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DIR's Panoramic Reach:
TAX ASSESSMENT MEETS AUDIT POWERS

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How Far Back Can the Department of Inland Revenue Go When Assessing a Taxpayer?

In the first article in our series, *DIR's Panoramic Reach: Tax Assessments and Audit Powers*, we examined the circumstances in which the Department of Inland Revenue (DIR), through the Comptroller, may issue a Value Added Tax (VAT) assessment.

The DIR's broad assessment powers naturally raise an important question: *How far back does the law allow the DIR to assess a taxpayer?*

The Value Added Tax Act (VAT Act) sets out the time limits within which certain assessments must be made. It also requires an assessment to be based on a reasonable estimate drawn from the information available to the Comptroller. Once an assessment is issued, the Comptroller must notify the taxpayer of the amount assessed and explain how the taxpayer may lodge an objection.

This article examines the timing and form of a VAT assessment.

When may the Comptroller issue an assessment?

As discussed in our first article, the Comptroller may issue a VAT assessment in circumstances including where:

- The Comptroller is not satisfied that a VAT return is accurate or reasonable; or
- There is reason to believe that a person will become liable to pay VAT but is unlikely to pay the amount due.

How far back does the law allow the DIR to assess a taxpayer?

1. **Where no VAT audit is conducted**
   Where no VAT audit has been undertaken, the DIR may assess a taxpayer within five years after the taxpayer files its VAT return.

   Accordingly, the VAT return filing date is the starting point for determining the ordinary assessment period.

2. **Where a VAT audit is conducted**
   The assessment period may be extended where the DIR orders a tax audit within five years after the VAT return was filed.

   In that situation, the Comptroller may assess the taxpayer within five years after the audit is completed. This may apply even where the Comptroller has reason to believe that a person will become liable to pay tax but is unlikely to pay the amount due.

   This provision can create a very broad assessment window. For example, if a VAT return is filed in Year 1, the DIR may commence an audit in Year 4. If the audit is completed in Year 12, the Comptroller may still have until Year 17 to issue an assessment.

3. **Fraud or wilful default**
   Independently of the time limits described above, there may be no statutory limitation period where the DIR alleges and establishes fraud or wilful default by the person filing or submitting the return or declaration.

   This is a significant exception. It means that an assessment may potentially be issued regardless of how much time has passed, provided the allegation of fraud or wilful default can be established and withstand a challenge by the taxpayer.

What must an assessment contain?

An assessment must be based on the information available to the Comptroller and must represent the Comptroller's reasonable estimate of the tax properly due and payable by the taxpayer.

Once an assessment is made, the Comptroller must serve the taxpayer with a notice of assessment specifying:

- The amount of tax payable; and
- The time, place and manner in which the taxpayer may object to the assessment.

These requirements are important. Although the DIR's assessment powers are broad, they are not without safeguards. Taxpayers should understand both the applicable time limits and the objection process so that they can protect their position and respond appropriately to any assessment.

We will examine these issues in greater detail in the Compliance article at the end of this series.

What comes next?

In the next article, we will consider what happens after an assessment is issued, including the steps a taxpayer may take where it intends to pay some or all of the tax assessed.

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