period within which the information must be provided. This period will allow the taxpayer reasonable and sufficient time to comply.

15. Where the taxpayer does not comply with a formal requirement for information that relates to a dispute (for example, as a tactic to delay the progress of the disputes process), the Commissioner can issue an assessment to the taxpayer without first completing the disputes process.

Exception 5: The parties agree in writing that the dispute should be resolved by the court or TRA without completing the disputes process (section 89N(1)(c)(viii)).

16. Section 89N(1)(c)(viii) reads:

(viii) the disputant and the Commissioner agree, recording their agreement in a document, that they have reached a position in which the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process:

17. Under this exception, where the Commissioner or taxpayer commences the disputes process, the parties can make such an agreement before either party issues their SOP. This would occur, for example, if the parties could incur excessive compliance and administrative costs in completing the full disputes process relative to the amount in dispute.
18. This exception allows the taxpayer to bring challenge proceedings against the Commissioner. The parties must have exchanged a NOPA and NOR before the taxpayer can bring challenge proceedings under section 138B(1).
19. The circumstances under which the Commissioner will enter into such an agreement are discussed in detail from paragraph 162 to 185. This SPS refers to this exception as opting out of the disputes process or "opt out".

Exception 6: The parties agree in writing to suspend the disputes process pending the outcome of a test case (section 89N(1)(c)(ix)).

20. Section 89N(1)(c)(ix) reads:

(ix) the disputant and the Commissioner agree, recording their agreement in a document, to suspend proceedings in the dispute pending a decision in a test case referred to in section 89O.

21. Section 89O(2) allows a dispute to be suspended pending the result of a test case. Pursuant to section 89O(3), the parties can agree, recording their agreement in a document, to suspend the dispute from the date of the agreement until the earliest date that:
 - (a) the court's decision is made, or
 - (b) the test case is otherwise resolved, or
 - (c) the dispute is otherwise resolved.
22. If the parties agree to suspend the disputes process, any statutory time bar affecting the dispute is stayed. The Commissioner can then make an assessment that is consistent with the test case decision. (However, the taxpayer is not precluded from challenging the Commissioner's assessment under section 89D(1), even if it is consistent with the test case decision.)
23. The Commissioner must issue an amended assessment or perform an action within the time limit specified in section 89O(5).

24. Section 89O(5) reads:

The Commissioner must make an amended assessment, or perform an action, that is the subject of a suspended dispute by the later of the following:

- (a) the day that is 60 days after the last day of the suspension:
- (b) the last day of the period that –
 - (i) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment, or perform the action; and
 - (ii) contains the same number of days as does the period of the suspension.

25. If the statutory time bar arising under section 108 or 108A is imminent, section 89O(5) allows the Commissioner more time to complete the disputes process.

26. For example, the Commissioner commences a dispute and on 1 March 2010 agrees with the taxpayer in writing to suspend the disputes proceedings pending the decision in a designated test case. The disputed issue is subject to a statutory time bar that commences after 31 March 2010 and the taxpayer does not agree to delay its application under section 108B(1)(a). A decision is reached in the test case on 31 July 2010.

27. The Commissioner must make an amended assessment or perform an action that is the subject of the suspended dispute by 29 September 2010. This date is calculated as follows:

- (a) The suspension period commences on the date of the agreement (1 March 2010) and ends on the date of the court's decision in the test case (31 July 2010). This is a period of 153 days.
- (b) The last date that the Commissioner can make an amended assessment falls on the later of the following two dates:
 - (i) 29 September 2010, that is 60 days after the date that the suspension period ends on 31 July 2010 pursuant to section 89O(5)(a), and
 - (ii) 31 August 2010, that is 153 days after the period commences on 1 April 2010 pursuant to section 89O(5)(b).

Exception 7: The Commissioner applies to the High Court for an order to allow more time to complete or dispense with the disputes process.

28. Section 89N(3) reads:

... [T]he Commissioner may apply to the High Court for an order that allows more time for the completion of the disputes process, or for an order that completion of the disputes process is not required.

29. The Commissioner envisages that this exception will be used if section 89N(1)(c) does not apply and there are exceptional circumstances.

30. Any application made by the Commissioner under section 89N(3) must be based on reasonable grounds. Whether there are reasonable grounds will depend on considerations such as the complexity of the issues in the dispute, whether the taxpayer has caused delays; whether the dispute involves large amounts of revenue

or whether there were significant matters in the dispute that were unforeseen by either party and provided a justification for the delay.

31. For example, due to unusual circumstances the Commissioner does not learn about a proposed adjustment until late. Further delays by the taxpayer and the need for the Commissioner to obtain significant legal advice means that the Disputes Review Unit cannot consider the dispute before the time bar applies. In these circumstances, the Commissioner may apply to the High Court for an order that allows more time for the disputes process to be completed under section 89N(3). (Note: This is only an example of a possible unforeseen situation and it is anticipated that there will be a wide variety of circumstances under which an application under section 89N(3) will be appropriate.)
32. The Commissioner's application to the High Court under section 89N(3) must be made before the four-year statutory time bar falls due.
33. The Commissioner must also issue an amended assessment within the time limit specified in section 89N(5). Section 89N(5) reads:

If the Commissioner makes an application under subsection (3), the Commissioner must make an amended assessment by the last day of the period that -

 - (a) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment; and
 - (b) contains the total of -
 - (i) the number of days between the date on which the Commissioner files the application in the High Court and the earliest date on which the application is decided by the High Court or the application or dispute is resolved:
 - (ii) the number of days allowed by an order of a court as a result of the application.
34. Section 89N(5) allows the Commissioner more time to complete the disputes process where the statutory time bar under section 108 or 108A is imminent.
35. For example, the Commissioner commences the disputes process. On 1 March 2010 the Commissioner applies to the High Court under section 89N(3) for an order allowing more time to complete the process. The disputed issue is subject to a statutory time bar that commences after 31 March 2010 and the taxpayer does not agree to delay its application under section 108B(1)(a). On 30 June 2010, the High Court makes an order that allows the Commissioner's application and gives the Commissioner 30 further days to complete the disputes process.
36. Pursuant to section 89N(5), the Commissioner must make an amended assessment by 30 August 2010. This date is calculated as follows:
 - (a) The Commissioner would have one month to make the amended assessment before the statutory time bar commences. That is, 1 March 2010 to 31 March 2010. The period during which an amended assessment must be made under section 89N(5)(a) commences on 1 April 2010.
 - (b) The period during which the assessment must be made includes 122 days, that is the period between 1 March 2010 and 30 June 2010 (the date of the decision) under section 89N(5)(b)(i) and the 30-day period allowed by the High Court order under section 89N(5)(b)(ii). This is a total of 152 days.
 - (c) The Commissioner must issue an amended assessment to the taxpayer on the date that is 152 days from 1 April 2010. That is, by 30 August 2010.

WITHDRAWN

37. During the period from 1 March to 30 August 2010, the parties may continue to attempt to resolve the dispute. This may include exchanging SOPs and going through the adjudication process.
38. The above example indicates that the Commissioner has more time to complete the disputes process. The time bar will not commence until 30 August 2010.
39. Where the Commissioner applies to the High Court under section 89N(3) for an order to truncate the disputes process, an assessment must be issued within the period as calculated under section 89N(5). Applying the same facts as in the above example, the Commissioner must issue an assessment to the taxpayer by 30 August 2010.