

Tax Administration Act 1994

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3 INTERPRETATION

3(1) [Definitions]

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"Response period" ~~for a notice in response to another notice (called the **initiating notice**) means—~~*(a) For the purposes of section 89LA means the **one month period starting on the date of issue of the response notice**; or*

(b) For the purposes of section 89LB(1) means the 2-month period starting on the date on which a conference meeting is held under section 89LA(1) and the date the conference process is terminated under section 89LA(4)

~~(ca)~~*for a notice in response to another notice (called the **initiating notice**) means—*

~~(i)~~The 2-month period starting on the date of issue of the initiating notice, if—

~~(A)~~i The initiating notice is a notice of proposed adjustment:

~~(B)~~ii The initiating notice is a notice of a disputable decision and the notice is not a notice of proposed adjustment issued by a disputant:

~~(C)~~iii The initiating notice is a notice revoking or varying a disputable decision that is not an assessment and the notice is not a notice of proposed adjustment issued by a disputant:

~~(D)~~iv The initiating notice is a disclosure notice:

~~(E)~~v The initiating notice is a notice issued by the Commissioner rejecting an adjustment proposed by a disputant:

~~(b)~~ii The 2-month period starting on the date of issue of the initiating notice, if the initiating notice is a disputant's statement of position:

~~(e)~~iii ~~if~~ the notice is a notice of proposed adjustment that is issued by a disputant and the initiating notice is either a notice of disputable decision issued by the Commissioner or a notice revoking or varying a disputable decision that is not an assessment,—

~~(A)~~i the 4-month period starting on the date of issue of the initiating notice, unless subparagraph (ii) applies; or

~~(B)~~ii the 1-year period starting on the date of issue of the initiating notice, if the notice of proposed adjustment relates solely to a claim for an amount of tax credit under section [LH 2](#) of the Income [Tax](#) Act 2007:

~~(d)~~iv if the notice is a notice of proposed adjustment not relating solely to a claim for an amount of tax credit under section [LH 2](#) of the Income [Tax](#) Act 2007 that is issued by a taxpayer under section [89DA](#) and the initiating notice is a notice of assessment issued by the taxpayer, the 4-month period starting on the date on which the taxpayer's notice of assessment is received at an office of the [Department](#):

(~~ey~~) if the notice is a notice of proposed adjustment relating solely to a claim for an amount of tax credit under section [LH 2](#) of the Income [Tax](#) Act 2007 that is issued by a taxpayer under section [89DA](#) and the initiating notice is a notice of assessment issued by the taxpayer, –

(~~iA~~) the 2-year period starting on the date on which the taxpayer's notice of assessment is received at an office of the [Department](#), if the taxpayer is not a member of an internal software development group and not a partner in a partnership to which section [68E](#) applies; or

(~~iiB~~) the period starting on the date on which the taxpayer's notice of assessment is received at an office of the [Department](#) and ending on the day that is 2 years after the latest day for any member of the taxpayer's internal software development group or for the taxpayer's partnership to furnish a return of income or joint return of income for the relevant tax year under section [37](#)

[\(vi\) Except where an election is made by a disputant in accordance with section 89LB, if the notice is a disclosure notice, the 3-month period starting on the date that the conference is terminated under section 89LA\(4\).](#)

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PART IVA – DISPUTES PROCEDURES

[History](#)

89A PURPOSE OF THIS PART

89A(1) [Purpose of procedures]

The purpose of this Part is to establish procedures that will–

(a) Improve the accuracy of disputable decisions made by the Commissioner under certain of the [Inland Revenue Acts](#); and

(b) Reduce the likelihood of disputes arising between the Commissioner and taxpayers by encouraging open and full communication–

(i) To the Commissioner, of all information necessary for making accurate disputable decisions; and

(ii) To the taxpayers, of the basis for disputable decisions to be made by the Commissioner; and

(c) Promote the early identification of the basis for any dispute concerning a disputable decision; and

(d) Promote the prompt and efficient resolution of any dispute concerning a disputable decision by requiring the issues and evidence to be considered by the Commissioner and a disputant before the disputant commences proceedings.

89A(2) [Application]

This Part does not apply with respect to any tax returns or notices of assessments that are, or become, subject to objection proceedings under Part [VIII](#).

89A(3) [Application to disputable decisions prior to 1994-95 income year]

Despite section [1\(2\)](#), this Part applies to disputable decisions made by the Commissioner for tax years before the 1994-95 tax year.

[History](#)

Notices of proposed adjustment

89B COMMISSIONER MAY ISSUE NOTICES OF PROPOSED ADJUSTMENT

89B(1) [Commissioner may issue notices]

The Commissioner may issue one or more notices of proposed adjustment in respect of a tax return or an assessment.

89B(2) [One notice may relate to more than one return period]

The Commissioner may issue one notice of proposed adjustment in relation to more than one return period, if, in the Commissioner's opinion,—

- (a) The adjustments proposed to each tax return or assessment for the return periods relate exclusively to the same issues or arrangements; or
- (b) The adjustments proposed to each tax return or assessment for the return periods relate substantially to the same issues, and the issue of one notice is likely to expedite the issue of the assessments for all of the returns.

89B(3) [Notices may relate to more than one period, issue, and tax type]

The Commissioner may issue a notice of proposed adjustment in relation to more than one return period, more than one issue, and more than one tax type.

89B(4) [Limitation on issue of notices]

The Commissioner may not issue a notice of proposed adjustment—

- (a) If the proposed adjustment is already the subject of a challenge; or
- (b) After the expiry of the time bar that, under—
 - (i) Sections [108](#) and [108B](#); or
 - (ii) Sections [108A](#) and [108B](#),—

applies to the assessment.

89C NOTICES OF PROPOSED ADJUSTMENT REQUIRED TO BE ISSUED BY COMMISSIONER

89C(1) The Commissioner must issue a notice of proposed adjustment before the Commissioner makes an assessment, unless—

- (a) The assessment corresponds with a tax return that has been provided by the taxpayer; or
- (b) The taxpayer has provided a tax return which, in the Commissioner's opinion, appears to contain a simple or obvious mistake or oversight, and the assessment merely corrects the mistake or oversight; or
- (c) The assessment corrects a tax position previously taken by the taxpayer in a way or manner agreed by the Commissioner and the taxpayer; or
- (d) The assessment reflects an agreement reached between the Commissioner and the taxpayer; or
- (db) 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; or
- (e) 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; or
- (eb) The Commissioner has reasonable grounds to believe that the taxpayer has been involved in fraudulent activity; or
- (f) 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; or
- (g) The assessment is made as a result of a direction or determination of a court or the [Taxation Review Authority](#); or
- (h) The taxpayer has not provided a tax return when and as required by a tax law; or
- (i) 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; or
- (j) 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; or
- (k) 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; or
- (l) The assessment results from an income statement under Part [IIIA](#); or
- (m) The assessment includes a calculation by the Commissioner of a tax credit identified in subparts [MA](#) to [MF](#) and [MZ](#) of the Income [Tax](#) Act 2007.

89C(2) The Commissioner must hold a conference meeting with the taxpayer in accordance with section 89LA(1) before the Commissioner makes an assessment, unless -

- (a) the taxpayer refuses to attend a conference meeting with the Commissioner; or
- (b) the taxpayer and the Commissioner agree pursuant to section 89N(1)(c)(viii) that the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process.

[History](#)

89D TAXPAYERS AND OTHERS WITH STANDING MAY ISSUE NOTICES OF PROPOSED ADJUSTMENT

89D(1) [Taxpayer may issue notice in respect of assessment]

If the Commissioner—

- (a) Issues a notice of assessment to a taxpayer; and
- (b) Has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment, whether or not in breach of section [89C](#),—

the taxpayer may, subject to subsection (2), issue a notice of proposed adjustment in respect of the assessment.

89D(2) [Taxpayer may dispute assessment by furnishing return for period]

A taxpayer who has not furnished a return of income for an assessment period may dispute the assessment made by the Commissioner only by furnishing a return of income for the assessment period.

[History](#)

89D(2A) [Non-application of s 33(2)]

For the purpose of subsection [\(2\)](#), section [33\(2\)](#) does not apply.

[History](#)

89D(2B) [Taxpayer may dispute deemed assessment only if amended income statement furnished]

A taxpayer to whom section [80F](#) applies who has not furnished an amended income statement for an assessment period may dispute a deemed assessment under section [80H](#) only by furnishing an amended income statement for the assessment period.

[History](#)

89D(2C) [Taxpayer may dispute assessment only if GST return provided]

A taxpayer who has not provided a [GST](#) tax return for a [GST](#) return period may not dispute the assessment made by the Commissioner other than by providing a [GST](#) return for the [GST](#) return period.

[History](#)

89D(2D) [Non-application of s 16(6) of Goods and Services Tax Act 1985]

For the purpose of subsection (2C), section [16\(6\)](#) of the Goods and Services [Tax](#) Act 1985 does not apply.

[History](#)

89D(3) [Taxpayer may issue notice in respect of disputable decision]

If the Commissioner—

- (a) Issues a notice of disputable decision that is not a notice of assessment; and
- (b) The notice of disputable decision affects the taxpayer,—

the taxpayer, or any other person who has the standing under a tax law to do so on behalf of the taxpayer, may issue a notice of proposed adjustment in respect of the disputable decision.

89D(4) *(repealed)*

[History](#)

89D(5) [Applicable response period]

For a notice of proposed adjustment issued under this section to have effect, the notice must be issued within the applicable response period.

89DA TAXPAYER MAY ISSUE NOTICE OF PROPOSED ADJUSTMENT FOR TAXPAYER ASSESSMENT

89DA(1) [Notice of proposed adjustment by taxpayer]

A taxpayer may issue a notice of proposed adjustment in respect of an assessment made by the taxpayer for a tax year or a [GST](#) return period if the Commissioner has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment.

[History](#)

89DA(2) [Notice of proposed adjustment ineffective unless issued within response period]

A notice of proposed adjustment under this section is not effective unless it is issued within the response period for the notice.

[History](#)

89E ELECTION OF SMALL CLAIMS JURISDICTION OF TAXATION REVIEW AUTHORITY *[needs to be considered for amendment as per the Societies' submission]*

89E(1) [Disputant may elect hearing by Taxation Review Authority]

Where a disputant—

- (a) Issues a notice of proposed adjustment under section [89D](#) or [89DA](#) and the amount in dispute is \$30,000 or less; or
- (b) Rejects a notice of proposed adjustment issued by the Commissioner under section [89B](#) and the amount in dispute is \$30,000 or less,—

the disputant may elect, in the disputant's notice of proposed adjustment or notice of rejection, that any unresolved dispute arising from the notice of proposed adjustment is to be heard by a [Taxation Review Authority](#) acting in its small claims jurisdiction.

[History](#)

89E(2) [Disputant bound by decision]

If a disputant elects under subsection [\(1\)](#) to challenge a disputable decision or tax liability in a [Taxation Review Authority](#) acting in its small claims jurisdiction, the decision is irrevocable and binds the disputant.

89F CONTENT OF NOTICE OF PROPOSED ADJUSTMENT

89F(1) [Contents]

A notice of proposed adjustment must—

- (a) Contain sufficient detail of the matters described in subsections [\(2\)](#) and [\(3\)](#) to identify the issues arising between the Commissioner and the disputant; and
- (b) Be in the prescribed form.

89F(2) [Content of Commissioner's notice]

A notice of proposed adjustment issued by the Commissioner must—

- (a) Identify the adjustment or adjustments proposed to be made to the assessment; and
- (b) Provide a concise statement of the key facts and the law in sufficient detail to inform the disputant of the grounds for the Commissioner's proposed adjustment or adjustments; and
- (c) State how the law applies to the facts.

89F(3) [Content of disputant's notice]

A notice of proposed adjustment issued by a disputant must—

- (a) Identify the adjustment or adjustments proposed to be made to the assessment; and
- (b) Provide a statement of the facts and the law in sufficient detail to inform the Commissioner of the grounds for the disputant's proposed adjustment or adjustments; and
- (c) State how the law applies to the facts; and

(d) Include copies of the documents of which the disputant is aware at the time that the notice is issued that are significantly relevant to the issues arising between the Commissioner and the disputant.

[History](#)

89G ISSUE OF RESPONSE NOTICE

89G(1) [Notification of rejection]

To reject a proposed adjustment, the recipient of the notice of proposed adjustment must, within the response period for the notice, notify the issuer that the adjustment is rejected by issuing a response notice.

89G(2) [Contents of response notice]

A notice of response must state concisely—

- (a) The facts or legal arguments in the notice of proposed adjustment that the issuer of the notice of response considers are wrong; and
- (b) Why the issuer of the notice of response considers those facts or legal arguments to be wrong; and
- (c) Any facts and legal arguments relied on by the issuer of the notice of response; and
- (d) How the legal arguments apply to the facts; and
- (e) The quantitative adjustments to any figure referred to in the notice of proposed adjustment that result from the facts and legal arguments relied on by the issuer of the notice of response.

[History](#)

89H DEEMED ACCEPTANCE

89H(1) [Deemed acceptance of notice of proposed adjustment]

If a disputant does not, within the response period for a notice of proposed adjustment issued by the Commissioner, reject an adjustment contained in the notice, the disputant is deemed to accept the proposed adjustment and section [89I](#) applies.

89H(2) [Commissioner deemed to accept proposed adjustment]

If the Commissioner does not, within the response period for a notice of proposed adjustment issued by a disputant, reject an adjustment contained in the notice, [or, subject to section 89C\(2\), does not within the response period have a conference meeting with a disputant in respect of a notice of proposed adjustment issued by a disputant,](#) the Commissioner is deemed to accept the proposed adjustment and section [89J](#) applies.

89H(3) [Disputant deemed to accept notice]

Where—

- (a) A disputant does not, within the response period for replying to a notice from the Commissioner rejecting an adjustment proposed by the disputant, reject in writing all or part of the Commissioner's notice, the disputant is deemed to accept the matters specified in the Commissioner's notice; or
- (b) The disputant accepts all or part of the Commissioner's notice in writing,—
then, in those circumstances,—
- (c) Section [89I](#) applies as if the matters contained in the Commissioner's notice were an adjustment or adjustments proposed by the Commissioner; and

(d) The Commissioner's notice is deemed, for the purposes of section [89K](#), to be a notice of proposed adjustment.

89H(4) [Commissioner deemed to accept notice]

If the disputant has made an election under section 89LB(1) and the Commissioner fails to issue an assessment within the timeframe specified in section 89LB(3), the Commissioner is deemed to accept the disputant's position in the notice of proposed adjustment or response notice (whichever is applicable). [Note: alternative is suspension of UOMI]

89I CIRCUMSTANCES WHERE DISPUTANT MAY NOT CHALLENGE ADJUSTMENT

89I(1) [Acceptance of Commissioner's proposed adjustment]

A disputant may not challenge an adjustment proposed by the Commissioner if the disputant—

- (a) Accepts the adjustment in writing; or
- (b) Is deemed to accept the adjustment, and section [89K](#) does not apply.

89I(2) [Commissioner to take account of disputant's acceptance]

The Commissioner must include or take account of each proposed adjustment that is accepted or deemed accepted by a disputant in a notice of assessment issued to the disputant.

89J WHERE COMMISSIONER ACCEPTS ADJUSTMENT PROPOSED BY DISPUTANT

89J(1) [Commissioner must take account of adjustment]

If the Commissioner accepts or is deemed to accept an adjustment proposed by a disputant, and section [89L](#) does not apply, the Commissioner must include or take account of the adjustment in—

- (a) a notice of assessment issued to the disputant; and
- (b) any further notice of assessment or further amended assessment issued to the disputant.

89J(2) [Exception]

Despite subsection (1), the Commissioner may issue a notice of assessment or an amended assessment that does not include or take into account an adjustment that the Commissioner has accepted, or is deemed to have accepted, if the Commissioner considers that the disputant in relation to the adjustment—

- (a) was fraudulent;
- (b) wilfully misled the Commissioner.

[History](#)

89K LATE ACTIONS DEEMED TO OCCUR WITHIN RESPONSE PERIOD

89K(1) [Commissioner may accept late rejections, proposed adjustments or statements of position]

Where—

- (a) The Commissioner considers that an exceptional circumstance has prevented a disputant from, within the applicable response period,—
 - (i) Rejecting an adjustment contained in a notice of proposed adjustment issued by the Commissioner; or
 - (ii) Issuing a notice of proposed adjustment under section [89D](#) or [89DA](#) in respect of a disputable decision; or
 - (iii) Issuing a statement of position; and

(b) The disputant sends to the Commissioner—

(i) A notice—

(A) Rejecting an adjustment proposed by the Commissioner in the notice of proposed adjustment referred to in paragraph (a)(i); and

(B) Specifying the matters required by section [89G](#); or

(ii) A notice of proposed adjustment—

(A) In respect of a disputable decision referred to in paragraph (a)(ii); and

(B) Specifying the matters required by section [89F](#); or

(iii) A statement of position

as soon as reasonably practicable after becoming aware of the disputant's failure to reject the Commissioner's proposed adjustment or to issue a notice within the applicable response period, the Commissioner may issue a notice in favour of the disputant stating that—

(c) The disputant's rejection of the Commissioner's notice of proposed adjustment; or

(d) The disputant's notice of proposed adjustment; or

(e) The disputant's statement of position

is to be treated for all purposes under this Part as if it had been given within the applicable response period.

[History](#)

89K(2) [Application of subsection (1)]

Subsection [\(1\)](#) may apply even if the Commissioner has already issued a notice of disputable decision that includes or takes account of an adjustment that was proposed by the Commissioner; and, where subsection [\(1\)](#) applies, the notice of disputable decision is to be deemed not to have been issued.

89K(3) [Definition of "exceptional circumstance"] *[to be amended]*

For the purposes of subsection [\(1\)](#),—

(a) An **exceptional circumstance** arises if—

(i) An event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment, or for not issuing a notice of proposed adjustment or statement of position, within the response period for the notice:

(ii) A disputant is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period:

(b) An act or omission of an agent of a disputant is not an exceptional circumstance unless—

(i) It was caused by an event or circumstance beyond the control of the agent that could not have been anticipated, and its effect could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

(ii) The agent is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period.

[History](#)

89L APPLICATION TO HIGH COURT

89L(1) [Commissioner may apply for High Court order]

The Commissioner may apply to the High Court for an order allowing the Commissioner to issue a notice rejecting an adjustment proposed by a taxpayer that the Commissioner has accepted, or is deemed to have accepted, or to hold a conference meeting, or issue a disclosure notice, or issue a statement of position if—

- (a) The Commissioner considers that an exceptional circumstance applies or has prevented the Commissioner from rejecting the adjustment within the response period; and
- (b) The Commissioner applies—
 - (i) Before the Commissioner issues a notice of assessment including the adjustment; or
 - (ii) Relying on section [108\(2\)](#) or section [108A\(3\)](#).

89L(2) [High Court response]

The High Court may—

- (a) Make an order for the purposes of subsection [\(1\)](#) on such terms as the Court deems fit; or
- (b) Decline to make an order.

89L(3) [Definition of "exceptional circumstance"] [to be amended]

For the purposes of subsection [\(1\)](#), an "exceptional circumstance"—

- (a) Is an event or circumstance beyond the control of the Commissioner or an officer of the [Department](#) that provides the Commissioner with a reasonable justification for not rejecting an adjustment proposed by a disputant within the response period; and
- (b) Without limiting paragraph (a), includes a change to a tax law, or a new tax law, or a decision of a court in respect of a tax law, that is enacted or made within the response period.

89LA Conference

89LA(1) [Conference meeting must be held]

The disputant and the Commissioner must, within the response period, hold a conference meeting to discuss the issues in dispute with a view to:

- (a) resolution of the dispute or any part of the dispute (including by settlement); or
- (b) narrowing or clarifying the issues or facts in dispute; or
- (c) a combination of any or all of the above.

89LA(2) [Independent person at conference meeting]

Any conference meeting under subsection (1) must be held between the Commissioner, and the disputant and, can, if agreed, include an independent person agreed by the Commissioner and the disputant.

89LA(3) [Further conference meeting by agreement]

If the Commissioner or the disputant provides notice to the other party that the Commissioner or the disputant wishes to hold a further conference meeting or meetings ("conference process") and the other party accepts that notice in writing then:

- (a) such further conference meetings as are agreed between the parties shall be held; and
- (b) subsection (5) will apply.

89LA(4) [Termination of the conference process]

Excluding conference meetings held under subsection (1), the Commissioner or the disputant may, at any time, by notice in writing to the other party, terminate the conference process notwithstanding any prior agreement under subsection (3) between the parties.

89LA(5) [Period of time within which assessment must be made]

If subsection (3) is applicable, the period of time during which the Commissioner would otherwise be required to make an amended assessment under the Inland Revenue Acts is extended by the number of days in the period which:

- (a) begins on the day following the day that the Commissioner or the disputant accepts notice provided under subsection (3); and
- (b) ends on the day on which the Commissioner or the disputant provides notice under subsection (4). [NOTE: taxpayer UOMI should also be suspended for this period]

89LB Taxpayer Opt Out Election

89LB(1) [Disputant may Opt Out of Dispute Process]

The disputant may, within the applicable response period, elect by notice in writing to the Commissioner, that the dispute be submitted to court or Taxation Review Authority without further completion of the disputes process.

89LB(2) [Conditions when Disputant may not Opt Out]

The disputant may not make an election under subsection (1) and any election which purports to be made by the disputant is of no effect if:

(a) A conference meeting has not been held in accordance with section 89LA(1);

(b) Any information requests issued under section 17 or section 17A are outstanding.

89LB(3) [Commissioner must issue an assessment]

Within two months of receipt of an election under subsection (1) the Commissioner must make an assessment based upon the notice of proposed adjustment or response notice issued by the Commissioner (whichever is applicable).

89LB(4) [Grounds of assessment to be specified]

Subject to subsection (6), in any dispute submitted to the court or Taxation Review Authority under subsection (1) or as a consequence of an agreement under section 89N(1)(c)(viii) in the absence of a Statement of Position being issued by the Commissioner, the Commissioner may raise in any such dispute only:

(a) the legal grounds of assessment specified in an assessment issued under subsection (3); or

(b) if no legal grounds of assessment have been specified in the assessment under subsection (3), the legal grounds of assessment specified in the Commissioner's notice of proposed adjustment or response notice (whichever is applicable).

89LB(5) [Grounds of Dispute]

Subject to subsection (8), in any dispute submitted to the court or Taxation Review Authority under subsection (1) or as a consequence of an agreement under section 89N(1)(c)(viii) in the absence of a Statement of Position being issued by the disputant, the disputant may raise in any such dispute only the legal grounds of dispute specified in the disputant's notice of claim or statement of claim (whichever is applicable)

89LB(6) [Commissioner may apply for an order to expand legal grounds of assessment]

The Commissioner may apply to the court or Taxation Review Authority for an order that allows for an expansion of the legal grounds of assessment for an assessment issued under subsection (3).

89LB(7) [Conditions for granting order to expand legal grounds of assessment]

The Court must be satisfied before granting any order under subsection (6) that:

(a) the Commissioner is only seeking to expand the legal grounds of assessment as specified in his notice of proposed adjustment or response notice (whichever is applicable); and

(b) the application would not be more appropriately dealt with by the issuing of a notice of proposed adjustment by the Commissioner.

89LB(8) [If order granted Disputant may expand grounds of dispute]

If the court or Taxation Review Authority grants an order under subsection (6) the disputant may, as a response to the Commissioner's expanded grounds of assessment, expand upon its legal grounds of dispute by way of an amended notice of claim or statement of claim.

Disclosure notices

89M DISCLOSURE NOTICES

89M(1) [Commissioner must issue disclosure notice]

Unless subsection (2) applies, and subject to section 89N, the Commissioner must issue a disclosure notice in respect of a notice of proposed adjustment to a disputant ~~at the time or after the Commissioner or the taxpayer, as the case may be, issues the notice of proposed adjustment~~ within the response period.

[History](#)

89M(2) [Failure by Commissioner to issue disclosure notice within applicable response period]

If the Commissioner does not issue a disclosure notice within the response period for the disclosure notice:

(a) If the disputant has proposed the adjustment to the assessment, the Commissioner is treated as having accepted the disputant's notice of proposed adjustment or statement of position:

(b) If the Commissioner has proposed the adjustment to the assessment, the Commissioner is treated as not having issued a notice of proposed adjustment.

89M(3) [Restriction on issue of disclosure notice by Commissioner]

The Commissioner may not issue a disclosure notice in respect of a notice of proposed adjustment if the Commissioner has already issued a notice of disputable decision that includes, or takes account of, the adjustment proposed in the notice of proposed adjustment.

89M(34) [Commissioner's statement of position]

Unless the disputant has issued a notice of proposed adjustment, the Commissioner must, when issuing a disclosure notice,—

- (a) Provide the disputant with the Commissioner's statement of position; and
- (b) Include in the disclosure notice—
 - (i) A reference to section [138G](#); and
 - (ii) A statement as to the effect of the evidence exclusion rule. [to be considered for amendment: should Commissioner issue SOP first every time]

89M(54) [Contents of Commissioner's statement of position]

The Commissioner's statement of position in the prescribed form must, with sufficient detail to fairly inform 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.

89M(65) [Disputant's response period]

If the Commissioner issues a disclosure notice to a disputant, the disputant must issue the Commissioner with the disputant's statement of position within the response period for the disclosure notice.

89M(76) [Contents of disputant's statement]

A disputant's statement of position in the prescribed form must, with sufficient detail to fairly inform 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.

89M(76B) [Evidence]

In subsections [\(4\)\(b\)](#) 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.

[History](#)

89M(78) [Failure by disputant or Commissioner to issue statement of position within response period]

[\(a\)](#) 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:

[\(ia\)](#) If the Commissioner has proposed the adjustment to the assessment, the disputant is treated as having accepted the Commissioner's notice of proposed adjustment or statement of position:

[\(bii\)](#) If the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.

[\(b\)](#) If the Commissioner does not issue a statement of position in the prescribed form within the response period for the statement of position:

[\(i\)](#) If the disputant has proposed the adjustment to the assessment, the Commissioner is treated as having accepted the disputant's notice of proposed adjustment or statement of position:

[\(ii\)](#) If the Commissioner has proposed the adjustment to the assessment, the Commissioner is treated as not having issued a notice of proposed adjustment.

[History](#)

89M(98) [Commissioner or disputant may provide additional information]

The Commissioner or disputant—

(a) May, within the response period for ~~a disputant's~~the other party's statement of position, provide the ~~disputant~~other party with additional information in response to the disputant's statement of position; and

(b) Must provide the additional information as far as possible in the manner required by subsection [\(4\)](#).

89M(109) [Additional information deemed part of Commissioner's statement]

The additional information provided by the Commissioner or disputant under subsection [\(8\)](#) is deemed to form part of the Commissioner's or disputant's statement of position. *[\(Note: both \(9\) and \(10\) require amendment so that for a taxpayer initiated dispute the same right arises\)](#)*

89M(110) [Commissioner may apply for time extension]

The Commissioner may apply to the High Court for more time to reply to a disputant's statement of position if—

(a) The Commissioner applies before the expiry of the response period for the disputant's statement of position; and

(b) The Commissioner considers it is unreasonable to reply to the disputant's statement of position within the response period, because of the number or complexity or novelty of matters raised in the disputant's statement of position.

89M(124) [Disputant may apply for time extension]

The disputant may apply to the High Court for more time within which to reply to the Commissioner's statement of position if—

- (a) The disputant applies before the expiry of the response period for the Commissioner's statement of position; and
- (b) The disputant considers it unreasonable to reply to the Commissioner's statement of position within the response period, because the issues in dispute had not previously been discussed between the Commissioner and the disputant.

89M(132) [Consideration of application by High Court]

The High Court shall, in considering an application under subsection (11), have regard to the provisions of section 89A and the conduct of the parties to the dispute.

89M(143) [Parties may agree to accept additional information]

The Commissioner and a disputant may agree to additional information being added, at any time, to either of their statements of position.

89M(154) [Additional information deemed part of original statement]

The additional information provided by the Commissioner or a disputant under subsection (13) is deemed to form part of the provider's statement of position.

89N COMPLETING THE DISPUTES PROCESS

89N(1) [When this section applies]

This section applies if—

- (a) A notice of proposed adjustment has been issued; and
- (b) The dispute has not been resolved by agreement between the Commissioner and the disputant; and
- (c) None of the following applies:
 - (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:
 - (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, under the 1988 version provisions in subpart YB of the Income Tax Act 2007, 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:
 - (iv) The disputant has begun judicial review proceedings in relation to the dispute:
 - (v) A person who is, under the 1988 version provisions in subpart YB of the Income Tax Act 2007, 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:
 - (vi) During the disputes process, the disputant receives from the Commissioner a requirement under a statute to produce information relating to the dispute and fails to comply with the requirement within a period that is specified in the requirement:
 - (vii) The disputant elects under section 89E to have the dispute heard by a [Taxation Review Authority](#) acting in its small claims jurisdiction:
 - (viii) The disputant and the Commissioner agree in writing 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:

(ix) The disputant and the Commissioner agree in writing to suspend proceedings in the dispute pending a decision in a test case referred to in section [89O](#).

[\(x\) The disputant makes an election under section 89LB.](#)

[History](#)

89N(2) [Disputes process to be completed before amendment of assessment]

If this section applies, the Commissioner may not amend an assessment under section [113](#) before one of the following occurs:

(a) The Commissioner or the disputant accepts a notice of proposed adjustment, notice of response, or statement of position issued by the other:

(b) The Commissioner considers a statement of position issued by the disputant. [\[to be considered for amendment to ensure the Commissioner issues a SOP\]](#)

89N(3) [Commissioner may apply for time extension or order that completion not required]

Despite subsection (2), the 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. [\[if section 89LB is not enacted \(which is preferable\), this provision needs amendment to ensure that the taxpayer can also seek such an order\]](#)

89N(4) [Period of time within which Commissioner's application to be made]

The Commissioner must make an application under subsection (3) within the period of time during which the Commissioner would otherwise be required, under the [Inland Revenue Acts](#), to make an amended assessment.

89N(5) [Period of time within which amended assessment must be made]

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.

[History](#)

[History](#)

89O TEST CASES

89O(1) [When this section applies]

This section applies if—

(a) A dispute between a disputant and the Commissioner has been identified; and

(b) ~~The Commissioner has designated a~~ separate challenge [has been designated](#) as a test case [and the disputant and the Commissioner agree in writing to suspend the proceedings in accordance with subsection \(2\)](#)

[or](#)—

(c) The disputant and the Commissioner agree in writing to suspend the proceedings in the dispute because there is significant similarity between the facts and questions of law in the dispute and the facts and questions of law in a challenge, whether or not that challenge has been designated a test case.

890(2) [Suspension of proceedings]

The disputant and the Commissioner may agree in writing to suspend the proceedings in the dispute because there is significant similarity between the facts and questions of law in the dispute and the facts and questions of law in the challenge that has been designated as a test case.

890(3) [Beginning and end of suspension period]

A suspension that is agreed under subsection (2) or subsection (1)(c) starts on the date of the agreement and ends on the earliest of—

- (a) The date of the court's decision in the test case;
- (b) The date on which the test case is otherwise resolved;
- (c) The date on which the dispute is otherwise resolved.

890(4) [Assessment to be consistent with resolution of test case]

The Commissioner may make an assessment or perform an action in relation to a suspended dispute that is consistent with the resolution of the test case.

890(5) [Period of time within which amended assessment must be made]

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.

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Part VIIIA

138B WHEN DISPUTANT ENTITLED TO CHALLENGE ASSESSMENT

138B(1) [Rejection of adjustment by disputant]

A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

- (a) The assessment includes an adjustment proposed by the Commissioner which the disputant has rejected within the applicable response period; ~~and~~
(b) The assessment was issued by the Commissioner pursuant to section 89C(db) without an adjustment being proposed by the Commissioner and rejected by the disputant within the applicable response period; and

(bc) Where the assessment is an amended assessment, an adjustment proposed by the Commissioner that is included in the assessment—

- (i) Imposes a fresh liability (being a liability that was not included in an earlier assessment) in respect of a particular; or
- (ii) Increases an existing liability (being a liability that was included in an earlier assessment but to a lesser extent) in respect of a particular; and

(dc) The disputant files the proceedings, in accordance with the [Taxation Review Authority Regulations 1994](#) (or any regulations made in substitution for those regulations) or the High Court Rules, within the response period following the issue of the relevant notice of assessment.

138B(2) [Rejection of adjustment by Commissioner]

A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

- (a) The assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by written notice within the applicable response period; and
- (b) The disputant is subsequently issued with an amended assessment; and
- (c) The disputant files the proceedings, in accordance with the [Taxation Review Authority Regulations 1994](#) (or any regulations made in substitution for those regulations) or the High Court Rules, within the response period following the issue of the amended notice of assessment.

138B(3) [Rejection of adjustment by Commissioner and amended assessment not issued]

A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—

- (a) The Commissioner rejects, within the applicable response period, an adjustment proposed by the disputant and does not subsequently issue an amended assessment; and
- (b) The disputant files the proceedings, in accordance with the [Taxation Review Authority Regulations 1994](#) (or any regulations made in substitution for those regulations) or High Court Rules, within the response period of the written disputable decision from the Commissioner that the proposed adjustment will not be adjusted; and
- (c) For the purposes of paragraph (b), the written disputable decision from the Commissioner is not limited to the Commissioner's notice of response. [Note: sub(3) could be considered for amendment if timeframes as proposed in section 3 'response period' and relevant sanctions are enacted]