



Inland Revenue
Te Tari Taake

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Disputing an assessment

What to do if you dispute
an assessment

Introduction

While we make every effort to apply the tax laws fairly and correctly, there may be a time when you disagree with your tax assessment. If that happens, this guide explains what you need to know and what options you have to resolve the disagreement.

Where you disagree with the amount assessed, there is a process to follow so your rights are protected. This process is important, because your dispute may have to be heard by a court if you and Inland Revenue are unable to resolve it. In all cases we try to reach an agreement with you before there is a need for you to dispute an assessment formally.

There are times when Inland Revenue may make an assessment without first sending a notice of proposed adjustment (NOPA). These include, but are not limited to:

- When an assessment is amended with agreement between Inland Revenue and a taxpayer to correct a tax position previously taken by a taxpayer.
- The assessment reflects an agreement reached between Inland Revenue and the taxpayer.
- An assessment is made from the direction of the courts or Taxation Review Authority.
- The assessment results from an income tax assessment.

There's a different dispute procedure if you receive a NOPA from Inland Revenue – for more information see our guide **Disputing a notice of proposed adjustment (NOPA) - IR777**.

How to use this guide

We've set out the disputes resolution process from when you first want to dispute an assessment or Inland Revenue decision to what happens after a challenge is resolved in court. In Part 10 there is a summary of the time limits that you must meet in the process, and some important points to remember.

Inland Revenue Acts grant various powers and responsibilities to the Commissioner – not to Inland Revenue as an organisation. In practice the Commissioner delegates powers and responsibilities to other Inland Revenue staff. That's why we've used "Inland Revenue" and "we" in this guide to describe action taken in the Commissioner's name. During the disputes process you may get letters or other documents that use the Commissioner as legal authority.

ird.govt.nz

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Part 1 – Settling a difference informally

There may be disagreement when you want to make adjustments to your self-assessment or if we've adjusted your assessment by correcting your calculations. This may then place an assessment in dispute.

The disputes resolution process can take some time, and can also include late payment penalties, non-payment penalties and interest. Because of this, we try to settle disagreements before the dispute stage.

If you've made a simple error in your return, you can:

- correct errors, such as the transposition of numbers or arithmetical mistakes, by telephone or in writing
- self-correct errors – if you have made a small error in a GST return, you may self-correct it in a later period.

Late claim of GST

If you can not claim GST now (for example, no tax invoice), you can claim it in a future period. You can only make a late GST claim on expenditure incurred in the previous two years. Exceptions to this two-year rule include:

- inability to obtain a tax invoice
- disputed payments for expenditure
- mistakenly treating a supply as non-taxable
- clear mistakes or simple oversights.

Make sure you know what's going on

It's important you understand exactly what any adjustments are for. Ask us for an explanation straightaway in any of these situations.

- You're not sure about any part of a letter or decision.
- You think an adjustment or an assessment is incorrect.
- You think we're taking too long to reply.

Part 2 explains the disputes resolution process and how to proceed with your dispute.

Part 2 – The disputes resolution process and you

If your disagreement with Inland Revenue has not been resolved as set out in Part 1, you may want to have your point of view considered through the disputes resolution process that applies to:

- assessments issued under tax legislation, including your self-assessment
- disputable decisions that are not assessments.

The procedures do not apply to assessments issued to paying parents under the Child Support Act 1991.

In this part we tell you what you must do if you disagree with an assessment. The process is designed to resolve disagreements as quickly as possible by early identification of all issues, disclosure of the facts and evidence, and consultation between you and Inland Revenue.

We explain the steps of the disputes procedure and what you must do. If you wish to proceed with a dispute, we recommend you seek independent advice from an accountant or other professional tax advisor. This is especially important if complex issues are involved.

Note

There are time limits built into the process that apply to you and to Inland Revenue. If you do not respond within the time limits you will have to pay the tax calculated. Part 10 contains a summary of the time limits for disputing an assessment.

Steps in the disputes resolution process

The disputes resolution process usually goes through the steps set out on the following pages. Sometimes there are special circumstances that mean this is not appropriate. We'll tell you if we consider the dispute should be handled differently, and how you should proceed.

The chart on page 13 summarises these steps.

Inland Revenue postal addresses

If you know the name and address of the Inland Revenue staff member who is dealing with your case, send all your correspondence and forms to that person. Otherwise use one of the following:

Returns

Inland Revenue
PO Box 39090
Wellington Mail Centre
Lower Hutt 5045

General correspondence

Inland Revenue
PO Box 39010
Wellington Mail Centre
Lower Hutt 5045

For a full list of addresses go to ird.govt.nz/contact-us

Notice of proposed adjustment

If you've received a notice of a tax assessment or decision without first receiving a notice of proposed adjustment (NOPA) from us, and you disagree, or want to make adjustments to your self-assessment, you must issue us with a NOPA.

If you're sending us a NOPA to your self-assessment you must do so within four months of the date your return is received by Inland Revenue – the self-assessment date. You'll find this on the return acknowledgment form that we sent you after processing your return.

If you're sending us a NOPA in response to an assessment made by Inland Revenue you must send it to us within four months of the date of issue of the notice of assessment.

Note

If you have not filed a return for the period of disputed assessment, you can not issue a NOPA. You must file the return along with your NOPA.

We'll accept a late NOPA if there is an exceptional circumstance (page 11). If you do not send us a NOPA within the applicable period you are considered by law to have accepted the assessment or disputable decision.

Your NOPA must be in the prescribed format and identify all of the following:

- the proposed adjustment(s)
- the facts and tax laws that support the adjustment you are proposing
- how the law applies to the facts
- the documents you intend to rely on.

You can either use a **Notice of proposed adjustment - IR770** form or create your own. However, if you choose to create your own document, we recommend you attach the IR770 cover sheet and follow the format of our form as this will help to make sure you meet all the requirements of a NOPA. Part 3 has details on how to complete a NOPA.

If Inland Revenue accepts all the contentions in your NOPA we'll make an amended assessment. However, if we disagree with any part of your proposed adjustment, we'll issue a notice of response within two months of the date you issued your NOPA.

Commissioner's notice of response

Our notice of response (NOR) will state concisely why the proposed adjustment is rejected and specify how it could be altered so agreement is possible. It will contain:

- the facts or legal arguments in your NOPA we disagree with
- why we consider those facts or legal arguments are incorrect
- further facts and legal arguments we rely on
- how the legal arguments apply to the facts
- the quantitative adjustments by which your proposed adjustment could change as a result of the facts and legal arguments we rely on.

If you disagree with part or all of the NOR you must write to tell us within two months of the date it was issued. If you do not, you're considered to have accepted Inland Revenue's position.

If no agreement is reached at this stage, the dispute will usually move to the conference stage.

Conference stage

The conference is held to identify and clarify the facts and issues, and to allow any disputed facts to be resolved. A conference provides an opportunity for the parties to state the facts and define the issues clearly and concisely.

A conference may be in the form of a meeting (or series of meetings), or a phone call. The Inland Revenue staff member you've been dealing with will contact you to arrange the conference. They'll also offer to have a senior Inland Revenue staff member act as facilitator for the conference. The facilitator will have had no previous involvement with the dispute.

If no agreement is reached at the conference stage we'll usually issue a disclosure notice. If all or some of the issues are resolved during the conference, the issues on which the agreement is reached will be recorded and an assessment made if necessary. A disclosure notice will be issued to deal with any issues remaining in dispute.

Suspension of a dispute pending a separate test case

Provided you and Inland Revenue agree in writing, your dispute can be suspended pending the outcome of a test case in the High Court. For such a dispute to be suspended, the facts and questions of law in the dispute must be significantly similar to those of the court proceeding that has been designated as a test case.

Once agreement is reached the dispute is suspended pending the outcome of the test case in the courts and you're not required to continue with the disputes procedures (for example, you do not have to file a statement of position, or have your dispute considered by our Adjudication Unit).

Your dispute is suspended until the earliest of the following occurs:

- the court makes its decision about the test case
- the test case is otherwise resolved
- your dispute is otherwise resolved.

If we suspend your dispute pending the outcome of a test case we'll advise you of the outcome of that test case. If that results in an amended assessment you may accept that assessment, or begin challenge proceedings.

Further information about test case court proceedings can be found in Part 7.

Disclosure notice

A disclosure notice requires you to send your statement of position to Inland Revenue within two months from the date of issue. Although the disclosure notice is usually issued at the end of the conference stage, it may be issued at any time after the NOPA. You must respond to the disclosure notice within two months of the date of issue unless there is an exceptional circumstance (page 11). If you do not, you are considered to have accepted our NOR and the assessment will be confirmed. If you are considered to have accepted the assessment, you can not challenge it in court.

Statement of position

Your statement of position must be in the prescribed format, and contain all the following:

- an outline of the facts you intend to rely on
- an outline of the documentary evidence you intend to rely on
- an outline of the issues you consider will arise
- the propositions of law you intend to rely on.

When you respond with your statement of position, we have two months to issue our statement of position. It will contain all the following:

- an outline of the facts we intend to rely on
- an outline of the documentary evidence we intend to rely on
- an outline of the issues we consider will arise
- the propositions of law we intend to rely on.

Part 4 has more information about completing your statement of position.

If there is still a disagreement on some issues at the end of the disclosure stage, the case will usually be sent to our Adjudication Unit for consideration, regardless of the issue or amount of tax involved.

Exclusion rule

The issuing of a disclosure notice and the two statements of position brings into effect the “exclusion rule”. This rule prevents issues and propositions of law not raised in the statements of position from being raised in any subsequent challenge, unless both sides agree. There is a provision that allows judicial discretion to admit previously undisclosed material in very limited circumstances.

Make sure we receive all your correspondence

Once you’ve written your NOPA, rejection of Inland Revenue’s NOR or statement of position, either deliver it or post it to us.

If you’re posting any of these notices, send them to the staff member you’ve been dealing with. If you do not have a contact name or address, use one of the postal addresses on page 7.

Late actions (exceptional circumstances)

There are time limits throughout the disputes resolution process that must be met.

If you do not take the required action within the applicable timeframe, you are considered by law to have accepted our position unless we consider that exceptions apply. Exceptional circumstances are events outside the control of you or your agent, that could not have been reasonably anticipated.

Exceptional circumstances may also arise if we consider the lateness is minimal, or results from one or more statutory holidays falling in the response period.

Late actions, such as filing a dispute document late, may be accepted providing you can show your intention to enter into, or continue with, a dispute and you send the required information to Inland Revenue as soon as reasonably practicable.

Adjudication

The adjudicator is an independent officer from within Inland Revenue who will take a fresh look at the application of the law to the facts of the case. If the adjudicator agrees with Inland Revenue's position the assessment will be confirmed.

The adjudicator will consider the facts, evidence, propositions of law and issues raised in the statements of position. The adjudicator is not an investigator and will not search for missing facts or evidence.

Usually the adjudicator will not contact you or the Inland Revenue staff member involved in the dispute, except to clarify a point. If contact is made both parties involved will be advised, and the reasons why contact is necessary outlined.

When the adjudicator reaches a decision a copy will be given to you and the staff member involved.

If you're dissatisfied with the adjudicator's decision you may start proceedings before the TRA or the High Court. You have two months from the date of the notice of assessment or challenge notice to file proceedings.

The adjudicator's decision

At the end of the disputes process the adjudicator must make a decision. The decision will be in writing and include a written report giving the grounds for the decision.

If your dispute goes to the adjudication stage there are four possible outcomes.

1. The adjudicator fully agrees with your position

If the adjudicator agrees in full, you'll receive an amended notice of assessment to replace the one you disputed. This new assessment will take into account any tax already paid.

2. The adjudicator partly agrees with your position

If the adjudicator agrees in part, you'll receive an amended notice of assessment to replace the one you disputed. This assessment will agree with the parts of your dispute the adjudicator has allowed, but it will not agree with those points they consider are incorrect.

You may take further steps to continue with the part of your dispute that the adjudicator has disagreed with. There are some specific actions you must take to continue with that part of your dispute. These are explained in Part 6.

3. The adjudicator disagrees with your position

If the adjudicator disagrees with all parts of your argument there will be no new assessment, and you'll receive a letter stating we consider the existing assessment to be correct.

If you want to continue with your dispute there are some specific further actions you must take. These are explained in Part 6.

4. The adjudicator can not make a decision

If the adjudicator considers both parties have failed to consider an issue or section that could affect the outcome of the dispute, both parties will be advised and the file will be referred back to the staff member handling the case.

Continuing your dispute

If the adjudicator disagrees with all or part of your position, you'll receive a letter containing a section similar to:

"If you wish to continue with your dispute, you must file proceedings before the Taxation Review Authority or High Court within two months of the date of this letter:

The courts have limited authority to accept an application after two months have expired.

The only instance in which they may accept a late application is if your application is late due to circumstances completely beyond the control of you or your agent."

Parts 5 and 6 explain the different courts you can have your challenge heard in, and how to take your case to court.

Statutory time bars

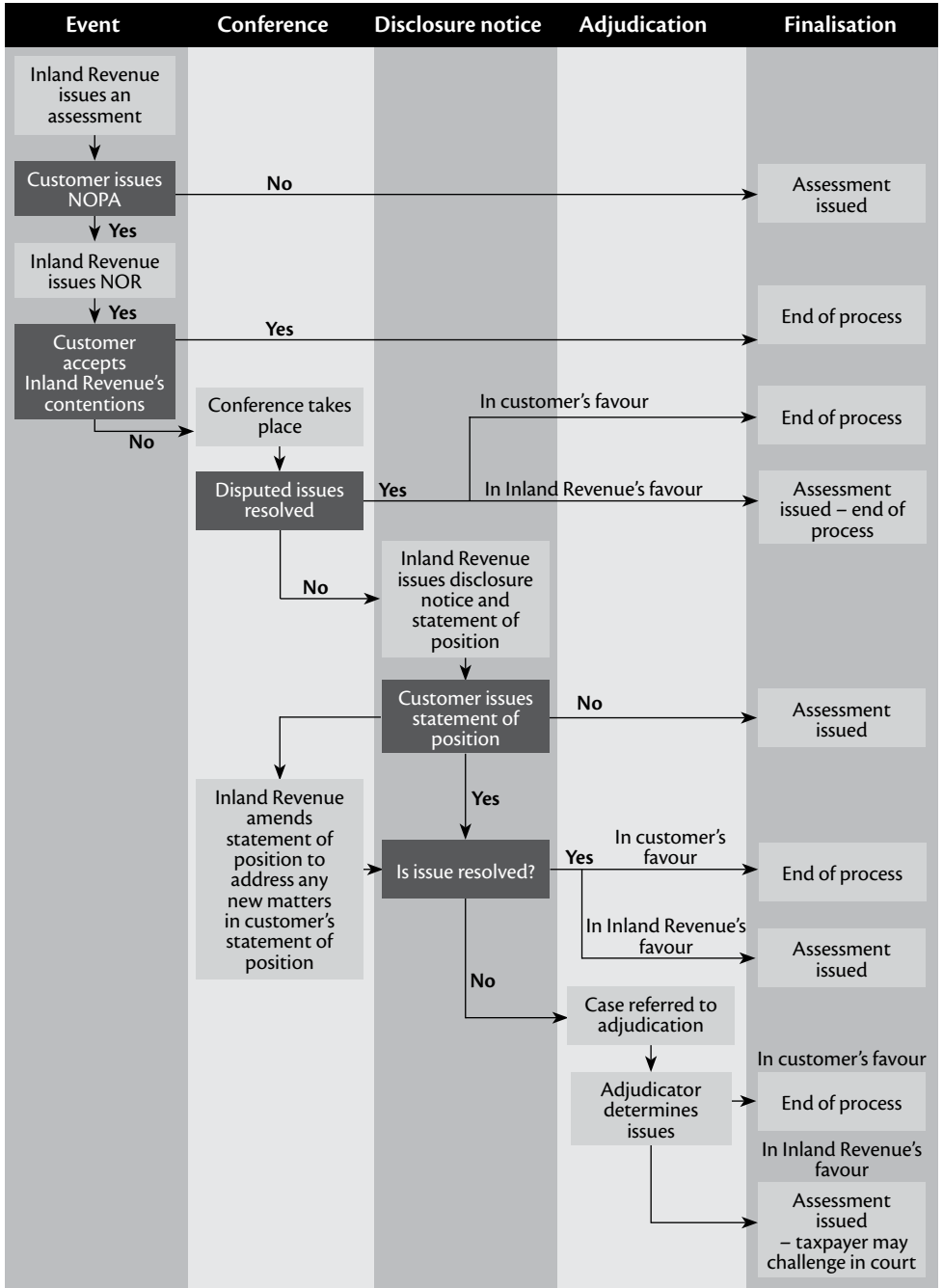
Generally there are set time periods (time bars) for disputing an assessment. In most cases the law does not allow us to proceed with the dispute outside of these time periods.

However, time bars can be waived in some circumstances.

Waiving the time bar

- The time bar can be waived for a total agreed period or periods of up to 12 months after the expiry of the relevant four-year period, from the date of assessment.
- The time bar can be waived for a further six months from the end of the period referred to above on written notice being given by the taxpayer.
- During the waiver period Inland Revenue must not investigate issues between the taxpayer and Inland Revenue that weren't identified and known to both parties before the start of the period.

Flowchart: Disputes resolution process commenced by you



Part 3 – Preparing your notice of proposed adjustment (NOPA)

Purpose and format of the NOPA

The NOPA is your advice to Inland Revenue that you disagree with the assessment and would like it adjusted.

The NOPA must be in the prescribed form and contain the following details:

- the date of issue of the notice
- your name and IRD number
- your address and preferred contact details (phone, email, fax or post).

The second part of the NOPA must contain:

- the tax adjustments you propose
- the facts and tax laws that support your adjustments
- how the law applies to the facts
- the documents you intend to rely on.

Completing the NOPA

Date of issue

Show the date the NOPA is issued to Inland Revenue.

Full name of taxpayer

Show your full name here. If the adjustment is for a company, partnership or other organisation, show the name of the organisation.

IRD number of taxpayer

Show your IRD number here. If the adjustment is for a company, partnership or other organisation, show the IRD number of the organisation.

Address and contact details

Show your address and contact details here. If the adjustment is for a company, partnership or other organisation, show the address and contact details of the organisation.

If you have an agent or would like to be contacted at a different address from your postal address, show how and where you would like to be contacted.

Identify the proposed adjustments

Include the tax type, return period and the amount of tax payable or refundable resulting from the adjustment, along with a description of the adjustment required.

The facts and laws that support your adjustment

Please provide a statement of the facts and laws that you consider make the adjustment necessary in sufficient detail to inform Inland Revenue of the grounds for your proposed adjustment.

You should identify the laws that relate to your proposed adjustment. These should refer to the relevant Act (for example, the Income Tax Act 1994, the Income Tax Act 2004, the Income Tax Act 2007 or the Goods and Services Tax Act 1985) and section(s) that support your adjustment.

If you do not know the tax laws relevant to your proposed adjustment, please provide as much information about the adjustment as soon as possible so we can establish which section(s) of the relevant Acts apply.

Also provide any legal arguments or principles that support your proposed adjustments. This can be any information on the application of the law that relates to your proposed adjustment(s), for example, references to tax laws, court decisions or Inland Revenue policy statements. When referring to a case as support for your proposed adjustment a summary of the applicable legal principle is required. Just referring to a case without the supporting principle could make your NOPA invalid.

How the law applies to the facts

You must relate the law and the legal principles in support of your proposed adjustments to your factual circumstances to ensure that the facts logically support the proposed adjustments.

Documents supporting the adjustment

Attach the documents you intend to rely on that are significantly relevant to the issues and that you're aware of at the time you issue your NOPA.

Where the evidence is oral it's not necessary to give the name of the witnesses who may give evidence for you if the matter proceeds to court.

Finalising and sending your NOPA

Once you have completed and dated your NOPA, send or deliver it to us straightaway. If you have been in contact with an Inland Revenue staff member about the assessment or other issue you are disputing, address it to that person. Otherwise, send it to one of the postal addresses on page 7.

Note

You must send us your NOPA within four months of the date your assessment was issued or your self-assessed return was received by Inland Revenue. If you do not meet this deadline your NOPA can not be considered unless exceptional circumstances apply (page 11).

If you have not furnished a return and the Commissioner makes a default assessment, you must furnish the outstanding return and send us a NOPA in respect of the default assessment otherwise you can not dispute the Commissioner's default assessment.

Note

If your dispute relates solely to a research and development tax credit claim, different time limits apply. See the R&D tax credit information at ird.govt.nz/research-development

Once Inland Revenue receives your NOPA

As soon as we receive your NOPA and have confirmed that it's valid we'll acknowledge it by letter.

If it's not valid and the NOPA deadline has not passed, we'll contact you with details of the action you must complete before the deadline expires, to make your NOPA valid.

The staff member reviewing your NOPA will consider the points made to determine if the adjustment you have requested is allowed under the legislation.

If they decide that your adjustment is allowed we'll tell you your NOPA has been accepted, and make an amended assessment in due course.

If they do not agree with your proposed adjustment we'll issue a NOR rejecting your proposed adjustment. Inland Revenue's NOR will outline why we consider that your proposed adjustment can not be accepted. To be valid, Inland Revenue's NOR must be issued within two months of the date on your NOPA. For example, if your NOPA was sent 10 April 2019, the last date for issuing Inland Revenue's NOR is 9 June 2019.

You may contact us to provide further information in support of the NOPA, provided this is within the response period.

If Inland Revenue rejects your NOPA

If Inland Revenue rejects your NOPA and you disagree with our NOR, you must write to us rejecting it. You must do this within two months of the date we issue our NOR. The dispute will usually then proceed to the conference stage.

Part 4 – Preparing your statement of position

Purpose of the statement of position

If Inland Revenue issues you with a disclosure notice, you must issue a statement of position. The statement of position is your formal and final notification of what adjustments you consider should be made and why. It's important because if the dispute can not be resolved and ultimately goes to court, only those issues and propositions of law raised in the statements of position can be raised in challenge. This is the exclusion rule mentioned on page 10.

Format of the statement of position

We strongly recommend you get professional advice before completing your statement of position.

When you respond with your statement of position you must do so in the prescribed format. You can use either our **Statement of position (SOP) - IR773** form or create your own statement of position. However, we recommend you at least follow the format of our form to make sure you meet all the requirements.

The statement of position must contain the following details:

- the date of issue
- your name and IRD number
- your address and preferred contact details (phone, email, fax or post).

The second part of the statement of position must contain the:

- outline of the facts relied on
- outline of the documentary evidence in support of the facts
- outline of the issues arising
- propositions of law relied on.

Completing the statement of position

Date of issue

Show the date the statement of position is issued (sent) to Inland Revenue.

IRD number of taxpayer

Show your IRD number here. If the adjustment is for a company, partnership or other organisation, show the IRD number of the organisation.

Full name of taxpayer

Show your full name here. If the adjustment is for a company, partnership or other organisation, show the name of the organisation.

Address and contact details

Show your contact address, phone, email and fax numbers here. If the adjustment is for a company, partnership or other organisation, show their contact details.

If you have an agent or would like to be contacted at a different address from your postal address, show how and where you would like to be contacted.

Outline of the facts relied on

Set out the facts on which you intend to rely. This should be similar to the information on your NOPA.

Outline of the documentary evidence relied on

Set out the documentary evidence that you would intend to rely on if the case were to proceed to court. State the type and date of the document (if known) and any other unique identifying factor. Where the evidence is oral, it's not necessary to give the name of the witness who may give evidence for you if the matter proceeds to court, but you should still identify the evidence the witness may be giving..

Outline of the issues arising

State the legal questions arising from the proposed adjustments (these are what the court is being asked to decide about), including the application of the laws the proposed adjustment is based on. State the relevant sections of the legislation if possible.

You may raise several issues about one proposed adjustment.

The propositions of law relied on

List the propositions of law you consider support your proposed adjustment, along with any case authorities from which those propositions arise.

A proposition of law is a statement about the application or interpretation of the law. It may be based on statutes or case law, or other opinion. Propositions of law may also include a statement on the application or interpretation of law that has not been considered by the courts before.

Wherever possible, you should state the authority for the proposition of law relied on, for example, the particular case it is drawn from.

Finalising and sending your statement of position

We strongly recommend you seek professional advice before finalising your statement of position.

Once you have completed your statement of position, send or deliver it to the Inland Revenue staff member you've been dealing with. Send it to them as soon as you've completed it so they can consider it fully and send a reply back to you within the two-month response period.

You can add information to your statement of position at any time if we agree. We'll only approve this in limited circumstances, for example, the Commissioner will consider the materiality and relevance of the additional information in its capacity to resolve the dispute.

Note

You must issue your statement of position within two months of the date we issued the disclosure notice. If you do not meet this deadline your statement of position can not be accepted, unless exceptional circumstances apply (page 11).

Once Inland Revenue receives your statement of position

As soon as we receive your statement of position we'll generally acknowledge it by letter.

The staff member who sent you the disclosure notice will consider the points made in your statement of position and determine if the adjustment you have requested is allowed under the legislation.

If they decide that your adjustment is allowed under the legislation we'll tell you that your adjustment has been accepted, and make an amended assessment in due course.

If they still do not agree with your proposed adjustment we'll send you a statement of position. This will be issued within two months of the date of issue of your statement of position.

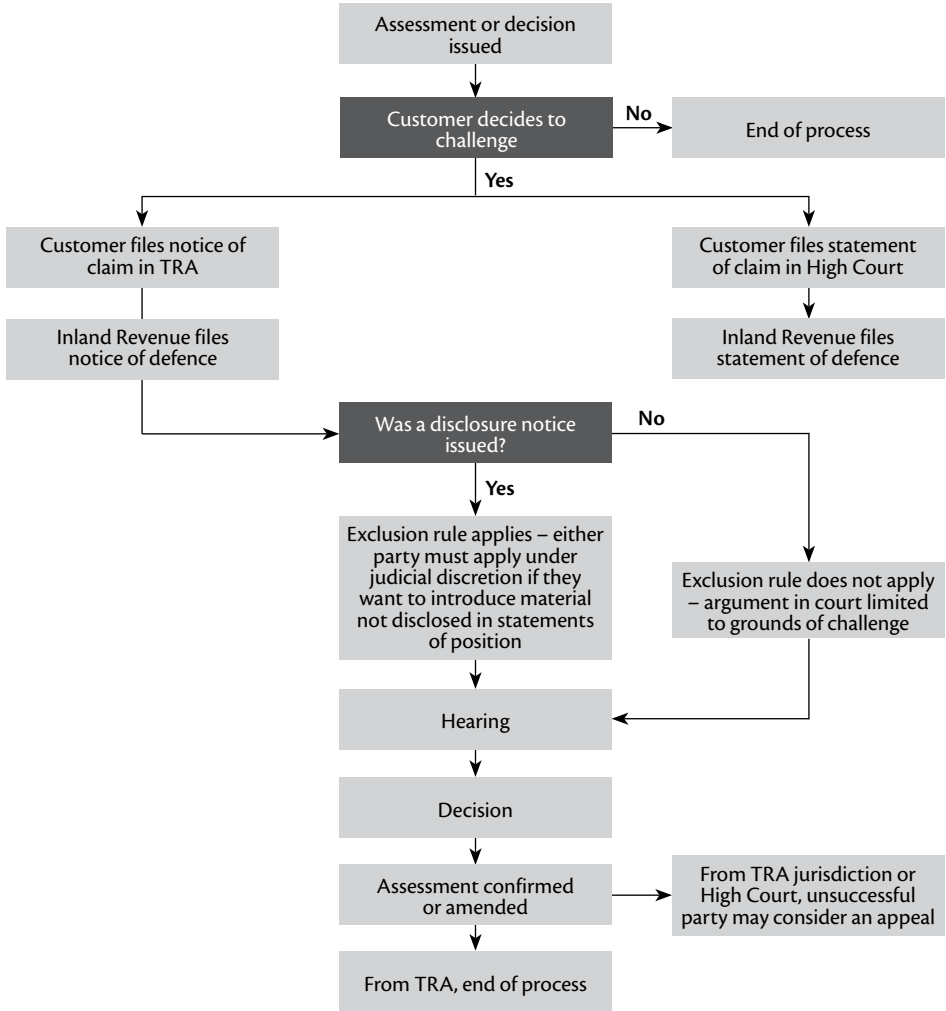
If you disagree with the statement of position, the matter will be referred to an adjudicator.

We may seek your agreement to add information to the statement of position at any time. An example of when we may ask to do this is if there has been an additional conference after the statements of position have been issued.

Part 5 gives details of which court your dispute may go to if the adjudicator rejects your position.

Part 5 – The courts

Here we talk about the courts and tribunals which you may take your dispute to if you do not accept all or part of the adjudicator’s decision. We also explain your rights of appeal if you disagree with a decision of the Taxation Review Authority (TRA) or High Court.



This chart shows an overview of court procedures.

The Taxation Review Authority (TRA)

The TRA is totally independent of Inland Revenue and is based in Wellington, but it travels to other areas so that cases can be heard as close as possible to where you live.

Most people have their challenge heard before the TRA for the following reasons.

- The TRA is less formal than the High Court.
- The cost is generally lower than for hearings in the High Court.
- The less formal nature of the TRA means you may more easily present your challenge yourself.
- Costs are not usually awarded, but in certain circumstances the TRA can award costs to the parties involved in the dispute.
- TRA hearings are not open to the public.
- The TRA judges are tax specialists.
- In certain circumstances the filing fee may be waived, remitted or refunded in full or in part, on application to the Registrar of the Authority.

Challenging the adjudicator's decision

You may wish to challenge the adjudicator's decision under the TRA's jurisdiction.

Features of the jurisdiction are:

- no limit on tax in dispute
- decisions are published without disclosing taxpayer details
- decisions may be appealed.

There is a filing fee for lodging a notice of claim in the TRA jurisdiction. In certain circumstances this fee may be waived by the TRA.

The High Court

The High Court is more formal than the TRA. Hearings are open to the public and the Court may award costs.

You may present your challenge to the High Court yourself, although we recommend you get professional legal assistance as a knowledge of court procedures is important. Companies, however **must** have a legal representative.

Decisions the TRA or High Court can make

After hearing your dispute, the TRA or High Court will make one of these decisions:

- allow your challenge in full
- allow it in part
- disallow it
- reduce the assessment.

Your appeal rights if the decision goes against you

If you disagree with a TRA or High Court decision, you may appeal against it to a higher authority if you have sufficient grounds. We have the same appeal rights.

Appealing a decision

TRA decisions

You can appeal a decision of the TRA to the High Court, as long as it involves:

- a question of law, or
- a question of fact, if the amount of disputed tax, duty or tax credit is \$2,000 or more, or if the amount of disputed loss is \$4,000 or more.

If you want to appeal a TRA decision to the High Court, you must lodge a notice of appeal in the High Court within 20 working days after the date of the decision. Copies must be served on the TRA and Inland Revenue (go to page 25 for contact details).

If your case does not meet any of the conditions shown above, the TRA decision is final.

High Court decisions

You can appeal a High Court decision to the Court of Appeal. If you want to do this, you must lodge a notice of appeal in the Court of Appeal within 20 working days after the date of the decision. Copies must be served on the High Court and Inland Revenue (go to page 25 for contact details).

Court of Appeal decisions

An appeal to the Supreme Court is allowed only with the leave of the Supreme Court. There is no monetary limit, but leave will be granted only in matters of general public importance or if it's of general commercial significance.

The final decision

The final decision will be:

- a court decision that can not be appealed, or
- a decision that neither you nor Inland Revenue decide to appeal within the required timeframes.

The timetable on page 34 explains the sequence and timing for appealing court decisions.

Part 6 – Court proceedings

Filing proceedings with the TRA

If you wish to challenge an assessment or a disputable decision that is not an assessment under the TRA's jurisdiction, you must prepare and file a notice of claim outlining your case. You must do this within two months of the issue date of:

- the adjudicator's decision
- an assessment or amended assessment that is based on the adjudicator's decision, whichever is appropriate in your circumstances.

Your notice of claim must be prepared in the format set out in the Taxation Review Authority Regulations 1998.

When you file the notice of claim under the TRA's jurisdiction, you must also provide three copies and pay a filing fee to the TRA (go to page 25 for contact details for the TRA). In certain circumstances the TRA may waive the fee.

Once you have filed your notice of claim with the TRA you must also personally serve a copy of the notice on Inland Revenue (refer to "Service of proceedings" on page 25).

Directions conference and hearings in the TRA

Following the filing of your notice of claim and our notice of defence and before a TRA judge hears your case, there must be a preliminary directions hearing at a place and time appointed by the TRA. At this hearing the TRA will want to know various details including how long Inland Revenue and you (or your agent) think the hearing will last.

Both you (or your agent) and Inland Revenue must attend the directions hearing. If you do not attend, your challenge is deemed to be withdrawn unless you later get the leave of the TRA to proceed with the hearing.

The TRA may permit you and/or Inland Revenue to attend by way of a telephone conference.

As soon as possible after the directions hearing, the TRA will send to your "address for service" a notice recording its directions. If no date for your challenge has been set at that hearing, either you or Inland Revenue may then ask the TRA to set a date for your challenge to be heard. The TRA will then send you a notice that sets a time and date for the hearing.

At the hearing, you may present your challenge personally or be represented by a solicitor, accountant, or other person of your choice. However, the TRA suggests it's in your own interests to seek professional assistance to present your challenge, especially if questions of law are involved.

TRA hearings are not open to the public, and in most cases costs are not awarded. The exception to this is if either party does not appear at the hearing, or abandons or settles the dispute without giving adequate notice. The TRA can also award costs if it dismisses a challenge as being frivolous, vexatious or for the purposes of delay. The TRA may also award costs for filing fees in certain circumstances.

After a hearing the TRA will issue its written decision and send you a copy.

Filing proceedings in the High Court

High Court challenges must also be filed within two months of the issue date of:

- the adjudicator's decision
- an assessment or amended assessment based on the adjudicator's decision, whichever is appropriate in your circumstances.

Your statement of claim must describe your course of action, in sufficient detail, to clearly inform the Court and Inland Revenue about the facts of your claim.

It's not essential, but we strongly recommend you get professional assistance.

If we issued a disclosure notice as part of the disputes process, your statement of claim may not refer to any facts, propositions of law or issues not disclosed in the statements of position.

File your statement of claim in the Registry of the High Court closest to where you live.

A notice of proceeding, in the format prescribed by the High Court rules, must be filed along with every statement of claim. As set out in the High Court schedule of charges, there is also a filing fee payable.

Once your statement of claim and notice of proceeding have been filed with the Court, you must personally serve a copy on the Legal Services of Inland Revenue (refer to "Service of proceedings" on page 25).

We must file a statement of defence and serve it on you within 30 days of the date your statement of claim and notice of proceedings was served. The statement of defence either admits or denies the allegations of fact in the statement of claim. It also sets out any further facts we consider are relevant to the issues, and the issues that we require to be determined by the Court. We're also limited to those issues and propositions of law disclosed in the statements of position under the disclosure notice procedure.

Proving your position

It's up to you to prove your position. Whether you've taken your case to the TRA or the High Court, you must prove:

- the assessment or other disputable decision is wrong
- why the assessment or other disputable decision is wrong
- the amount by which the assessment or other disputable decision is wrong.

This is called the "burden of proof".

If we issued a disclosure notice as part of the disputes process you can refer only to those issues and propositions of law you disclosed in your statement of position.

If your dispute is about shortfall penalties for evasion or a similar act we have charged, we have to prove the assessment is correct. In this situation our evidence is presented first at the hearing and it's not your responsibility to prove our assessment is wrong.

Contact details for the Taxation Review Authority

- **Postal**

Taxation Review Authority
Tribunals Unit
Ministry of Justice
Private Bag 32001
Panama Street
Wellington 6146

- **Delivery**

Taxation Review Authority
Tribunals Unit
Level One
AMP Building
86 Customhouse Quay
Wellington 6011

Service of proceedings

All proceedings in the TRA and High Court must be served on Inland Revenue in one of the following ways:

- **Postal**

Legal Services
Inland Revenue
PO Box 2198
Wellington 6140

- **Delivery**

Legal Services
Inland Revenue
Level 5
Asteron House
55 Featherston Street
Wellington 6011

Part 7 – Test cases

Sometimes, when there are several court proceedings about the same issue, we'll designate one of them as a test case to decide the issue for all of them.

If there are several cases similar to yours, we may decide to designate your case as a test case to be heard in the High Court. If we decide to do this, we'll notify you of this decision and request the case be transferred to the High Court if filed in the TRA.

If you file proceedings for your case to be heard before the TRA or the High Court, we may tell you there is a test case already before the Courts and that we wish to "stay" (delay) your case until the test case is settled. This will only happen if we consider the test case is likely to determine all or most of the issues in your case.

Your case can be stayed after you have filed your notice of claim or statement of claim with the TRA or the High Court, respectively. If you do not want your case delayed until the test case is decided, you can write to us saying you want your challenge to proceed. It will then carry on unless we get an order from the High Court.

If we stay your case pending the outcome of a test case, we'll tell you the outcome of that test case. You may accept that decision, or you may continue with your challenge.

Part 8 – Paying the tax in dispute

When you have a dispute, the amount of your tax calculation will usually be different from the amount assessed. The difference between your calculation and the assessment is called the “tax in dispute”.

If you start the disputes resolution process, initially you must still pay all your tax, including the tax in dispute, by the due date on the assessment.

However, if we notify you that we disagree with your position before the due date, and you decide to take your case to court, you may defer payment of the tax in dispute (if any) while the dispute is being resolved. If you have already paid all the tax in dispute (either directly to Inland Revenue or through your PAYE deductions), you can ask us to refund it to you.

Note

If you defer payment of tax in dispute, use-of-money interest continues to be charged and is payable should part or all of the original assessment be confirmed.

The tax in dispute you can defer paying until the TRA or the courts decide your challenge is called “deferrable tax”. When the adjudicator writes to tell you they disagree with your position, they will also tell you what the deferrable tax amount is.

If we consider there is a risk you will not pay the tax in dispute if your challenge in the court is unsuccessful, you can be required to pay the tax in dispute. We will not refund any tax in dispute already paid.

Note

Provisional tax

You may be calculating your provisional tax for the following year based on your residual income tax (RIT) for the year you are making the challenge for. In this situation, you can not reduce your provisional tax to take into account the tax in dispute – you must base it on the calculation of your RIT.

Where Inland Revenue makes an assessment to increase a taxpayer’s RIT after the due date for payment, it will be treated as not having been increased for provisional tax purposes.

Unsuccessful challenges

When the deferrable tax is due

If your challenge was unsuccessful you must pay the deferrable tax by the 30th day after what’s called “the day of determination of final liability”. This means the day the final result of your challenge is settled, and is the latest of:

- the day we receive written notice from you to advise that you are withdrawing your challenge
- the day the TRA, High Court, Court of Appeal or Supreme Court makes the final decision on the challenge
- the day you receive written notice from us to say we’re withdrawing our defence to your challenge.

Interest payable

If a challenge is unsuccessful, they'll be interest due on any deferrable tax you have not paid.

The amount of interest payable is calculated for each day in the interest period using this formula:

$$\frac{T \times R}{365}$$

Where:

T is the unpaid tax which interest is payable on

R is your paying rate applying on the day – check out our website for the current rate.

Late payment penalties

If you have not paid the deferrable tax plus the interest calculated under this formula 30 days after the day of determination of final liability, a further late payment penalty may be added to the outstanding amount as follows.

We will charge you a late payment penalty if you miss a payment, but if you have a good payment history with us we may contact you before we do this.

Otherwise, we'll charge an initial 1% late payment penalty on the day after the due date. We'll charge a further 4% penalty if there's still an amount of unpaid tax (including penalties) seven days after the due date.

Every month the amount owing remains unpaid after the due date a further 1% incremental penalty may be charged.

Go to ird.govt.nz/penalties for more information.

Non-payment of employer deductions

If your deferrable tax is from Employment information which is subject to non-payment penalties, and is not paid by 30 days after the day of determination of final liability, we'll send you a reminder letter. If the overdue amount is not paid or an instalment arrangement agreed to, we will charge you a 10% employer's withholding payment penalty.

Every month an amount remains outstanding a further 10% penalty will be charged. If, after we've imposed the penalty, you pay in full or enter into an instalment arrangement, the last penalty is reduced to 5%.

Successful challenges

Interest payable by Inland Revenue

If your challenge is successful, Inland Revenue refunds any tax in dispute you paid and also pays you interest on it.

Interest is calculated for each day in the interest period using this formula:

$$\frac{T \times R}{365}$$

Where:

T is the overpaid tax interest is payable on

R Inland Revenue's paying rate applying on the day – check out our website for the current rate.

For all years, the interest period ends on the earlier of:

- the date the tax is refunded
- the date the tax is transferred to another account
- the date you can claim the refund.

Note

We will not pay or charge interest or penalties if the overpaid/underpaid amount is \$100 or less. Any interest you receive is taxable income, so you must include it in your tax return the year you receive it. For more information on interest and penalties check our guide **Penalties and interest - IR240**.

Part 9 – Other assessments and decisions you may dispute

There are many types of decisions by Inland Revenue you can dispute – however, we will usually issue a NOPA before making either an amended assessment or a disputable decision you are likely to disagree with. If we do issue you with a NOPA you disagree with, the disputes process is slightly different to that described in this guide. For more information, see our guide **Disputing a notice of proposed adjustment (NOPA) - IR777**.

The following pages cover some of the types of assessments or disputable decisions you may dispute.

Income tax assessments

Income tax assessments are the most common type Inland Revenue issues or acknowledges. They cover:

- income tax
- Working for Families Tax Credits
- fringe benefit tax.

Note

This is not a complete list of the types of assessment you may dispute.

Income tax decisions

There are a number of Inland Revenue decisions about income tax you can dispute. Examples include:

- whether a natural person is a New Zealand tax resident
- disputing an assessment on the grounds that a PAYE determination is incorrect in law or fact.

International tax

The procedures are the same as for disputing an income tax assessment.

If you disagree with an assessment of income tax, including attributed controlled foreign company (CFC) or foreign investment fund (FIF) income, as part of your self-assessment, you should dispute the assessment.

Goods and services tax (GST)

You may dispute GST assessments of tax payable or refunds, including your self-assessment, if we have not issued a NOPA for the assessment.

You may also dispute certain decisions we make about GST and ask them to be reviewed. These include decisions about:

- a registered person's request to change GST taxable periods
- details of a tax invoice
- whether a person must register for GST, or the cancellation of a GST registration
- group registrations
- a registered person's accounting basis.

There are some Inland Revenue decisions you may not dispute. These include decisions about:

- late payment penalties
- refunds, relief from GST, late filing penalties and recovery of GST
- the effective start date for certain categories of taxpayers
- varying the due date of returns
- record keeping.

If you're issuing a NOPA to your self-assessment you must do so within four months of the date your return is received by Inland Revenue – the self-assessment date. You'll find this on the return acknowledgment form we sent you after processing your return.

If you're issuing a NOPA in response to an assessment made by Inland Revenue you must send it to us within four months of the date of issue of the notice of assessment.

Student loans

Studylink transactions

If you disagree with any Studylink transactions, send a written objection explaining why you disagree, to:

Student Loan Manager
Studylink Centre
Freepost 113907
Private Bag 11070
Palmerston North

The loan manager must receive your objection within 31 days of the date you are notified.

The loan manager will consider your objection and notify you whether or not it has been allowed.

If you disagree with the loan manager's decision, you can ask for your objection to be considered by the Chief Executive of the Ministry of Social Development. You must request this in writing within 21 days of the loan manager's decision. Send your objection to:

The Chief Executive
Ministry of Social Development
PO Box 1556
Wellington

The Ministry of Social Development (MSD) will write to you with a decision. If you do not agree with that decision, you can apply to the Disputes Tribunal or District Court to have your objection decided. You must do this within 30 days of MSD's decision.

For more information on disputes, read the Review and Appeal process on the StudyLink website www.studylink.govt.nz

Inland Revenue transactions

Borrowers

If you disagree with any Inland Revenue transactions, you may dispute any of the following:

- a repayment obligation (assessment)
- your student loan balance
- a disputable decision, eg, your New Zealand based or overseas based borrower status, outcome of an application for a student loan special deduction rate or student loan repayment deduction exemption, decision on a significant under- or over-deduction, and decision on relief
- interest charged
- penalties charged.

The disputes procedures are the same as for income tax assessments for borrowers.

Employers

If you disagree, you can dispute:

- your repayment deduction amount
- any penalties charged on your account
- any interest charged on your account.

The disputes procedures for employers are the same as for PAYE.

Note

The interest on deferred tax in dispute (page 28) only applies to deferred amounts of repayment deductions, penalties, penal assessments and penal charges. Deferred amounts of student loan assessments will continue to attract the normal interest chargeable on any amount of loan balance not overdue.

Child support

Paying parents and custodians

The process for objecting to child support assessments is different from the process described in this guide. If you wish to object to the amount of child support you have to pay you should first lodge a notice of objection with us. Our guide **Helping you to understand child support - IR100** explains how to do this.

If you still wish to challenge our decision, you will need to apply to the Family Court. Our guide **Helping you to understand child support and the Family court - IR174** explains how to do this.

Employers

If you disagree, you can challenge your deduction determination.

The disputes procedures are the same as for income tax assessments for paying parents and custodians, and as for PAYE determinations for employers.

Note

The interest on deferred tax in dispute only applies to deferred amounts of deductions and penalties.

Shortfall penalties

We may charge you shortfall penalties if you failed to meet your tax obligations. We usually issue a NOPA (notice of proposed adjustment) before assessing for shortfall penalties, but if we do not, you can dispute the assessment.

Gift duty

The gift duty disputes procedures are the same as those for income tax.

Part 10 – Time limits for disputing an assessment

The following table summarises the time limits for each step you must take to go right through the disputes process. The earlier parts of this guide explain in detail what you must do and how much time you have for each step.

Decision you wish to appeal	Action	Time limit you must meet	Where to lodge your action
Inland Revenue issues a notice of assessment or you want to make an adjustment to your self-assessment	Furnish the return then issue a NOPA	Four months from the relevant date on the notice	Inland Revenue
Inland Revenue issues a notice of response	Reject the notice of response in writing	Two months from the date on the notice of response	Inland Revenue
Inland Revenue issues a disclosure notice	File your statement of position	Two months from the date on the disclosure notice	Inland Revenue
Inland Revenue confirms the assessment	You can file proceedings with the TRA or the High Court	Two months from the date of rejection of your adjustment	TRA or High Court, as appropriate
Decision of TRA	You can appeal a TRA decision to the High Court	20 working days from when the TRA issues its written decision	High Court
High Court decision	You can appeal the High Court decision to the Court of Appeal	20 working days from when the High Court delivers its written decision	Court of Appeal
Court of Appeal decision	You may be able to appeal the Court of Appeal's decision to the Supreme Court	20 working days from when the Court of Appeal delivers its written decision	Supreme Court

Note

If your dispute relates solely to a research and development tax credit claim, different time limits apply. See the R&D tax credit information at ird.govt.nz/research-development

Before you begin

Planning, preparation and presentation is very important. These points below will help you.

Make yourself clear

Prepare your notices in a way that is clear and easy to understand.

Know your purpose

The aim of your dispute should be to prove the assessment (or decision) is incorrect. You must know:

- details of the items you intend to adjust
- the facts and laws (including tax laws) that support the adjustment you're proposing
- how the law applies to the facts
- the evidence you intend to rely on.

Know your time limits

There are timeframes throughout the disputes resolution process you must meet if your dispute is to succeed. Late actions will be accepted only in exceptional circumstances.

Know when your payments are due

Read Part 8 of this guide about paying the tax in dispute.

Progression

For each step you decide to take in the disputes resolution process, check you've made all the necessary preparations.

Professional assistance

We recommend you get independent advice from an accountant or other professional tax advisor if you wish to proceed with your dispute. This is especially important if complex issues are involved.

Because of the nature of the disputes resolution process, Inland Revenue staff can not help you to prepare your NOPA, NOR, statement of position or any other documents for use in a dispute.

For more help

Need to speak with us?

Have your IRD number ready and call us on one of these numbers.

General tax, tax credits and refunds	0800 775 247
Employer enquiries	0800 377 772
General business tax	0800 377 774
Overdue returns and payments	0800 227 771

0800 self-service number

Our 0800 self-service number, 0800 257 777, is open 7 days a week.. Make sure you have your IRD number ready when you call.

For access to your account-specific information, you'll need to be enrolled with voice ID or have a PIN.

When you call, confirm what you want from the options given. If you need to talk with us, we'll re-direct your call to someone who can help you.

Privacy

Meeting your tax obligations means giving us accurate information so we can assess your tax and entitlements under the Acts we administer. We may charge penalties if you do not.

We may also exchange information about you with:

- some government agencies
- another country, if we have an information supply agreement with them, and
- Statistics New Zealand (for statistical purposes only).

You can ask for the personal information we hold about you. We'll give the information to you and correct any errors, unless we have a lawful reason not to. Find our full privacy policy at ird.govt.nz/privacy

If you have a complaint about our service

We're committed to providing you with a quality service. If there's a problem, we'd like to know about it and have the chance to fix it.

If you disagree with how we've assessed your tax, you may need to follow a formal disputes process.

Find out more about making a complaint, and the disputes process, at ird.govt.nz/disputes



Te Kāwanatanga o Aotearoa
New Zealand Government