

The enclosed factsheet *Getting the best out of a disputes resolution conference with Inland Revenue* explains the conference phase, the facilitator's role and the opt-out process.

Go to **ird.govt.nz/disputes** for more information about the disputes resolution process and the standard practice statement (SPS) 16/06 *Disputes resolution process commenced by the taxpayer*.

Yours sincerely,

Richeile Narayan

Customer Compliance Specialist

Getting the best out of a disputes resolution conference with Inland Revenue

Why have a conference?

1. The conference phase of the disputes resolution process allows us to exchange material information relating to the dispute, if this has not already been done, or for additional material to be presented.
2. More importantly, it provides an opportunity to resolve differences in our understanding of facts, laws and legal arguments. Ideally, the dispute will be resolved by agreement between us, although this may not always be achievable.

When does the conference phase begin?

3. The conference phase begins on the date of the letter that invites you to attend a conference. This usually happens within one month of receiving your notice of response (NOR) or your rejection of our NOR in writing, depending on who started the disputes resolution process.

How long is the conference phase likely to take?

4. In most cases, the conference phase should be completed within three months. However, the time needed will vary, depending on the facts and complexities of the issues in dispute. A longer conference phase may be required for complex disputes, or if we are still involved in meaningful discussions with a genuine intention to resolve the dispute.

Format of a conference

5. The conference phase is intended to be flexible to meet our joint needs. Although a face-to-face meeting is generally the best option, we may all agree to hold a phone or video conference.
6. Once you have agreed to a conference, we will contact you and/or your client/agent to:
 - arrange a suitable time
 - agree on the venue and/or format (for example a phone or video conference)
 - confirm who will be attending
 - agree on the agenda and ground rules.
7. The agenda should have enough detail to enable you and us to prepare for the meeting and ensure an effective use of everyone's time. We may also all agree to exchange information relevant to the dispute before a meeting, especially if the meeting is to be held by phone or video conference.

Conference facilitator

8. You can choose to have an Inland Revenue facilitator involved in the conference phase. Their role is to:
 - manage the meetings between us, ensuring that we deal with items on the agenda and follow the ground rules
 - encourage structured discussion of the issues in dispute
 - help us to identify and agree on common ground
 - encourage exploration of options to resolve the dispute.

They also work with us to agree on a timeframe for completing the conference phase or, if we can't agree, they set a date.

9. Facilitators are senior Inland Revenue staff, with relevant knowledge, training and experience. They are independent of the case and have had no previous involvement in the dispute.

Please note that the facilitator is not able to make decisions or resolve issues. However, they do have the authority to decide when the conference phase should end.

Ground rules

10. The following are suggested ground rules to help ensure the conference is successful.
- If we have a facilitator, they manage the conference and direct discussions.
 - Participants can have their say without interruption.
 - One person speaks at a time and nobody dominates the discussions.
 - The parties should strive to understand each other's point of view.
 - Participants should be objective and must not make personal attacks on others.
 - Participants should act in good faith and participate meaningfully in the discussions.

11. Either of us may want to record some or all of the discussions at a conference. If either of us wants the conference to be electronically recorded by audio or video technology or both, then we all have to agree to this beforehand. You can find more details about electronic recording at SPS 12/01 *Recording Inland Revenue interviews*, on our website.

Resolving issues

12. Ideally, both parties will approach the conference phase with an open mind and seek to resolve the matters in dispute through clarification and discussion of the relevant facts, laws and legal arguments.

13. The conferences provides the opportunity for the parties to present evidence in support of their view of the facts and the law, and may lead to resolution of some or all of the matters in dispute. If we do resolve an issue, we will record the agreement in writing.

14. Even if agreement is not achieved on either facts or law, it is still important to hold constructive discussions of the contentious issues to establish where the differences in views lie.

Without prejudice discussions

15. If we are exploring options to reach a compromise, discussions will be conducted "without prejudice". This means that we can talk about various options without either of us being committed to any particular view or course of action. The conference agenda may be divided so that we exchange information and discuss contentious facts and issues separately from any compromise discussions held on a "without prejudice" basis.

Participation in the conference

16. The disputes resolution process is intended to be an "all cards on the table" process.

17. Ideally, you should personally attend the conference to clarify factual matters and gain an understanding of our position at first hand. Your agent or other support person may accompany you. For corporate taxpayers, we suggest appropriate senior personnel attend. If you are relying on expert evidence, your experts could also attend the conference.

18. It is particularly important for you to participate meaningfully in the conference phase if you want us to agree with your request to "opt out" from completing the full disputes resolution process under section 89N(1)(c)(viii) of the Tax Administration Act 1994. The next section explains this.

Opting out of the full disputes resolution process

19. If the dispute has not been resolved by agreement by the end of the conference phase, we may all agree that the dispute would be resolved more efficiently by the Taxation Review Authority or the High Court without completing the disputes process. This agreement must be in writing.

20. If you wish to opt out of the disputes process at the end of the conference phase, we will note your request and ask you to confirm that you have provided us with all relevant information relating to the issues in dispute. You must do this within two weeks from the end of the conference phase.

21. We will agree with your request to opt out when any one of the following applies.
- The total amount of core tax in dispute is \$75,000 or less, except if the dispute is part of a wider dispute. The \$75,000 excludes shortfall penalties, use of money interest and late payment penalties, if applicable.
 - The dispute turns on issues of fact.
 - The dispute concerns facts and issues that are waiting to be resolved by a Court.
 - The dispute concerns facts and issues that are similar to those considered by the Disputes Review Unit in a past dispute.

22. If the dispute does not meet any of the criteria, you may still be able to opt out if we agree that the dispute can be resolved more efficiently at a hearing authority. We will consider each request on its own merits.

23. If we do not agree with your opt-out request, or if you do not ask to opt out, the dispute will move to the next step in the process.

Ending the conference phase

24. When no further progress can be made in resolving the dispute, we should all agree to end the conference phase and the dispute will move to the next step of the disputes resolution process, which involves the issue of a disclosure notice and exchanging statements of position. You can find more details in *SPS 16/06 Disputes resolution process commenced by the Commissioner of Inland Revenue* and *SPS 16/06 Disputes resolution process commenced by a taxpayer* and any subsequent replacements of these policies.

25. If the parties can't agree to end the conference phase, the decision to end it is made by either the:

- facilitator, if there is one, or
- an Inland Revenue Group Lead, if there is no facilitator.

Whoever makes the decision will notify you and us of the date that the conference phase ends.