

Tax Talk

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NOPAs, NORs, Judicial Review and the ambit of the Commissioner's Powers

The recent Case of *Alam and Begum v C of IR* delivered great news for taxpayers in the form of a significant win. This Case establishes that the IRD does not have the power to reject a Notice of Response (NOR) in its own right on the basis of statutory non-compliance.

The Case concerned taxpayers who ran a kiwifruit picking business. They filed a GST return claiming input tax credits of approximately \$130,000. The IRD rejected the taxpayer's assessment and instead issued them with a Notice of Proposed Adjustment (NOPA). The taxpayers disagreed with the Commissioner's assessment and subsequently filed a NOR.

Upon receiving the taxpayer's NOR, the IRD decided that the NOR did not meet the legislatively required standard and therefore rejected it. The IRD proceeded on the basis that a valid NOR had not been filed, and deemed the taxpayers to have accepted the earlier NOPA.

The taxpayers sought judicial review of the IRD's decision to act as judge and jury in rejecting their NOR, stating that the IRD did not have the power to reject a NOR that in their sole opinion did not meet statutory requirements.

Woodhouse J agreed with the taxpayers, finding that the Tax Administration Act 1994 did not allow the IRD to act as they had. The more appropriate approach for the IRD to have taken would have been to apply to the Court for a determination regarding the validity of the NOR.

Woodhouse J went further and discussed the statutory requirements of a NOR and the level

of detail required to comply with the legislation in this context. He stated that although 'sparse', the taxpayers' NOR satisfied the statutory requirements and was therefore valid. His Honour noted that a NOR is not required to raise an arguable case, as was contended by the IRD, and a taxpayer is entitled to file a NOR 'even if the taxpayer does not have much of a case, or any good case'. Furthermore, His Honour stated that in the overall context of the dispute resolution process, many other opportunities are available for the IRD to elicit further information regarding the taxpayer's basis for objecting, such as the conference stage or via the taxpayer's Statement of Position.

This Case clarifies the position for taxpayers generally, by confirming:

- that the IRD should get judicial confirmation when determining the validity of critical documents in the disputes resolution process
- that in this context, the IRD determining the validity of documents and imposing the consequences is not an acceptable state of affairs
- the level of detail required in a NOR may not be as high as initially thought, thereby reducing the cost involved in compiling arguments.

Want to know more?

If you would like more information on this article, contact one of Kensington Swan's tax experts.

Peter Speakman

Partner

(09) 918 6515

peter.speakman@kensingtonswan.com

Tony Lines

Partner

(04) 498 0805

tony.lines@kensingtonswan.com