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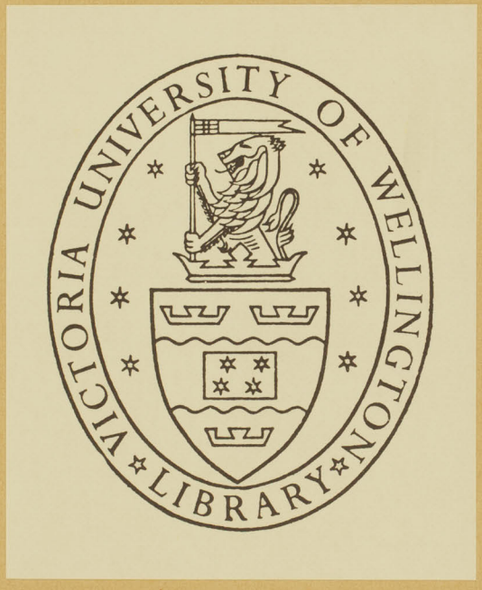
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OBJECTION AND APPEAL PROCEDURES IN TAX LEGISLATION

A COMPARATIVE STUDY WITH RECOMMENDATIONS FOR REFORM IN NEW ZEALAND

Research Paper for Taxation Law
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SYNOPSIS

The New Zealand procedures for disputing an assessment of income tax are traced from their inception and their present formulation is described. The equivalent procedures in Australia, England and Canada are surveyed, including a review of two government sponsored reports which include recommendations on tax administration reform. Brief mention is made of the procedures in Sweden, France and the United States of America.

Recommendations for reform, based on the principles of good tax administration and using suggestions from the jurisdictions surveyed, are made in five areas. These are: the procedure prior to the first hearing; the requirement imposed on the taxpayer that he or she be limited to the grounds set out in the objection; the onus of proof being on the taxpayer; the taxpayer's right to information concerning the Commissioner's case; and the time limits in the procedure.

I. INTRODUCTION

The significance of the administration of the tax system in any discussion of tax law reform has not been overlooked by commentators. For example, Congreve states:

> ... for the practitioner the administration of the tax system is just as important as the charge to tax in the Act.[1]

In the same vein, Reddy states:

> In my view, we cannot hope to achieve an equitable tax system without also ensuring that its application and administration is fair and workable.[2]

In states still developing their taxation systems, administration has been emphasised as important:[3]

> In recent years considerable thought and attention have been devoted to the fiscal policies best suited to the economic development of the areas of the free world. As part of this search for desirable fiscal policies, considerable stress is being placed on the role of tax policy ... However, a warning note seems appropriate. The concentration on tax policy - on the choice of taxes - may lead to insufficient considera- tion of the aspect of tax administration ... A survey of the available literature developing from the growing number of technical assistance missions underscores this warning. The administration of the tax system of the country involved generally receives relatively slight attention. It is increasingly apparent, however, that tax administration must receive far greater attention if the goals of tax policy are to be attained.

However, there does not appear to have been a corresponding emphasis in New Zealand on reform in this area by those charged with recommending reform. For example, the Task Force on Tax Reform[4] (the McCaw Committee) did not touch on this topic.

This paper examines the objection and appeal procedure in three jurisdictions; Australia, Canada and the United Kingdom, and contrasts them with New Zealand. It then discusses in more detail those aspects of the procedure in New Zealand which either have been the subject of criticism by commentators, or which could be usefully reassessed in the light of practices overseas. It concludes with some recommendations for reform in New Zealand.

II. HISTORY OF NEW ZEALAND LEGISLATION

It seems that for as long as statutes have imposed taxes they have also provided for objection procedures.

The Land-Tax Act 1878, which imposed a land tax, also provided for objections to any valuations made.[5] There was a two-tier procedure, the Land-Tax Commissioner was empowered to allow objections, and if not allowed the objection could be heard in any Assessment Court.[6] The Court had the power to hear and determine all objections to any valuation of land and claims to exemption from land-tax.[7]

The Property Assessment Act 1879 (which regulated the assessment of real and personal property for the purposes of taxation) also contained a two-tier objection procedure, first to the Commissioner and then to a Board of Reviewers.[8] This procedure was continued in the Property Assessment Act 1885.

Statutes imposing income tax also provided for objection procedure, commencing with the Land and Income Assessment Act 1891 which permitted both the taxpayer and the Commissioner to object to Boards of Review of Assessments.[9] The Boards were designed to be independent, and no one holding office under the Act could also be a reviewer.[10] There was no further right of appeal from the Board; its decision was final and conclusive.[11]

This procedure was developed further in the Land and Income Tax Act 1916, which provided for more extensive rights of appeal. Under that Act, any person who had been assessed for land tax or income tax could object to that assessment.[12] There was a duty on the Commissioner to consider the assessment and the power to alter it.[13] However, if the Commissioner did not allow the objection the taxpayer had the right to have the objection heard and determined in the (then) Magistrate's Court.[14] For the purpose of hearing and determining the objection, the Court had all the powers

vested in it in its ordinary civil jurisdiction as if it was an action between the objecting taxpayer and the Commissioner.[15]

In the Magistrate's Court the rules of evidence were relaxed and the Court could receive evidence as it thought fit, whether receivable in accordance with law in other proceedings or not.[16] The burden of proof was on the objector.[17] The proceedings were not heard in open Court.[18]

From the determination of the Magistrate's Court there was a right of appeal to the (then) Supreme Court on a question of law or a question of fact if the amount of tax bona fide in dispute was more than £200.[19] The decision of the Supreme Court was subject to appeal to the Court of Appeal (except on a question of fact), and there was also the right to refer an objection on a question of law only directly to the Supreme Court.[20]

The objection provisions had no application to objections relating to any matter which the Act left to the discretion of the Commissioner.[21]

The provisions outlined were re-enacted in the Land and Income Tax Act 1923, and the Land and Income Tax Act 1954.

In 1960 the provisions were changed by the Inland Revenue Department Amendment Act 1960, which set up Boards of Review. Taxation law is in fact the first area in which tribunals were developed to make determinations of questions of law.[22]

> The Commissioners of Customs and Excise were given judicial powers by statutes dating from 1660 ... they were the forerunners of many such powers, such as those of the Land Tax Commissioners who in 1799 were succeeded by the General Commissioners of Income Tax, a tribunal which still exists.

The prime motive behind the Amendment Act was to permit taxpayers to object to discretionary determinations by the Commissioner.

In addition, as a matter of convenience, the Board of Review took over the functions of the Magistrates Court in the hearing and determining of existing rights of objection.[23]

Referring to the right to object to discretionary determinations, the Minister of Finance said:[24]

> It simply follows the lead of other countries in establishing the right of the taxpayer to have the Commissioner's decisions, where matters of moment are involved, determined by an independent authority. I should explain that one of the matters which had to be considered in framing the amendments now incorporated in this Bill was whether each and every one of the discretionary powers at present vested in the Commissioner should be subject to appeal to this board. It became obvious that many of the Commissioner's powers are of a purely administrative character which do not affect the quantum of tax charged and which are merely preliminary to, or subsequent to, the making of an assessment ... The Government has decided it will be quite unnecessary to make these purely administrative decisions subject to appeal, and the broad principle which has been adopted is to permit appeals only in respect of those decisions which affect the quantum of tax payable.

The 1960 Act provided for the establishment of Boards of Review of three members, the chairman being a barrister or solicitor of not less than seven years' practice.[25] Its function was to sit as a judicial authority for hearing and determining objections to assessments of tax or duty or to decisions or determinations of the Commissioner.[26]

The decision of the Board on a question of fact was final, but on a question of law there was the right to appeal to the Supreme Court and then Court of Appeal.[27] The Board could also state a case for the opinion of the Supreme Court on any question of law (and the Supreme Court could order the removal into the Court of Appeal any case stated for its opinion).[28]

In 1969 the Public and Administrative Law Reform Committee considered the desirability of returning the Board's jurisdiction to the

(then) Magistrate's Court, which a minority of the Committee supported.[29] The majority, however, disagreed, on the grounds that the Board had a wider jurisdiction than a Magistrate (in particular in relation to discretionary decisions of the Commissioner), and that it was desirable that the cases be heard by one body.

The Inland Revenue Department Amendment Act took away the right to appeal on a question of fact from the body hearing the dispute at first instance. The Minister of Finance justified this in the following way:[30]

> There are two points to take into account in considering the reasons for the change. The first is that whereas a Magistrate's decision is that of one man, the decision of a board is the decision of a majority of a three-man tribunal. The second point is that there is a new provision dealing with rights of direct reference to the Supreme Court on questions of fact.

This provision was designed for cases where there were complicated, mixed questions of fact and law or questions of fact involving considerable sums.

In 1974 the Boards of Review were abolished and replaced by Taxation Review Authorities pursuant to the Inland Revenue Department Act 1974. The major difference between the two bodies was that the Authority consisted of only one person. This change was criticised by the Opposition on the grounds that the Society of Accountants had expressed reservations on such a structure. When the Bill was debated in Parliament, the justification was that:[31]

> In view of the amount of work involved and the difficulty, mentioned by the Member for Wellington Central, of obtaining personnel prepared to serve on the appeal authority, it was considered, after much discussion, that a one-man authority would be quite sufficient to do the work... The Bill makes provision for the appointment of more than one authority, if it should be felt at some later stage that the work load is such that it might be desirable to have more than one authority in order to prevent a backlog or delays.

> The present indications, in terms of the amount of work and the experience of the man proposed to be the authority, are that one authority will be sufficient.

The Taxation Rewview Authority is, in fact, a District Court Judge.

The 1974 Act reverted to permitting appeals to the Supreme Court on questions of fact (where the amount of tax or duty was $1,000 or more). Since then the monetary limits have been increased.[32]

Such a change was recommended by the Public and Administrative Law Reform Committee in 1969. It stated that there should be a full right of appeal (i.e. including questions of fact) to the High Court.[33] A monetary limit of $500 was suggested, however, because it was thought desirable to avoid appeals involving relatively small amounts. In its report in 1972 the Committee reviewed that recommendation at the request of the Minister of Justice and reaffirmed it.[34]

III. PRESENT LEGISLATION

The objection and appeal procedures applicable today are found in Part III of the Income Tax Act 1976 and Part II of the Inland Revenue Department Act. It is not apparent from parliamentary debates why the legislation is in two separate Acts. These provisions are designed to be a code by which a taxpayer can dispute an assessment or a determination.[35] For convenience only assessments will be referred to hereafter. (Recent developments concerning the attack of an assessment by means other than the objection procedure will be mentioned briefly later.)

Any person who has been assessed for income tax may object.[36] He or she must make a written notice of objection stating the grounds of objection not less than fourteen days after the date on which the notice of assessment is given.[37] The time limit for making the objection is stated in the notice of assessment (as a matter of

practice one month is given). The Commissioner considers the objection and may alter the assessment.[38] If the objection is not wholly allowed by the Commissioner and the taxpayer is still dissatisfied, the taxpayer can require the objection be heard and determined by a Taxation Review Authority.[39]

Objections may be referred to the High Court directly by way of case stated on a question of law or a question of fact (whether or not it also relates to a question of law).[40] The Court may grant leave for an objection relating to a question of fact to be referred directly to the High Court if, because of the amount of tax in dispute, or the general or public importance of the matter, or its extraordinary difficulty or for any other reason it is desirable that the High Court hear and determine the matter.[41]

A number of matters are specifically excluded from any right of objection, for example, any matter left to the discretion of the Minister, and any valuation or apportionment made by the Valuer-General under the Valuation of Land Act 1951 or the Income Tax Act.[42]

Turning to the Taxation Review Authority, the Inland Revenue Department Act and Regulations provide for its establishment and procedure.

Parties may represent themselves or be represented by a barrister or solicitor or any other person.[43] The rules of evidence are less formal; the Authority may receive as evidence material which in his opinion will assist him to deal effectively with the proceeding, whether or not it would be admissible in a court of law.[44] The taxpayer is limited at the hearing to the grounds stated in the objection and carries the burden of proof.[45]

The Authority may state a case for the opinion of the High Court on a question of law.[46]

As has been noted above, the determination of the Authority may be subject to appeal to the High Court if it involves a question of law or the amount involved is $2,000 or more.[47] In all other cases the determination is final.[48]

The High Court's decision may be subject to appeal to the Court of Appeal, and then to the Privy Council.[49]

The objection procedure was designed to be a code. Recently, however, there have been attempts by taxpayers dissatisfied with assessments that the Commissioner proposes to make, to invoke the procedure in the Judicature Amendment Act 1972 for judicial review. The availability of the procedure was considered in the case of CIR v. Lemmington Holdings Limited.[50]

In that case the taxpayer was seeking a declaration preventing the withdrawal of approval given previously by the Commissioner for a plan permitting investors in a scheme to set off estimated losses against their employment income.

The Court of Appeal rejected the use of judicial review. Richardson, J., said:[51]

> First, to restrain the Commissioner from making assessments within his jurisdiction would be both contrary to the scheme of the income tax legislation and outside the proper scope of the Judicature Amendment Act 1972 ... [I]n our view it is implicit in Section 4 that the discharge of an imperative statutory duty is not amenable to judicial restraint.

It is the belief of one commentator that there will be a growth in the forms of action outside the objection procedure.[52] By way of example he cites review proceedings in respect of the Commissioner's administrative functions not leading directly to an assessment.

The procedure for objection and appeal in New Zealand has, it can be seen, been subject to reform. It would appear from an examination of parliamentary debates, that the reforms have not always

been the result of a thorough analysis of what would constitute desirable reforms, and that administrative convenience has been a significant motivating factor. The fact that the procedure has not been subject to widespread criticism must also have been significant in the retention of the procedures in their present form.

IV. OTHER JURISDICTIONS

A. Australia

The procedure for objecting to an assessment by the Commissioner in Australia is very similar to that in New Zealand. It is set out in Div 2 of Part V of the Income Tax Assessment Act 1936. The legislation is explicit in that no other remedies are available to the taxpayer when the notice of assessment is definitive in form.[53]

The procedure set down in the legislation commences by providing that the taxpayer may, if dissatisfied with an assessment, lodge a written objection with the Commissioner.[54] The Commissioner is obliged to consider it and give written notice of the decision.[55] (There is, as in New Zealand, no time limit prescribed for this step.) A taxpayer dissatisfied with that decision may, within sixty days of being served with written notice of the Commissioner's decision, request the Commissioner either to refer the decision to a Board of Review for review, or to treat the objection as an appeal and forward it to the Supreme Court of a specified state.[56] The taxpayer is limited to the grounds stated in the objection, and the burden of proof is on the taxpayer.[57]

Subject to one exception (regarding the remission of additional tax in certain circumstances), the Board of Review has all the powers and functions of the Commissioner in making assessments.[58] The Board's decisions are given in writing.[59]

If dissatisfied with the Board of Review's decisions, the parties may appeal to a Supreme Court if the case involves a question of law.[60] The Board must refer a question of law to the Supreme Court if requested by either party.[61] The appeal is heard by a single Judge of the Supreme Court. From that court's decision an appeal lies to the Federal Court of Australia by leave and then to the High Court by special leave,[62] or from the Supreme Court to the High Court directly by special leave.[63]

In 1975 a review committee (the Asprey Committee) made a number of recommendations about reform of the objection and appeal procedure.[64] These will be discussed later under the specific topics for reform, however it is interesting to note that the Committee's recommendations in this area have led, in Australia, to legislative reform.

Administrative law procedures for review of assessments, appear to be an avenue which is increasingly becoming available.[65]

> Taxpayers now enjoy greater opportunity than before in challenging the acts and decisions of revenue authorities in the execution of their powers and responsibilities under various taxing instruments. Further, generally the courts have interpreted the legislation in a manner which has restricted the attempts of revenue authorities to exclude review.

Although the Administrative Decisions (Judicial Review) Act 1977 (CTH), which provided that statutory right to seek review of an administrative decision, expressly excluded decisions making or leading up to the making of assessments, it:[66]

> ... has been construed narrowly, thereby maximising the scope for review. The courts have adopted the view that decisions making or forming part of the process of making or leading up to the making of assessments of calculations of tax or duty must be integrally or closely connected to the process for the exclusion to operate.

B. England

The English procedure for objection and appeal is similar to New Zealand's in several respects, but one obvious difference is that the composition of the body which hears the majority of matters at first instance is quite different from the Taxation Review Authority in New Zealand.

In England there are two bodies which hear appeals in the first instance, Special Commissioners and General Commissioners.

General Commissioners have been described as "busy local amateurs", and their method of appointment is similar to the appointment of justices of the peace.[67] To understand this use of laypeople it is necessary to look at the historical origins.[68] The Commissioners were bodies of local men of property who were responsible for ensuring that revenue from their locality flowed to the Exchequer. Subsequently all the administrative functions of taxation have been assumed by the Board of Inland Revenue, but the General Commissioners remain. Their advantages are seen as being their knowledge of local conditions and local people. They are guided by a clerk who is usually a solicitor.

The Special Commissioners, on the other hand, are usually legally qualified and appointed from the Bar or senior levels of the Department of Revenue. Their original function was to hear appeals not suitable for the General Commissioners (because they were too specialised, or raised questions of privacy). Now the important or time consuming cases are almost automatically heard by the Special Commissioners.

The legislation sets out to whom the right of appeal lies. Generally speaking, an appeal lies to the General Commissioners, except in certain specified cases, or except where the appellant elects to bring the appeal before the Special Commissioners.[69] Examples of matters which are heard by the different bodies

follow. Claims to personal reliefs by persons resident in the U.K., objections to notices of P.A.Y.E. codings, and questions as to the annual value of land are heard by the General Commissioners only.[70] Appeals against assessments in respect of the investment income of overseas life assurance companies, assessments on individuals to whom the income of a close company has been apportioned, and assessments made under the provisions for preventing tax avoidance by the transfer of income aborad are heard by the Special Commissioners only.[71] Appeals relating to exemption certificates for sub-contractors in the construction industry are an example of cases where the appellant may elect to appeal to the Special Commissioners.[72]

Turning to the procedure when appealing to the Commissioners, the onus is on the taxpayer to show that the assessment should be reduced or set aside.[73] If, however, the taxpayer, having issued a notice of appeal, can come to an agreement with the Revenue, then that agreement has effect as if it was the result of the determination of the appeal.[74] Such an agreement can be repudiated by the appellant by notice in writing given within thirty days.[75]

At the hearing the Commissioners are permitted to act on circumstantial evidence, for example they can taken into account evidence relating to other similar businesses. They can also rely on their own local knowledge.[76]

There are no rules of procedure, and the taxpayer can conduct the case in person or be represented by counsel, a solicitor, or an accountant.[77]

In regard to General Commissioners, one commentator characterises the procedure thus:[78]

> What the system is intended to produce is rough justice; this, provided the justice is not too rough, appears to be the way that the legislature and the judiciary want it.

On determining an appeal, the Commissioners may reduce or increase an assessment, or, if they cannot say on the evidence whether the assessment is excessive or inadequate, the assessment stands.[79]

If dissatisfied with the Commissioners' determination on the grounds that it is wrong on a point of law, the parties may within thirty days request a case be stated for the opinion of the High Court.[80] The time limit for transmitting the case stated to the High Court is thirty days.[81] The appeal is heard by a single judge in the Chancery Division, who will hear and determine any question of law.[82]

Although the High Court does not entertain an appeal on a question of fact, there can be an exception to this rule. The Court will intervene if the only reasonable conclusion from the evidence is in contradiction to the Commissioner's determination.[83]

From the High Court an appeal lies to the Court Appeal, and then to the House of Lords. Under certain circumstances, an appeal lies direct to the House of Lords.[84]

In addition to the appeal process, other remedies are available to the taxpayer in the form of prerogative orders of mandamus, prohibition, or certiorari, or a declaratory judgment.[85] These are only available however if the remedy by way of appeal is not available, and would be appropriate where, for example, there has been a clear excess of jurisdiction, or failure by officers of the Department to perform some mandatory duty. However:[86]

> ... these alternative remedies are strictly circumscribed and very largely discretionary, and will not be granted where an appeal to the Commissioners is the prescribed remedy.

The English legislation provides an example of a system which has modern provisions grafted onto old practices, with a resulting hybrid of formal judicial procedures and informal quasi-judicial procedures.

C. Canada

The Canadian system for objection and appeal was amended as a result of investigation in 1966 and recommendations for reform made by the Royal Commission on Taxation (the Carter Commission).[87]

The Commission expressed concern at the processes of tax adjudication. It cited the increase in the volume of objections as indicating that the administrative appeal procedures were not adequate.[88] To remedy this inadequacy, it proposed a procedure prior to the notice of objection.[89] With the aim of enabling disputed assessments to be resolved without litigation, the Commission recommended a three step procedure, a pre-assessment conference, a district conference, and a regional conference.

The function of the pre-assessment conference was to establish the facts of the case and to clarify any misunderstandings between the parties. The taxpayer would receive notice that the Division intended to amend the taxpayer's return unless representations were made within fifteen days. The conference would then follow, where the taxpayer would meet with the assessor and the section head.

The second step proposed was that if, having received an assessment, the taxpayer decided to file a notice of objection, the taxpayer should then meet with the Appeals Section of the District Office, which would consider the case and make a recommendation to the Director of Taxation. A taxpayer objecting would have to file a notice of objection within ninety days of the mailing of the notice of assessment.

The third step was a Regional Conference, in effect, an appeal at the regional level.

Each of the three steps would be at the option of the taxpayer. If the taxpayer did not exercise the option the intended assessment or assessment would stand.

The Commission also recommended reform of the bodies hearing the objection.[90] It proposed a Tax Court to replace the Tax Appeal Board. The Court was to be a court of record, the important decisions of which would be published, and oral decisions were to be given where possible.

The proposals for conferences were adopted. Four Regional Appeals Offices were established.[91]

In 1970 the appeal system was restructured to ensure that the officers within the department who had dealt with an assessment were not the same officers who subsequently reconsidered it.[92]

In 1972, sixty three per cent of the notices of objection sent in were resolved in district offices, the remaining thirty seven per cent were transferred to Regional Appeals Offices. Those offices resolved ninety three per cent of the objections they considered, leaving seven per cent to go to the Tax Review Boards and the courts.[93]

In 1980 it was decided to discontinue Regional Appeals Offices because of limited resources available to the Department.[94] Now the responsibility to confirm Notices of Objection rests with the appeal section of the District Offices.

The proposals for the structure of the Courts were followed:[95]

> ... in substance, though departing from them in form. The Trial Division and the Appeal Division of the Federal Court fill the roles in which the Commission cast its Tax Court and the Exchequer Court.

The Tax Appeal Board continued in existence (renamed the Tax Review Board) although it changed its method of operation. It was designed to be informal, accessible, and cheap.

The Chairman described it thus:[96]

The new Board has many advantages in operation over the previous Tax Appeal Board, and this is the result of the wording of the Act itself, which specifically spells out that the hearings are to be informal, not tied by the technical rules of evidence, before a Tribunal where the ordinary citizen may have his day in court, so to speak, when he feels aggrieved by the manner in which the Department of National Revenue has treated his tax assessment or, more particularly, the way in which some assessor in a local District Office has dealt with his tax problem.

Such cases, if taken to a court of law with its formal procedure for discovery of, settlement of, and adjudication of, issues of fact and law, would unduly hamper the individual of modest means from obtaining at low cost an impartial review of his grievance.

The Tax Review Board Act states:

9(1) Where an appeal is made to the Board under any Act, the appeal shall be made in writing but no special form of petition or pleadings shall be required by the Board, unless the Act under which the appeal is made expressly otherwise provides.

9(2) Notwithstanding the provisions of the Act under which an appeal is made, the Board is not bound by any legal or technical rules of evidence in conducting an hearing for the purposes of that Act, and all appeals shall be dealt with by the Board as informally and expeditiously as the circumstances and considerations of fairness will allow.

10(3) The Board shall given reasons for its decisions but, except where the Board deems it in the public interest in any particular case that the reasons given by it be in writing, reasons given by it need not be in writing.

The Canadian system can be characterised as being based on an informal dispute resolution model, incorporating, to borrow an analogy from the criminal law, the concept of diversion. A large percentage of tax disputes are diverted from the appeal structure by the use of conferences. In addition, if the dispute is taken to the formal tribunals, the conferences serve to clarify the issues for determination.

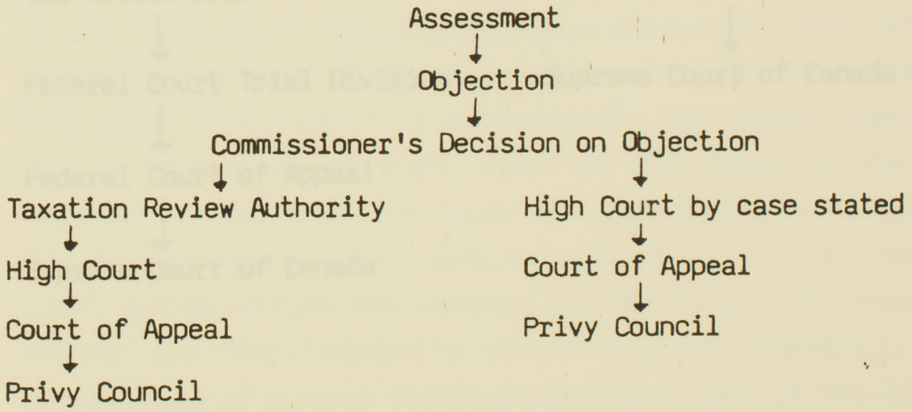
The Canadian provisions are the most recently devised of the jurisdictions surveyed in this paper, adopted in response to a study of the adequacy of the former provisions. They have been amended subsequently in the light of evaluation. For this reason they are of particular interest. They have been described as "... an important and surprisingly fast-changing area of tax practice".[97]

Although beyond the scope of this paper, another aspect of Canadian tax practice which is closely linked to the conference system outlined is that of revenue rulings. The Carter Commission recommended the introduction of revenue rulings as a device for "... fostering and encouraging the self-assessment system ...".[98]

Designed to increase certainty and uniformity and to reduce litigation, the procedure incorporates discussion with the taxpayer prior to the ruling being made. Although the objective is different (i.e. the issue of a ruling as opposed to the resolution, if possible, of an objection) the means used are similar.

Diagrammatic Representation of the Appeal Process in Income Tax Matters

New Zealand



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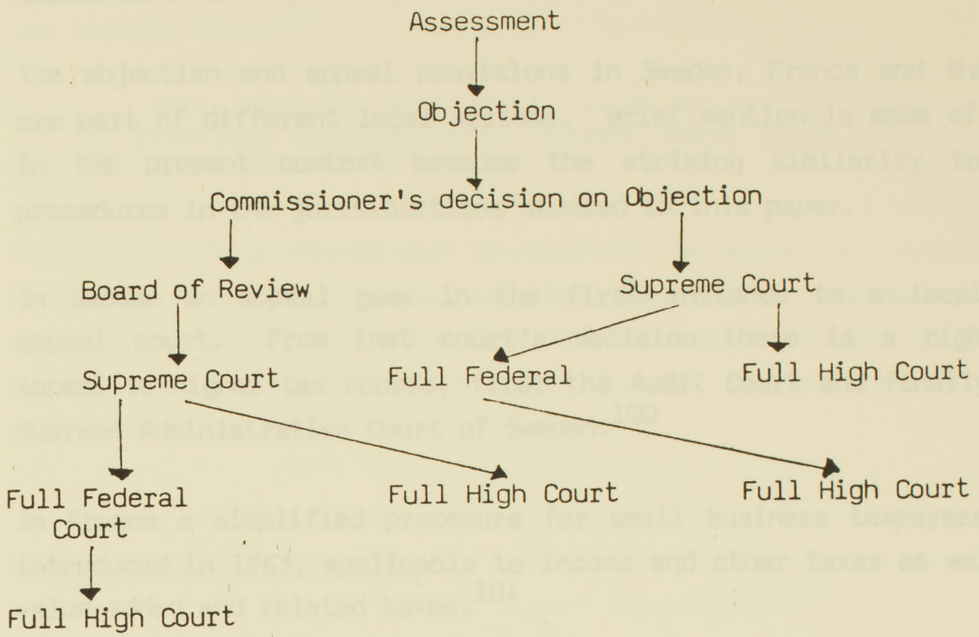
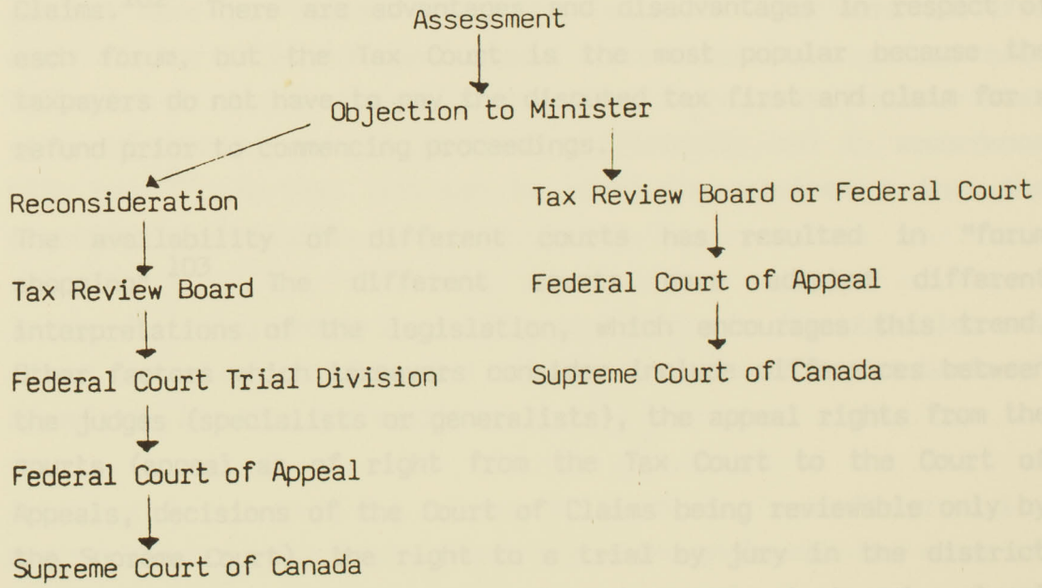


Canada



D. Sweden, France and the USA

The objection and appeal provisions in Sweden, France and the USA are part of different legal systems. Brief mention is made of them in the present context because the striking similarity to the procedures in the jurisidictions studied in this paper.

In Sweden an appeal goes in the first instance to a local tax appeal court. From that court's decision there is a right of appeal to higher tax courts, first the Audit Court and finally the Supreme Administrative Court of Sweden.[100]

In France a simplified procedure for small business taxpayers was introduced in 1963, applicable to income and other taxes as well as value-added and related taxes.[101]

Taxpayers in the United States can proceed in one of three courts, the Tax Court, a federal district court, or the Court of Claims.[102] There are advantages and disadvantages in respect of each forum, but the Tax Court is the most popular because the taxpayers do not have to pay the disputed tax first and claim for a refund prior to commencing proceedings.

The availability of different courts has resulted in "forum shopping".[103] The different courts have adopted different interpretations of the legislation, which encourages this trend. Other factors which taxpayers consider include differences between the judges (specialists or generalists), the appeal rights from the courts (appeal as of right from the Tax Court to the Court of Appeals, decisions of the Court of Claims being reviewable only by the Supreme Court), the right to a trial by jury in the district court (which enables the taxpayer to raise arguments based on local custom and the taxpayer's reputation and standing), and the availability of a small claims procedure as part of the Tax Court.

The simplified procedure for small claims was introduced because it was thought that:[104]

> ... many taxpayers with small claims believe they have no practical opportunity to present their claim before an impartial tribunal.

The simplified procedure can be used if the amount in dispute is less than $5,000 for any one tax year. The proceedings are conducted informally, and the decision is final, not open to review by any other court. The decision is not to be treated as a precedent in any other case.

V. RECOMMENDATIONS FOR REFORM

Discussion of reform must focus first on the aims of the objection and appeal process, and then consider whether proposed reforms go towards fulfilling those aims. Although the aims of tax law in general have ben stated from early times,[105] the more specific aims of the objection and appeal procedures have seldom been defined. In Canada it was stated that the system should, inter alia, dispose of appeals promptly, efficiently and in accordance with law.[106] To that list can be added the requirement that the procedure be accessible.

In the following sections specific amendments to the objection and appeal procedure are discussed which are suggested on the basis of experience in other jurisdictions.

An objection or appeal is, of course, based on a specific provision or provisions of the legislation, and although beyond the scope of this paper, the possibility of amendment of other provisions of the legislation should not be overlooked. If it appears that particular provisions generate a large number of disputes then it may be appropriate to look at not only the way the disputes are dealt with but also at the provisions themselves. For example, of the 157

decisions of the Taxation Review Authority reported in 1982 and 1983, fifty-six concerned the Fourth Schedule of the Income Tax Act (which provides for items of expenditure or loss deductible in respect of income from employment). It may be that, upon closer analysis, these cases are not particularly significant and could be reduced by amending the legislation without diminishing the taxpayers' right to challenge assessments.

A. Procedure Prior to the First Hearing

The Carter Commission, as discussed already, propsed an extensive structure of pre-proceedings conferences. Its recommendations have been enacted, and subsequently amended in the light of experience, although the fundamental elements have been retained.

The proposal for the introduction of a pre-proceedings procedure has found favour in both New Zealand and Australia.

Green argues that a pre-proceeding conference would be useful to isolate the issues in the dispute, or even to go to the extent of finally determining the grounds of the objection. He advocates this procedure on the grounds that in his view the taxpayer goes "... into contentious proceedings blindfolded with an extremely broad barrelled blunderbus pointed at him or her by the Commissioner".[107]

The Asprey Committee based its support for such a procedure on considerations of speed and the reduction of costs. It criticised the practice at some hearings where all the evidence is formally proved as if at a trial, using up a great deal of time on matters which ought to be common ground. It recommended therefore a short preliminary hearing before a single member of the Board to eliminate the fact-finding work of the Board by admitting as much of the facts as possible and thereby narrowing the issues to those facts actually in dispute.[108] This would also, the Committee believed, result in a narrowing of the questions of law.

An effective pre-proceedings procedure would eliminate most of the criticisms of the present procedure based on limitation of grounds, onus of proof, the taxpayer's right to information, and time limits.

A procedure analogous to that proposed by the Carter Commission would require administrative rather than legislative change. In a small jurisdiction such as New Zealand a two-tier structure would not be necessary. The use of a meeting between the taxpayer (and advisors if wished) and the Department of Inland Revenue to isolate the issues in contention, and resolve them if possible, would benefit both the taxpayer and the Department. A time limit could be included to ensure that the use of a meeting would not slow down the process.

B. Limitation of the Grounds of Appeal

One aspect of the objection and appeal procedures which has come under criticism in New Zealand is the rule contained in Section 36 of the Inland Revenue Department Act 1974, that is:

> ... on the hearing and determination of any objection, the objector shall be limited to the grounds stated in his objection.

For example, Molloy says:[109]

> In any other sphere of the civil law, a party who realises that his present pleadings will not enable him to argue his case properly can amend them: on terms as to the granting of an adjournment, or costs, if necessary, to protect the other side. In the tax field any other rules places the need for certainty as to the quantum of the Revenue take too far ahead of the demands of justice for the citizen.

The Australian legislation in this respect is similar to New Zealand. Section 190 states in part:

> Upon every such reference or appeal - [to a Board of Review or the Supreme Court]

(a) The taxpayer shall be limited to the grounds stated in his objection.

However, a difference is found on the issue of the stating of the grounds of the objection, in Australia the legislation requires that they be stated fully and detail, whereas in New Zealand the grounds should be stated "shortly".[110]

The Australian provision has been interpreted liberally by the Courts and Boards. The grounds of objection are not to be interpreted "... technically, narrowly or with rigidity".[111]

It appears that:[112]

> ... where there is a reasonable doubt whether a particular point is covered by the grounds of objection the doubt will, if possible, be resolved in the taxpayer's favour.

One possible interpretation of this development by the Courts and Boards is that it is a recognition of the difficult position the taxpayer is put in, and is an attempt to mitigate the rigidity of the rule to alleviate that position. In other words, it may be a tacit recognition that the rule is unfair.

The Asprey Committee considered this issue. It stated that the limitation was "... highly unsatisfactory and unfair to the taxpayer".[113]

It pointed out that the taxpayer is put in the position of having to state grounds of objection without necessarily being able to ascertain the basis of the Commissioner's assessment.

It recommended that the taxpayer should not have an unlimited right to amend the grounds of objection, but should be able to contest the case on any grounds open to him or her when first faced with the Commissioner's argument. The basis of the Committee's view was the desire to place the Commissioner and taxpayer on an equal footing.[114]

The Canadian system for objection and appeal includes, as discussed, a highly developed procedure for objecting before reaching a formal tribunal. If, after the procedures outlined above, the taxpayer wishes to continue with the notice of objection, the procedure is comparatively informal.

Against this background therefore, it is possible to see why notices of objection stating that the taxpayer objects because the assessment is wrong in fact and in law are not in practice challenged by the Department of National Revenue.

Turning to the specific issue of whether the taxpayer can raise new grounds at the Board, although this was formerly refused, the new trend is to accept amendment.[115] Obviously, however, if the taxpayer has been in discussion the issues will have been isolated to a far greater extent than is the case where there is no system of conferences.

In England, the Taxes Management Act 1970 provides that an appeal may be brought against an assessment to tax by a notice of appeal in writing given within thirty days after the date of the notice of assessment.

Section 31(5) provides:

> The notice of appeal against any assessment shall specify the grounds of appeal, but on the hearing of the appeal the Commissioners may allow the appellant to put forward any ground not specified in the notice, and take it into consideration if satisfied that the omission was not wilful or unreasonable.

One commentator stated that the grounds of the appeal are usually interpreted fairly liberally.[116]

> If an appeal against an estimated assessment is being made and the form provided by the Revenue is not used, the grounds are frequently stated to be that the assessment is estimated, excessive in amount or erroneous in law.

However, although taxpayers may state the grounds widely they are advised to be more precise in case the Crown objects that the statement of the grounds is too broad. Specificity is also advocated to prevent delays in disposing of the objection.[117]

> If the appeal is to the Special Commissioners then, whether the original ground of appeal was of the broader or the narrower type, the parties will be expected to agree on a "question for determination" to be notified to the commissioners at the time when the Inspector of Taxes asks for the case to be listed for hearing. Generally, if on the hearing of an appeal the appellant desires to go into any ground of appeal which was not specified in the notice, it will be desirable to give as much notice as possible to the inspector since, if the new ground takes him by surprise, there will be nothing to prevent him from asking the commissioners to adjourn the case to enable him to consider the point properly.

To summarise the provisions in the three jurisdictions reviewed, where a rule analogous to the New Zealand one exists it is either interpreted liberally, for example as in Australia, or cast in less restrictive terms, for example in the United Kingdom.

The restriction of grounds must be, it is submitted, to facilitate a simple and speedy resolution of the objection.[118] However, in practice is would appear to result in unfairness to the taxpayer. The taxpayer must prepare argument quickly, without necessarily knowing the grounds for the Commissioner's argument, and then is restricted to those grounds. It is submitted that the rule should be changed to permit the taxpayer to amend the grounds when fully appraised of the Commissioner's argument. This is in keeping with the general law.

Coupled with a pre-proceeding conference (discussed below), such a reform would, it is submitted, achieve fairness without sacrificing the aim of efficient disposal of objections.

C. Onus of Proof

Section 36 of the Inland Revenue Department Act 1974 states in part:

> On the hearing and determination of any objection, ... subject to the provisions of subsection (2) of Section 234 of the Land and Income Tax Act 1954, the burden of proof shall be on the objector.

The same rule applies to a case stated to the High Court.[119]

The courts have held that the taxpayer must prove that the assessment is incorrect and the extent to which it is wrong. Richardson, J. in Buckley Young Ltd v. CIR[120] reviewed previous cases and quoted with approval Moller, J. in Lancaster v. Commissioner of Inland Revenue[121] where he said the question for the court is:[122]

> On all the evidence, has the taxpayer discharged the onus of demonstrating that the Commissioner's assessment was wrong, and, if so, why it was wrong, and how far it was wrong?

Richardson, J. continued:[123]

> The reason for this statutory onus is obvious enough. The Commissioner could not sensibly be expected to bear the onus of proof of matters which originate with the taxpayer and which usually are peculiarly within his knowledge and power. Thus, there are sound if not compelling practical reasons why the legislation requires him to provide satisfactory evidence to support his calculation of his assessable income.

The taxpayer must discharge the onus of proof on the balance of probabilities. This will result sometimes in the taxpayer having to prove a negative. This has been challenged by counsel at the Court of Appeal who argued (in a case concerning property disposal) that the taxpayer will succeed if, having put forward the evidence, there is no evidence from which it can be concluded that the Commissioner's argument is correct.[124] The Court rejected this, holding that such an interpretation would result in reversing the requirement that the burden of proof be on the taxpayer.[125]

Richmond, P. said:[126]

> I think that the ordinary and natural meaning of the New Zealand section [Section 36 of the Inland Revenue Department Act 1974] is to require an objector to establish one or more of the grounds of its objection are correct, even if this involves him (sic) in proving a negative, as is the position in the present case.

(One commentator has said that proving a negative is a "... notoriously difficult position ...", but concludes however that this has to be so for "... the system to work at all.")[127]

The onus of proof being on the taxpayer is one of the few areas of the objection and appeal procedure which has aroused comment.

With regard to the New Zealand provision commentators have not been critical. For example, Molloy states:[128]

> Except in respect of an objection to an assessment of penal tax - where the onus is on the Commissioner to prove the offence in respect of which it is chargeable - the onus of proof is eneludibly and ineluctably on the objector. Generally, this is not unfair in that most of the essential facts will be within his exclusive knowledge.

However, reform has been advocated in the limited area of objections against discretionary determinations of the Commissioner. In these cases it was suggested by Reddy that the objector should only need to raise prima facie evidence which would support a different conclusion for the burden of proof to be shifted to the Commissioner.[129] She argued that this would ensure that an objector could properly prepare a case.

Commentators overseas have, however, been much more forceful in their condemnation of the rule that the taxpayer carries the onus of proof. For example in Australia, although noting that it is logical for the taxpayer to bear the onus of proof, Brown argues:[130]

> On the other hand the Commissioner has received the material information. He has selected what is necessary to make his assessment. He stands or falls on the facts which he considers relevant. It may be that the onus should be on him to state the facts which he considers relevant and on which he has made his determination.

More specifically, Myers argues that where an appeal is made by the Commissioner from a Board of Review to a Court then the Commissioner should bear the onus of proof. The existing provisions were characterised as giving the Commissioner "... substantial procedural advantages ...".[131]

In England in appeals to the Commissioners the onus of proof is on the taxpayer to show that the assessment should be reduced or set aside.[132] The English provision is based on the established evidential rule which applies where there are facts peculiarly within the knowledge of one of the parties.[133]

> The existence or non-existence of a fact in issue may be known for certain by one of the parties. It is only reasonable that this should affect the evidential burden in some cases.

In Canada the legislation does not specify on whom the burden of proof rests. The courts have decided, however, that the onus is on the taxpayer.

For example, in Johnston v. MNR[134] the Court said:[135]

> Every such fact found or assumed by the assessor or the Minister must then be accepted as it was dealt with by these persons unless questioned by the appellant.

If, however, the Minister does not allege as a fact an ingredient essential to the validity of the assessment then the taxpayer is not obliged to disprove that fact.[136]

One commentator, Wolff, states that this attitude was probably based on the general scheme of the Act which requires the taxpayer to avail him or herself of the appeal procedures.[137]

Wolff notes the argument based on the view that the facts are peculiarly within the knowledge of the taxpayer mentioned above, but believes it is not an adequate justification for placing the burden on the taxpayer. He argues that such a rule is unfair to the taxpayer:[138]

> And while the facts stated in the return or the notice of objection may be peculiarly within the knowledge of the taxpayer, the contary may well be true with respect to those facts underlying the assessment or re-assessment, which may have been made after investigation by the Minister ... or the seizure of the taxpayer's documents. The taxpayer may, indeed, be completely at sea as to the facts relied on by the Minister when the matter is viewed in this way.

Wolff argues that there is a fundamental misconception about objections which result in unfairness to the taxpayer. He states that objections are regarded as appeals whereas they should properly be regarded as what he described as "... trials of actions by the Minister for disputed amounts of tax".[139]

Therefore, he argues, the rules about the burden of proof in appeals is followed, yet in other respects the taxpayer is disadvantaged, because it is a trial of an action for a disputed amount of tax the taxpayer does not have the usual protections of a defendant in a civil action, for example, the filing of a statement of claim setting out the grounds of the dispute. The Minister is not required to reveal the arguments and grounds being relied on in the assessment.

Wolff proposed, therefore, the following changes to the procedure. The party bearing the responsibility of imposing income tax should be required to file the first pleading in the courts. The taxpayer's objection would then take the form of a statement of defence filed in response. Then, if the parties could not reach agreement after the conferences, the Minister would be required to file a statement of claim alleging the facts and the statutory provisions relied upon. The taxpayer would then file a statement of defence.[140]

> The legal burden of proof would be the same as in any other action, to be decided on the pleadings. Facts denied by the taxpayer would have to be proved by the Minister, and other facts pleaded by way of defence would have to be proved by the taxpayer ...
>
> There would be a presumption of law that facts alleged by the Minister in his statement of claim existed, in the absence of evidence to the contary. This would have the effect of shifting the evidential - but not the legal - burden of proof on the facts to the taxpayer in the first instance.

Wolff submitted that this proposal would not place the Revenue Department in a more disadvantageous position in disputes.

This discussion on the onus of proof highlights one of the conflicts arising from the use of administrative tribunals. On the one hand, to achieve the aim of speedy and efficient disposal of cases the full procedural requirements of the courts are bypassed, but on the other hand this may result in unfairness which is the very reason for the development of the procedural requirements.

The traditional justification for imposing the onus on the taxpayer, that is, that the matters are peculiarly within the taxpayer's knowledge, does not appear convincing in circumstances where the taxpayer may not have knowledge of the basis of the Commissioner's assessment.

Commentators have proposed shifting the burden, either through requiring the taxpayer to raise prima facie evidence which would shift the burden to the Commissioner (as Reddy proposed), or putting the onus on the party seeking to rely on a fact, but the evidential burden on the taxpayer in the first instance (as Wolff proposed).

It is submitted that in the majority of cases it is not unfair for the taxpayer to have the onus of proof because the facts will be within his or her knowledge. In circumstances where that is not so, however, and discretionary determinations of the Commissioner

provide an example (where the grounds on which the determination is made is known only to the Commissioner), then Reddy's proposal would appear to be fair to the taxpayer without disadvantaging the Commissioner.

D. The Taxpayer's Right to Information

The New Zealand tax legislation does not make specific provision for the taxpayer to acquire information about the basis of the Commissioner's opinion in making the assessment. This point has been considered by the courts however in relation to a case stated for the High Court.

In Cates v. CIR[141] the Court of Appeal held tht the High Court has jurisdiction to order discovery of documents held by the Commissioner pursuant to Section 27 of the Crown Proceedings Act 1950. The court also has inherent jurisdiction to order the Commissioner to supply further particulars. The Court said, however, that discovery would only be ordered in rare cases. Green believes that the case will result in a greater use of discovery.[142]

As to the taxpayer's right to information prior to the request for a case stated, Simcock and Rooke submit that if the Commissioner refused to supply the information, the refusal may be open to review under Section 4(1) of the Judicature Amendment Act 1972.[143]

The issue of whether the Taxation Review Authority has the power to order the Commissioner to provide information was examined in Case F.70.[144] The Authority decided that Section 4C of the Commissions of Inquiry Act 1908 applied, that is, by virtue of Section 33(1) the Authority is deemed to be a commission of inquiry, and therefore Section 4C empowers the Commission to, inter alia, require the Commissioner to furnish information.

Simcock and Rooke argue, however, that because the cases make it clear that the Commissioner will be required to provide information only infrequently, the taxpayer is still disadvantaged. They point out that it:[145]

> ... is a difficult onus to discharge when the taxpayer must remain ignorant of or second guess the basis upon which the Commissioner proceeded.

Green stresses that evidence in tax cases is critical because the onus is on the taxpayer. Therefore he argues that:[146]

> It is, after all, only logical that where the Department has extensive powers of investigation and powers to compel the production of documents the taxpayer, who starts from behind scratch in so many respects, should be able to obtain the basis for the Department's view and a clear and unambiguous reason for any assessment or amended assessment that has been made.

In Australia the issue of the taxpayer's right to information has been discussed in the courts. In Bailey & Ors v. F.C. of T.[147] the Full High Court ordered the Commissioner to supply particulars to the taxpayer, on the grounds that the High Court had the inherent jurisdiction to order the supply of particulars if it appears just to do so.

The Asprey Committee, commenting on the previous situation when it had been held that the Board could not order the Commissioner to supply the taxpayer with particulars, stated that natural justice required that the taxpayer should have sufficient knowledge of the Commissioner's basis for decision to enable the taxpayer to prepare legal argument relevant to the issue the Board will be deciding.[148] It recommended, therefore that the Board be given discretionary power to supply the taxpayer with particulars as to the computation of the assessment and the reasoning on which the Commissioner's decision was based.

It is submitted that establishing the taxpayer's right to information would not only be fair to the taxpayer but it would also

enhance the speedy and efficient disposal of objections. The taxpayer would then be able to prepare a better case, having been able to focus on the Commissioner's grounds. The provision of information should not have to be at the discretion of the first tribunal as the Asprey Committee recommended, but should be specifically legislated for (in view of the restrictive approach taken by the Courts). Such provision should deal with the right to information before both a court hearing and a hearing before an Authority.

E. Time Limits

On the reverse side of the Income Tax Notice of Assessment it is stated that an objection "... must be delivered or posted to the District Commissioner, Inland Revenue Department at the office of issue within one month of date of issue."[149] There is no time limit on the Commissioner when considering the objection.[150] If it is not wholly allowed by the Commissioner, the objector may within two months of the notice of the disallowance, require that the objection be heard by the Authority (or the Commissioner state a case for the opinion of the High Court).[151]

The Department, having received notice of the objection, must file the case with the Taxation Review Authority within six months.[152] If it does not, the Authority shall make an order allowing the objection, unless it is satisfied that there are reasonable grounds for the failure to file.[153] At any time before the hearing the Commissioner can file an amended case and the objector can file an amended answer.[154]

By contrast, a taxpayer who objects under the Canadian legislation must serve notice on the Minister within ninety days.[155] If the taxpayer is not notified of the Minister's decision within 180 days he or she may appeal to the Tax Appeal Board.[156] There is also a time limit of 120 days for an appeal from the decision of the Tax Appeal Board to the Exchequer Court of Canada.[157]

Provision is also made for filing cases directly with a Board or the Federal Court with the Minister's consent. The consent is not usually forthcoming because it may result in a court hearing before there has been time to investigate all the issues.[158] However, the provision is appropriate for cases where all the issues have been thoroughly canvassed and neither side has any new points to raise.

In Australia a time limit of sixty days is imposed on the taxpayer to lodge an objection after having received an assessment.[159] In addition, there is a time limit of sixty days for the service of a notice requesting that the Commissioner's decision be referred to a Board of Review or a Supreme Court.[160]

In England a notice of appeal must be given within thirty days of the date of the notice of the assessment.[161] If dissatisfied with the determination of the Commissioners, either side must declare its dissatisfaction immediately, and file written notice within thirty days of a request for a case stated for the opinion of the High Court.[162]

The New Zealand limit of one month has been criticised by both the Department of Inland Revenue and commentators concerned with the taxpayer's position. The Department recommended to the Public and Administrative Law Reform Committee that the time period be extended to two months, although the Committee rejected this. Their reason was the belief that an extension to two months would increase delays and uncertainty.[163]

Green argues that one month is too short in view of the complexity of many tax cases:[164]

> It is just not practicable in many circumstances to lodge an objection, the grounds of which are going to be binding on the taxpayer, within the thirty day period allowed by the Act. Given delays in the mail, the necessity for discussion between the accounting and legal advisors and the perusal of what may often be vast numbers of documents it is essential that more time be given.

The Asprey Committee reviewed the issue of time limits and conluded that sixty days to lodge an objection was reasonable in practically all cases.[165] It recommended that provision be made for further time to be granted in unusual circumstances.

The Committee did not favour imposing a time limit on the Commissioner for making a decision on the objection, for similar reasons to those that Green advances for permitting the taxpayer more time. It cited the fact that the grounds of the objection may be: "... lengthy and complex and raise important questions of law".[166]

It also referred to the pressure of work on the Commissioner, and the double duty of care on the Commissioner (i.e. to the taxpayer and the requirements of the Act).

The time limits that do exist are designed to ensure the speedy disposal of cases. This is undermined, however, if long delays arise at other points of the process. On the other hand, speedy disposal should not be pursued at the expense of fairness, which is particularly relevant in complex cases.

It is submitted that the one month limit for making an objection be able to be extended to two months, and that a time limit be imposed on the Commissioner for making a decision on the objection. The problems in such a requirement as highlighted by the Asprey Committee are recognised, but that it is possible is illustrated by the Canadian legislation.

VI. CONCLUSION

This paper has drawn on experience in other jurisdictions to make recommendations for reform of the objection and appeal procedure in New Zealand. However, by focussing on certain issues it is easy to lose sight of the fact that the systems in the different jurisdictions operate within different social settings. For example, the

Canadian and American systems rely on extensive public relations campaigns to ensure that taxpayers are aware of their rights and obligations. This facilitates effective use of those objection procedures which are available. In the United States of America there is an emphasis, arising from the political context, on permitting taxpayers to take their own proceedings without the use of counsel.

But there is a large degree of uniformity in the jurisdictions surveyed, and from this basis recommendations are made. It is also possible to gain guidance from Australia and Canada which have conducted reviews of their objection and appeal procedures.

FOOTNOTES

1. R. L. Congreve "Tax Administration and Practice - Part One" (1983) 13 VUWLR 95.

2. P. L. Reddy "The Commissioner's Rulings" (1983) VUWLR 21.

3. Stanley S. Surrey "Tax Administration in Underdeveloped Countries" in Richard M. Bird and Oliver Oldman (eds) Readings on Taxation in Developing Countries (the John Hopkins Press, Baltimore, 1967) 497.

4. Task Force on Tax Reform Report of the Task Force on Tax Reform (Government Printer, Wellington, 1982).

5. Section 27.

6. Section 31.

7. Section 33.

8. Sections 53, 54 and 55.

9. Section 19.

10. Section 20.

11. Section 21(3).

12. Section 22.

13. Section 23.

14. Idem.

15. Idem.

16. Section 25.

17. Idem.

18. Section 24(2).

19. Section 28.

20. Section 35.

21. Section 38.

22. H.W.R. Wade Administrative Law (5 ed., Clarendon Press, Oxford, 1982) 777.

23. N.Z. Parliamentary Debates, Vol. 324, 1960; 2294.

24. Ibid, 2295.

25. Section 3.

26. Section 15.

27. Section 28.

28. Section 26.

29. Public and Administrative Law Reform Committee Appeals from Administrative Tribunals (Second Report) (Government Printer, Wellington, 1969) 24.

30. N.Z. Parliamentary debates Vol. 342, 1960; 2295.

31. N.Z. Parliamentary debates Vol. 393, 1974; 3973.

32. Section 43. The limit at present is $2,000.00 where the case involves tax or duty, and $4,000.00 where the case involves loss.

33. Public and Administrative Law Reform Committee, op. cit. 25.

34. Public and Administrative Law Reform Committee Administrative Tribunals Constitution, Procedure and Appeals (Fifth Report) (Government Printer, Wellington, 1972) 8.

35. Section 27 of the Income Tax Act.

36. Section 30.

37. Idem.

38. Section 31(1).

39. Section 31(2).

40. Section 33.

41. Section 33(4).

42. Section 36.

43. Section 34 of the Inland Revenue Department Act.

44. Section 35.

45. Section 36.

46. Section 41.

47. Section 43.

48. Section 43.

49. Section 45.

50. [1982] 1 N.Z.L.R. 517.

51. Ibid, 520.

52. R. L. Congreve, loc. cit. 102.

53. Ibid, 92.

54. Section 185.

55. Section 186.

56. Section 187.

57. Section 190.

58. Section 192, 193(1).

59. Section 195.

60. Section 196(1).

61. Section 196(2).

62. Section 196(4).

63. Section 200A.

64. Taxation Review Committee Full Report (Australian Government Publishing Service, Canberra, 1975).

65. Section 177(1) of the Income Tax Assessment Act 1936.

66. P. J. Cosgrave "Commonwealth Administrative Law Remedies in Regard to Revenue Law" (1984) 13 Australian Tax Review 100.

67. Paul W. De Voil Tax Appeals (Butterworths, London, 1969) 33.

68. Ibid. 37.

69. Halsbury's Laws of England (4 ed. Butterworths, London, 1980) vol. 32. Income Taxation, para. 1602, p. 1164.

70. Ibid. para. 1603, p. 1164.

71. Ibid. para. 1605, p. 1167.

72. Ibid. para. 1602, p. 1164.

73. Halsbury's op. cit. para. 1607, p. 1169.

74. Ibid. para. 1611, p. 1173.

75. Idem.

76. K. B. Edwards, "Tax Appeals" (1970) NLJ, 1032.

77. Halsbury's op. cit. para. 1617, p. 1176.

78. De Voil, op. cit. 35.

79. Halsbury's op. cit. para. 1617, p. 1176.

80. Ibid. para. 1618, p. 1177.

81. Ibid. para. 1622, p. 1180.

82. Ibid. para. 1624, p. 1181.

83. Ibid. para. 1629, p. 1184.

84. Ibid. para. 1631, p. 1186.

85. Ibid. para. 1637, p. 1189.

86. De Voil, op. cit. 12.

87. Royal Commission on Taxation Report of the Royal Commission on Taxation (Queen's Printer, Canada, 1966) p. 161.

88. Ibid. p

89. Ibid. p

90. Ibid. p. 163.

91. Robert M. Beith Canadian Tax Foundation Conference Report 1979, p. 602.

92. Idem.

93. Canadian Tax Foundation Report of the Proceedings of the Twenty-Fourth Tax Conference (Canadian Tax Foundation, Canada, 1973) 505, 507.

94. Beith op. cit. p. 602.

95. Robert J. Bertrand "Transformation of the Tax Adjudication Process" (1970) Vol XVIII No. 6 Canadian Tax Journal p. 475.

96. Canadian Tax Foundation Report of the Proceedings of the Twenty-Third Tax Conference (Canadian Tax Foundation, Canada, 1972) p. 510.

97. Bruce Verchere and Guy Du Pont "Income Tax Appeals: Practice and Procedure" Canadian Tax Foundation Report of the Proceedings of the Thirty-Third Tax Conference (Canadian Tax Foundation, Canada, 1981) p. 776.

98. Royal Commission on Taxation, op. cit. p. 138.

99. CCH Australia Limited Contesting an Income Tax Assessment (3 ed, CCH Australia Limited, Australia, 1981) p. 34.

100. Martin Norr The Tax System in Sweden (Skandinaviska Enskilda Bankeu 1972) p. 115.

101. Martin Norr and Pierre Kerland World Tax Series Taxation in France (Commerce Clearing House Inc, Chicago, 1966) p. 920

102. Boris I. Bittker Federal Taxation of Income, Estates and Gifts (Warren, Gorham and Lamont, Boston, 1981) p. 115-2.

103. Ibid. p. 115-3

104. Ibid. p. 115-34.

105. "As long ago as 1776 Adam Smith ennunciated the following maxims, to which 'good' taxing laws should conform; they are those of equality, certainty, convenience of payment and economy of collection." Quoted in R. F. Hughes "Taxation Reform" in Taxation Now and in the Future (The Taxation Institute of Australia, Australia, 1969) 146.

106. W. D. Goodman "Tax Litigation: Appellate System" Canadian Tax Foundation Report of the Proceedings of the Twenty-Fourth Tax Conference op. cit. p.

107. R.A. Green op. cit. 114.

108. Taxation Review Committee op. cit. 386.

109. A. P. Molloy "Objections to Assessments and Other Decisions of the Commissioner" (1979) NZLJ 343.

110. Section 30.

111. CCH Australia Limited, op. cit. p. 49.

112. Idem.

113. Taxation Review Committee, op. cit. 385.

114. Idem.

1155 Canadian Tax Foundation Report of the Thirty-Third Tax Conference op. cit. p. 798.

116. K. B. Edwards loc. cit. p. 1032.

117. Idem.

118. As has been noted, this is one of the traditional justifications for the use of tribunals.

119. Section 33(10).

120. [1978] 2 NZLR 485.

121. [1969] NZLR 589.

122. Ibid, 591.

123. Idem.

124. Williams Property Developments Ltd v CIR (1980) 4 NZTC 61, 537, 61, 542.

125. Ibid. 61, 547.

126. Ibid. 61, 542.

127. De Voil, op. cit. 58.

128. Anthony P. Molloy Molloy on Income Tax (Butterworths, Wellington, 1976) 671.

129.. P. L. Reddy "Objecting to Discretionary Determinations by the Commissioner of Inland Revenue (1981) II VUWLR 125, 151.

130. Douglas Brown "Written Argument in Taxation Appeals" (1981) Vol. 10 No. 1. Australian Tax Review 37, 38.

131. A. J. Myers "The Burden of Proof in Appeals from Decisions of Boards of Review" (1979) Vol. 8 No. 4 Australian Tax Review 184.

132. Halsbury's op. cit. para. 1607, p. 1169.

133. D. L. Mathieson Cross on Evidence (3 ed, Butterworths, Wellington) p. 98.

134. 3 DTC 1182.

135. 1183.

136. 1185.

137. Horst G. Wolff "The Burden of Proof in Tax Disputes" 1970 Vol XVIII No. 6 Canadian Tax Journal 1.

138. Ibid, 9.

139. Ibid, 1.

140. Ibid, 14.

141. [1982] 5 NZTC 61, 237

142. R. A. Green "Tax Administration and Practice - Part Two" (1983) 132 VUWLR 110.

143. Donald H. Simcock and John F. S. Rooke New Zealand Income Tax Law and Practice (Commerce Clearing House, New Zealand, 1984) 53,014.

144. [1983] 6 NZTC 59, 907.

145. Ibid. 53, 035

146. R. A. Green, op. cit. 110.

147. [1977] ATC 4096

148. Taxation Review Committee, op. cit. p. 386.

149. Income Tax Notice of Assessment 1984.

150. Section 31.

151. Section 31(2).

152. Reg 5. Taxation Review Authority Regulations 1974.

153. Reg 5.

154. Reg 8.

155. Section 64 of the Income Tax Act.

156. Section 65.

157. Section 66.

158. P. N. Thorsteinsson "How to Settle An Income Tax Controversy, through Litigation and Before" Canadian Tax Foundation Report of the Twenty-Eight Tax Conference (Canadian Tax Foundation, Canada, 1978) p. 325.

159. Section 185 of the Income Tax Assessment Act.

160. Section 187.

161. Section 31(1) of the Taxes Management Act.

162. Halsbury's op. cit. para. 1618, p. 1177.

163. Public and Administrative Law Reform Committee.

164. R.A. Green op. cit. 113.

165. Taxation Review Committee. op. cit. 384.

166. Ibid.