

9/12/2012

Providing information to Inland Revenue

The Tax Act Administration Act 1994 – powers

The Tax Act Administration Act 1994 (“TAA”) provides the Commissioner of Inland Revenue (CIR) with a broad range of investigatory powers and enables the CIR to seek out the information required to make an assessment of a taxpayer’s liabilities. The TAA does provide taxpayers with some protection particularly in the way of privacy, for example there are strict secrecy obligations on the CIR and the Inland Revenue Officers, the protection of privileged information (ie between a client and their lawyer) and the non-disclosure of tax advice.

An Inland Revenue request for information under s 17 of the TAA

Under s 17 of the TAA any person requested by the CIR must give in writing any information and produce for inspection any documents (which can include for example the hard drive of a computer) which the CIR considers necessary or relevant for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts (ie the Income Tax Act or the GST Act) or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the CIR.

Note: If a person served with a s 17 Notice does not comply with it, Inland Revenue can apply to the District Court for an order requiring the person to produce the information. Alternatively of in addition to, Inland Revenue can prosecute the person for failing to comply with a s 17 notice.

Inland Revenue’s powers to access premises s 16 of the TAA

The CIR’s powers to access premises to obtain information are provided for in s 16 of the TAA. The CIR also has power, under s 16C, to remove documents from a place accessed under s 16 and to retain such documents for a full and complete inspection. The TAA authorises very broad powers of entry, search and seizure on the part of Inland Revenue officers without limitation and without warrant, except in relation to private dwellings (ie a taxpayer’s own home) which does first require the CIR to obtain a warrant for entry

The CIR’s powers under the TAA were recently considered by the Court of Appeal in ***Tauber v Commissioner of Inland Revenue*** [2012] NZCA 411. In that case the CIR believed that requests to the taxpayer to provide information under s 17 had not been fully complied with or were not being complied with in a timely manner. In response to those difficulties, the CIR decided that the most timely and effective way to obtain the information would be to use s 16 of the Act.

The Court noted that s 16(1) sets out the CIR’s general rights of access to premises. It provides for the CIR (or an authorised Inland Revenue officer) to have full and free access to all lands, buildings and places, and to all documents, for the purpose of inspecting any documents and any property, process, or matter which the CIR considers necessary or relevant for the purpose of collecting any tax or for the purpose of carrying out any other function lawfully conferred on the CIR.

The occupier of the property must provide all reasonable facilities and assistance so that Inland Revenue can effectively exercise its powers. The occupier must also answer all questions that relate to the effective exercise of those powers either verbally or if required, in writing. Where documents are accessed by the CIR under s 16, they can be removed and copied. The documents must be returned, as soon as practicable.

When a warrant is required

The CIR's general power under the TAA is limited by s 16(3), which provides that the CIR (or any authorised officer) shall not enter any private dwelling (ie a taxpayer's home) except with the consent of an occupier or under a warrant issued under the TAA.

The warrant (which is applied for on oath) is issued by a District Court Judge who must be satisfied when issuing the warrant that physical access by the CIR to the private dwelling is required.

A separate warrant will also be required for authorisation to remove and retain books and documents from that same address.

The warrant must be in the prescribed form which specifies an authorised officer of Inland Revenue, (either by name or in general), who may act under the warrant, and specifying whether other persons may accompany the officer acting under the warrant. This may include such people as a locksmith to assist the Inland Revenue Officer to gain entry into the property. In some instances a police officer will also accompany the Inland Revenue officers.

Note: No warrant is required where the access sought is for other than a private dwelling.

Other investigation powers available to Inland Revenue

The CIR also has powers to require any person to attend and give evidence before the CIR.

The CIR may apply in writing to the District Court for a Judge to hold an inquiry for the purposes of obtaining any information with respect to the tax liability of any person.

Disputing the way the search was carried out by Inland Revenue

Usually the most suitable remedy for any errors occurring in the process of obtaining and exercising a search warrant is by arguing for the exclusion of wrongly seized evidence. This will normally occur during trial. In some instances it may be that a search warrant can be challenged by judicial review proceedings. The Courts have heard such challenges where the defect in the search warrant is of a fundamental nature, where the matter could be said to go to the jurisdiction of the issuing officer or where some other ground of true unlawfulness (such as want of jurisdiction) is established.

If you have received a notice under s 17 of the TAA or your home or business has been subject to a search by an Inland Revenue officer you should obtain expert legal advice immediately. For personal and professional assistance contact Graeme Withers, a tax specialist at Graeme Withers Law.

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.