

111. The statutory holiday exception is self-explanatory. The Commissioner can also accept a late NOPA where the Commissioner considers that the lateness is minimal, that is, the document was only one to two days late.
112. For example, the response period ends on a Saturday and the taxpayer provides a NOPA on the following Tuesday. The Commissioner treats the response period as ending on Monday on the basis of section 35(6) of the Interpretation Act 1999 and accepts that the lateness of the NOPA was minimal. That is, the Commissioner received the NOPA within one to two days of Monday, the last day of the response period. If the response period ended on Friday and the taxpayer provided the NOR on the following Monday, the Commissioner would also accept that the lateness is minimal.
113. Besides the degree of lateness, the Commissioner will consider the following factors when exercising the exceptional circumstances discretion under section 89K(1):
 - (a) the date on which the NOPA was issued, and
 - (b) the response period within which the NOPA should be issued, and
 - (c) the real event, circumstance or reason why the taxpayer did not issue the NOPA within the applicable response period, and
 - (d) the taxpayer's compliance history in relation to the tax types under consideration (for example, the taxpayer may have a history of paying tax late or filing late tax returns or NOPAs in the past).
114. For example, a taxpayer issues a NOPA to the Commissioner two days after the applicable response period has expired. The taxpayer does not provide a legitimate reason for the lateness. The taxpayer also has a history of filing late NOPAs within the minimal allowable lateness period (that is, up to two days outside the applicable response period) and has been advised on the calculation of the response period each time.
115. Although the degree of lateness was minimal each time, the Commissioner would not accept the taxpayer's NOPA in this circumstance. This ensures that the section 89K(3)(b)(ii) exception is not treated as an extension of the response period in all circumstances.
116. The Commissioner will consider a taxpayer's application made under section 89K(1)(b) after receiving the relevant NOPA. Where the application is rejected, the Commissioner is required to issue a "refusal notice" within one month of receipt of the application (which must include the late NOPA). The disputant may challenge the Commissioner's refusal notice by taking proceedings directly to the TRA. Where the taxpayer's application is accepted, the Commissioner will advise the taxpayer of the Commissioner's decision in writing within one month after Inland Revenue receives the application.
117. If the Commissioner rejects a taxpayer's application made under section 89K(1), the Commissioner can still consider the validity of the taxpayer's tax position in terms of the practice for applying the discretion under section 113. See *SPS 16/01: Requests to amend assessments* for details of this practice.

- (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.

187. 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

188. 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.
189. When a dispute remains unresolved after the conference phase has been completed, the Commissioner must issue a disclosure notice under section 89M(1).
190. 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

191. Section 89N(1)(c)(viii) provides that the Commissioner and a taxpayer can enter into an agreement 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").
192. 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 will be made by a senior Inland Revenue officer. In making a decision on opt out, that person will consult with Legal and Technical Services, the Litigation Management Unit, and the Office of the Chief Tax Counsel. The decision-maker will consider the taxpayer's request with reference to all of the specific criteria listed and will also consider if any other factors exist which mean that the dispute can be resolved more efficiently at a hearing authority.
193. Before agreeing to a taxpayer's preference to opt out the Commissioner must be satisfied that the taxpayer has participated meaningfully during the conference phase. In addition, the taxpayer must have signed a declaration that all material information has been provided to the Commissioner.
194. The Commissioner will not agree to opting out unless there has been a conference.

the current court case or the plaintiff's tax affairs due to the secrecy provisions in section 81 of the TAA.

209. In some cases, a taxpayer may not be aware at the time of issuing the NOPA or during the conference phase of the existence of similar cases that are subject to court proceedings. The taxpayer may still request to opt out of the disputes process without this knowledge. In considering the request, 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

210. 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 request 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.
211. 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 NOPA 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 request 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.

CHALLENGE NOTICE WHERE THE COMMISSIONER HAS AGREED TO OPT OUT

212. In agreeing to the taxpayer's preference for opt out the Commissioner will issue a challenge notice 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 two months of receipt of the challenge notice.
213. In issuing the challenge notice, 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 NOR and the taxpayers' NOPA will not be relied on, if they have not been notified or sufficiently discussed during the conference phase.
214. Where the parties have agreed to opt out the Commissioner will send to the taxpayer at or near the time of the challenge notice, a letter confirming briefly the reasons why the Commissioner has not accepted the adjustment proposed by the taxpayer.

CHALLENGE UNDER SECTION 138B(4)

215. It is also possible to shorten the disputes process in circumstances where:

decision that includes, or takes account of, the adjustment proposed in the notice of proposed adjustment.

229. The meaning of disputable decision is discussed in paragraphs 51 to 61.
230. The Commissioner will usually advise the taxpayer two weeks before a disclosure notice is issued that it will be issued to them.
231. Where practicable, the Commissioner will contact the taxpayer shortly after the disclosure notice and SOP are issued to ascertain whether they have received these documents.
232. 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 SOP will commence from the date that the Commissioner issued the initial disclosure notice.
233. Where the taxpayer cannot issue a SOP within the applicable response period, they should issue a late SOP with an explanation of why it is late. The Commissioner will consider the late SOP in terms of the discretion under section 89K(1) (see paragraphs 107 to 117 for details).

Evidence exclusion rule and issues and propositions of law exclusion rule

234. The evidence exclusion rule has been replaced by the issues and propositions of law exclusion rule, in relation to disputes where a disclosure notice is issued on or after 29 August 2011, being the date that the Taxation (Tax Administration and Remedial Matters) Act 2011 received the royal assent. A disclosure notice is the document that triggers the application of either rule under section 138G(1) and its replacement. The evidence exclusion rule restricts the evidence that the parties can raise in court challenges to matters disclosed in their SOP. (Both parties can refer to evidence raised by either party.) The new issues and propositions of law exclusion rule only confines the taxpayer and Commissioner to the issues and propositions of law set out in their respective SOPs, in subsequent challenge proceedings. There is no restriction on introducing new facts or evidence which has not previously been referred to in either party's SOP.
235. Any disclosure notice that the Commissioner issues will explain the effect of the exclusion rules and refer to section 138G.

Issue of a disclosure notice

236. The Commissioner can issue a disclosure notice at any time on or after the date that the taxpayer issues a NOPA because there is no statutory timeframe specifying when the notice must be issued.
237. The Commissioner does not have to issue a disclosure notice to a taxpayer when they ask for one to be issued. However, the Commissioner will usually discuss such a request with the taxpayer and advise whether a disclosure notice will be issued and, if not, the reasons why and the implications for the dispute.
238. Generally, the Commissioner's practice is to issue a disclosure notice after the exchange of a NOPA, NOR, notice rejecting the NOR, the conclusion of the conference phase and in accordance with any timeframe agreed with the

taxpayer. The Commissioner will usually issue a disclosure notice within one month after the conference phase has been completed.

239. When possible, the responsible officer should use the relevant statutory power under the TAA to obtain any information needed to complete the conference or disclosure phases. This will ensure that the disputes process is conducted in a timely and efficient manner. If the Commissioner is waiting for information to be provided pursuant to a statutory power Commissioner will defer issuing a disclosure notice to ensure that any information provided by the taxpayer can be included in the Commissioner's SOP.
240. If a disclosure notice is issued earlier (for example, the facts are clear, the taxpayer agrees, or a conference is not required) the reasons must be documented and explained to the taxpayer.

TAXPAYER'S STATEMENT OF POSITION (SOP)

241. Pursuant to section 89M(5), once the Commissioner has issued a disclosure notice, the taxpayer must issue to the Commissioner a SOP within the two-month response period that starts on the date that the disclosure notice is issued.
242. The Commissioner cannot consider a document that the taxpayer purports to issue as a SOP before the Commissioner has issued the disclosure notice because it would have been issued outside the applicable response period. The taxpayer must submit another SOP after the disclosure notice is issued to satisfy their obligation under section 89M(5).
243. Unless an "exceptional circumstance" or "demonstrable intention" in section 89K applies, if the taxpayer issues a SOP to the Commissioner outside the response period, the Commissioner will treat the dispute as if it was never commenced. The Commissioner does not have to issue an assessment to include or take account of the taxpayer's proposed adjustment. Section 89M(7)(b) reads:

- (7) A disputant who does not issue a statement of position in the prescribed form within the response period for the statement of position, is treated as follows:
- ...
- (b) if the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.

Contents of a taxpayer's SOP

244. Different elements of a SOP will be binding on the taxpayer, depending on whether the evidence, or issues and propositions of law exclusion rule apply. Either exclusion rule is subject to section 138G(2), which permits any party to a challenge to apply to the court to include new facts, evidence, issues and propositions of law in the challenge.
245. The taxpayer's SOP must be in the prescribed form (the *Statement of position (IR 773)* form that can be found on Inland Revenue's website: www.ird.govt.nz) and include sufficient detail to fairly advise the Commissioner of the facts, evidence, issues and propositions of law on which the taxpayer wishes to rely. In particular, the taxpayer must clarify what tax laws are being relied on and advise if any of these are different to those relied on in the taxpayer's NOPA.

246. However, if the Commissioner receives a SOP that is not in the prescribed form (as described in paragraph 245) the Commissioner's practice will be to advise the taxpayer that the SOP must be in the prescribed form. If this occurs on the last day of the response period the Commissioner will consider the resubmitted SOP under section 89K.
247. Section 89M(6) reads:
- A disputant's statement of position in the prescribed form must, with sufficient detail to fairly advise the Commissioner,–
- (a) give an outline of the facts on which the disputant intends to rely; and
 - (b) give an outline of the evidence on which the disputant intends to rely; and
 - (c) give an outline of the issues that the disputant considers will arise; and
 - (d) specify the propositions of law on which the disputant intends to rely.
248. The minimum content requirement for a SOP is an outline of the relevant facts, evidence, issues and propositions of law. To allow the Disputes Review Unit to successfully reach a decision, the outline in the SOP must contain full, complete and detailed submissions.
249. An outline that consists of a frank and complete discussion of the issues, law, arguments and evidence supporting the arguments is implicit in the spirit and intent of the disputes process. (In very complex cases the taxpayer should provide a full explanation of the relevant evidence.)
250. The disputes process does not require that relevant documents are discovered or full briefs of evidence or exhaustive lists of documents exchanged. Rather, providing an outline of relevant evidence in the SOP will ensure that both parties appreciate the availability of evidence in respect of the factual issues in dispute. The taxpayer should include an outline of any expert evidence on which they intend to rely in the SOP.
251. If the Commissioner considers that the SOP has insufficient detail to allow a correct assessment to be made the SOP can be treated as not complying with the requirements of section 89M(6).
252. Subject to any order made by the court under section 138G(2), the evidence exclusion rule found in section 138G(1) and the issues and propositions of law exclusion rule found in the replacement section 138G(1) (applying to disclosure notices issued after 29 August 2011) prevents a hearing authority from considering facts, evidence, issues and propositions of law (where the evidence exclusion rule applies) or issues and propositions of law (where the issues and propositions of law exclusion rule applies) that are not included in:
- (a) the SOP, or
 - (b) any additional information that:
 - (i) the Commissioner provides under section 89M(8), that is deemed to be part of the Commissioner's SOP under subsection (9), or
 - (ii) the parties provide pursuant to an agreement under section 89M(13), that is deemed to be part of the provider's SOP under subsection (14).

253. Section 89M(6B) reads:

In subsection 4(b) and 6(b), **evidence** refers to the available documentary evidence on which the person intends to rely, but does not include a list of potential witnesses, whether or not identified by name.

254. Pursuant to section 89M(6B), the SOP must list any documentary evidence but not potential witnesses. Any witnesses' identities will continue to be protected without undermining the effect of the evidence exclusion rule, in disputes where that rule applies.

Receipt of a taxpayer's SOP

255. If a taxpayer has issued a SOP the Commissioner can accept the SOP or issue a SOP in response to the taxpayer's SOP. Furthermore, section 89P allows the Commissioner to issue a challenge notice after the Commissioner has issued the SOP. (However, the Commissioner's practice is to send the dispute through the adjudication process. See paragraphs 275 to 290 for details.)

256. The Commissioner will make reasonable efforts to contact the taxpayer or their tax agent 10 working days before the response period expires to determine whether the taxpayer will issue a SOP in response to the disclosure notice. Such contact will be made by telephone or in writing. The taxpayer's SOP will be referred to the responsible officer within five working days after Inland Revenue receives it. Upon receipt of the SOP, the responsible officer will ascertain and record the following:

- (a) the date on which the SOP was issued, and
- (b) whether the SOP has been issued within the relevant response period, and
- (c) the salient features of the SOP including any deficiencies in its content.

257. Where practicable, the Commissioner will acknowledge that the taxpayer's SOP is received within 10 working days after it is received. However, the Commissioner will advise the taxpayer or their agent of any deficiencies in the SOP's content as soon as they become aware of the deficiency. They will be further advised when the response period expires that those deficiencies must be rectified and whether the Commissioner intends to provide any additional information to the taxpayer.

258. Where a SOP is issued outside the applicable response period, the taxpayer can apply for consideration of exceptional circumstances or that the disputant had a demonstrable intention to continue the dispute under section 89K. The responsible officer will notify the taxpayer of the decision to accept the application in writing within one month after Inland Revenue has received the taxpayer's application. Where the application is rejected, the responsible officer must notify the taxpayer by issuing a refusal notice.

259. If the taxpayer issues a SOP outside the applicable response period and none of the exceptional circumstances under section 89K apply, the dispute will be treated as if it was never commenced (see paragraph 243). Where practicable, the Commissioner must advise the taxpayer of this within 10 working days after the response period for the disclosure notice has expired.

COMMISSIONER'S SOP IN RESPONSE

260. When the taxpayer has issued a NOPA, section 89M(3) allows the Commissioner to issue a disclosure notice without a SOP. If the dispute remains unresolved the Commissioner's practice is to issue a SOP that addresses and responds to the substantive items in the taxpayer's SOP within the applicable response period (that is, within two months starting on the date that the taxpayer issued their SOP).
261. However, in very rare circumstances the Commissioner may not issue a SOP in response to the taxpayer's SOP. For example, an exception arises under section 89N(1)(c) or the High Court has made an order that the disputes process can be truncated pursuant to an application made under section 89N(3).
262. If there is insufficient time to provide a SOP in response, the Commissioner can apply to the High Court for further time to reply to the taxpayer's SOP under section 89M(10) if the application is made before the response period expires and the Commissioner considers that it is unreasonable to reply within the response period because of the number, complexity or novelty of matters raised in the taxpayer's SOP.
263. Such applications are expected to be rare but can arise if the taxpayer is less than cooperative with supplying information and/or has failed to maintain proper and adequate records.
264. The Commissioner's SOP must be in the form that the Commissioner has prescribed under section 35(1) and include sufficient details to fairly advise the taxpayer of the facts, evidence, issues and propositions of law on which the Commissioner wishes to rely.
265. Section 89M(4) reads:
- The Commissioner's statement of position in the prescribed form must, with sufficient detail to fairly advise the disputant,–
- (a) give an outline of the facts on which the Commissioner intends to rely; and
 - (b) give an outline of the evidence on which the Commissioner intends to rely; and
 - (c) give an outline of the issues that the Commissioner considers will arise; and
 - (d) specify the propositions of law on which the Commissioner intends to rely.
266. If the Commissioner has issued a SOP, the Commissioner can also provide to a taxpayer additional information in response to matters raised in their SOP under section 89M(8) within two months starting on the date that the taxpayer's SOP is issued.
267. However, the Commissioner's practice is to issue a SOP to the taxpayer towards the end of the response period to allow sufficient time for gathering any further information in response and considering the SOP's content. This minimises the occasions when additional information needs to be provided under section 89M(8) as the information in question will be in the SOP. In any event, as any additional information must be provided within the same response period as the Commissioner's SOP in most cases it will be unlikely that the Commissioner will be able to issue additional information within the response period.

268. The taxpayer cannot reply to the Commissioner's SOP (or any additional information provided) unless the Commissioner agrees to accept additional information under section 89M(13).

AGREEMENT TO INCLUDE ADDITIONAL INFORMATION

269. The parties can agree to include additional information in their SOP under section 89M(13) at any time during the disputes process including after the dispute has been referred to the Disputes Review Unit. Although there is no statutory time limit, the Commissioner's practice is to allow one month (from the later of the date that the Commissioner issues a SOP or provides any additional information under section 89M(8)) for such an agreement to be reached and information provided.
270. However, before agreeing to include additional information under section 89M(13) the Commissioner will consider the taxpayer's prior conduct and whether they could have provided the information earlier through the application of due diligence.
271. The Commissioner will usually also consider the materiality and relevance of the additional information and its capacity to help resolve the dispute and may decide to take it into account in coming to an assessment. In this circumstance, both parties will be expected to cooperate in resolving the relevance and accuracy of any such material. The Commissioner may wish to apply resources to verification and comment and this will be considered by the adjudicator.
272. If the Commissioner does not agree to add additional information to the taxpayer's SOP, the reasons for not agreeing must be documented with detailed reference to the taxpayer's conduct, level of cooperation before the request was made and why the information was not provided earlier. The responsible officer will also advise the taxpayer or their tax agent of the reasons why their request was not agreed to.
273. Any agreements to add further information to the SOP will be made subject to the taxpayer agreeing that the Commissioner can also include responses to the additional information to the SOP under section 89M(13), if required.
274. Any additional information that the parties provide under section 89M(13) will be deemed to form part of the provider's SOP under section 89M(14). The evidence exclusion rule under section 138G(1) and the issues and propositions of law exclusion rule under the new section 138G(1) apply to the additional information.

PREPARATION FOR ADJUDICATION

275. The Disputes Review Unit is part of the Office of the Chief Tax Counsel and represents the final step in the disputes process. The adjudicator's role is to review unresolved disputes by taking a fresh look at the tax dispute and the application of law to the facts in an impartial and independent manner and provide a comprehensive and technically accurate decision that will ensure the correctness of the assessment.
276. Generally, the adjudicator will make such a decision within three months after the case is referred to the Disputes Review Unit (although sometimes a decision can be made in a few weeks). The length of time taken to make a decision will depend on the number of disputes that are before the Disputes

Review Unit, any allocation delays and the technical, legal and factual complexity of those disputes.¹

277. Judicial comments have been made in *C of IR v Zentrum Holdings Limited and Another, Ch'elle Properties (NZ) Limited v CIR* (2004) 21 NZTC 18,618 and *ANZ National Bank Ltd and others v C of IR (No. 2)* (2006) 22 NZTC 19,835 indicating that, as a matter of law, it is not strictly necessary for Inland Revenue officers to send all disputes to the Disputes Review Unit for review, and Inland Revenue officers are not necessarily bound by the Disputes Review Unit's decisions.
278. Notwithstanding the above judicial comments, if the parties have not agreed on all the issues at the end of the conference and disclosure phases or to truncate the disputes process under section 89N(1)(c)(viii), it is the Commissioner's policy and practice that all disputes are to be sent to the Disputes Review Unit for review, irrespective of the complexity or type of issues or amount of tax involved unless any of the following exceptions arise:
- (a) the Commissioner has considered the taxpayer's SOP for the purposes of section 89N(2)(b) and referred the dispute to the Disputes Review Unit for their preliminary consideration and the Disputes Review Unit has determined that it has insufficient time to reach a decision in respect of the dispute before a statutory time bar would prevent the Commissioner from subsequently increasing the assessment (see paragraph 282 for further discussion), or
 - (b) any of the legislative exceptions specified in section 89N(1)(c) apply (see Appendix to this SPS) so that the Commissioner can amend an assessment without first completing the disputes process, or
 - (c) the High Court has made an order that the disputes process can be truncated pursuant to an application made by the Commissioner under section 89N(3).
279. Inland Revenue officers will adequately consider the facts and legal arguments in the taxpayer's SOP before deciding whether to amend the assessment. It is expected that this will occur only in very rare circumstances.
280. 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).
281. Thus a simple dispute could take only a couple of days to consider adequately while a complex dispute could take a few weeks.
282. The decision not to refer the case to adjudication must be made by a senior person in Service Delivery (for example, at the time of writing the delegation was with Area Manager level or above). In respect of the first exception mentioned in paragraph 278(a) it is necessary that the parties have

¹ For further information on the timeframe for adjudication of disputes see the article titled "Adjudication Unit – Its role in the dispute resolution process" that was published in the *Tax Information Bulletin* Vol. 19, No. 10 (November 2007).

exchanged a SOP and it is a matter solely for the Disputes Review Unit to determine whether it has insufficient time to fully consider the dispute.

283. If the dispute is to be referred to the Disputes Review Unit, the Commissioner should not issue a challenge notice before the adjudication process is completed unless a time bar is imminent. The responsible officer will prepare a cover sheet that records all the documents that must be sent to the Disputes Review Unit.
284. The cover sheet together with copies of the documents (NOPA, NOR, notice rejecting the NOR, conference notes, both parties' SOP, additional information, material evidence including expert opinions and a schedule of all evidence held) and any recordings of discussions held during the conference must be sent to the Disputes Review Unit.
285. When the dispute is to be referred for adjudication, the responsible officer will issue a letter and copy of the cover sheet to the taxpayer before sending the submissions, notes and evidence to the Disputes Review Unit. The cover sheet and letter is usually completed within one month after the date that the Commissioner issues the SOP or provides additional information under section 89M(8).
286. The purpose of this letter is to seek the taxpayer's concurrence on the materials to be sent to the adjudicator - primarily in regard to the documentary evidence that has been disclosed at the SOP phase. This letter will allow the taxpayer no more than 10 working days from when it is received to provide a response.
287. Once the taxpayer has concurred on the materials to be sent to the Disputes Review Unit, those materials will usually be so forwarded. However, if the taxpayer does not provide a response the materials will be forwarded within 10 working days after the date that the letter is issued to the taxpayer advising that the materials will be sent to the Disputes Review Unit. The adjudicator can also contact the parties after the initial materials have been received to obtain further information.
288. Where an investigation has covered multiple issues, the cover sheet will outline any issues that the parties have agreed upon and any issues that are still disputed. The adjudicator can then consider the disputed issues and not reconsider those issues that have been agreed upon.
289. Generally, the adjudicator only considers the materials that the parties have submitted. They do not usually seek out or consider further information, unless it is relevant. The adjudicator may consider such additional information notwithstanding that the parties have not agreed that the provider can include this information in their SOP under section 89M(13).
290. However, any additional material which amounts to a legal or factual issue, or a proposition of law, that the parties have not included in their SOP (or is not deemed to be included in their SOP under section 89M(14)) cannot later be raised by the parties as evidence in the TRA or a hearing authority because of the issues and propositions of law exclusion rule in section 138G(1).

ADJUDICATION DECISION

291. Once a conclusion is reached, the Disputes Review Unit will advise the taxpayer and responsible officer of the decision. The responsible officer will

implement the Disputes Review Unit's recommendations and follow up procedures where required, including issuing a notice of assessment to the taxpayer where applicable.

292. If the Disputes Review Unit makes a decision that is not in the Commissioner's favour, the Commissioner is bound by and cannot challenge that decision. The dispute will come to end. The Commissioner will issue an assessment or challenge notice to the taxpayer to reflect the decision.
293. If a taxpayer commences the disputes process, they can file challenge proceedings in the TRA or the High Court within the applicable response period if any of the following conditions are met:
- (a) The Commissioner or taxpayer has issued an assessment that was the subject of an adjustment that the taxpayer proposed and Commissioner rejected within the applicable response period and the Commissioner has later issued an amended assessment to the taxpayer (section 138B(2)).
 - (b) For taxpayer-initiated disputes where the taxpayer NOPA is issued after 29 August 2011, a new section 138B(3) applies. A taxpayer may issue challenge proceedings where: the Commissioner or taxpayer has issued an assessment that was the subject of an adjustment that the taxpayer proposed and the Commissioner rejected within the applicable response period by a NOR; and the Commissioner has issued a challenge notice to the disputant. The latter requirement has the effect of deferring the commencement of challenge proceedings, as the Commissioner's challenge notice can only generally be issued after the Commissioner has issued a SOP.
 - (c) The Commissioner or taxpayer has issued an assessment that is the subject of an adjustment notified to the Commissioner, where:
 - the adjustment relates to a matter for which the material facts and relevant law are identical to another assessment for the taxpayer (for another period) which is the subject of court proceedings; or
 - the adjustment seeks to correct 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, which is the subject of or was the subject of court proceedings; and
 - the Commissioner has issued a challenge notice.
 - (d) The Commissioner or taxpayer has issued a disputable decision that is not an assessment that was the subject of an adjustment that the taxpayer proposed and the Commissioner rejected within the applicable response period (section 138C).
294. A taxpayer must file proceedings with the TRA or High Court within the two-month response period that starts on the date that the Commissioner issues:
- (a) the amended assessment if the challenge proceedings are filed under section 138B(2), or
 - (b) the challenge notice if the challenge proceedings are filed under section 138B(3) or (4), or

- (c) the written disputable decision rejecting the taxpayer's proposed adjustment if the challenge proceedings are filed under section 138C.

295. If applicable, the responsible officer will implement any decision made by the hearing authority and follow up procedures where required including issuing a notice of assessment or amended assessment to the taxpayer.

This Standard Practice Statement is signed on 10th October 2016.

Rob Wells

LTS Manager – Technical Standards

APPENDIX

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 191 to 214. 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.
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.