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| Inland Revenue Department paid ex gratia payment to compensate loss incurred when Company relied on incomplete information contained in IRD Company Tax Guide, 1997. |
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| Legislation Ombudsmen Act 1975, Inland Revenue Department Act 1988  Agency Inland Revenue Department  Ombudsman Anand Satyanand  Case number(s) W41879  Date 2000 |

*Provisional tax paid by both a company and its individual directors using Standard Formula method rather than Estimate method calculations—reliance placed on information published by Inland Revenue Department in 1997 IR4 Company Tax Guide—large overpayments resulted at end of tax year—company and directors not eligible to receive ‘use of money interest’ from Department—Department agreed that IR4 Company Tax Guide was misleading*

The complainant was one of four directors/shareholders of a small company. Provisional tax payments were made by both the company and the individual directors for the 1998 tax year. The payments were based on the ‘Standard Formula’ method of calculation. At the end of the tax year the provisional tax paid exceeded the tax liability by approximately $10,000 in the case of each director/shareholder and by $100,000 in the case of the company.

The Inland Revenue Department pays ‘Use of Money Interest’ (UOMI) on overpayments of tax and charges UOMI on underpayments of tax, in accordance with certain rules and conditions which became law in July 1996. In this case, UOMI was not paid to either the company or the complainant and the other directors/shareholders because they did not qualify under the relevant rules and conditions. The complainant argued that he had followed guidance information published by the Department and, on the basis of that information, had expected UOMI would have been paid in respect of his own case and that of the company. He was of the view that if a taxpayer relied on incorrect information published by the Department, the Department should be held accountable for any loss and compensate the taxpayer accordingly.

The Department acknowledged that an example in the IR240 booklet, on which the complainant had based his expectation of receiving UOMI if his provisional tax was overpaid, did not make it clear that the example applied only if certain qualifying criteria were met. These included using the ‘Estimate’ method of calculation instead of the ‘Standard Formula’ method. The Department’s view was that the complainant ought to have obtained more detailed information on how the rules and conditions for the payment of UOMI applied to provisional taxpayers. The Department also pointed out that the IR240 booklet made it clear that it *‘...was just a guide so it can’t give all the details of the new legislation. If you need more information ask your tax agent or contact your local Inland Revenue Office*.’  There was also a separate specialist booklet on provisional tax (IR 289) available at Departmental offices which provided full details of the new legislation and rules and the conditions which had to be satisfied for UOMI to be payable.

The view formed was that in these circumstances it was reasonable to expect the taxpayer to have made further inquiries at the nearest IRD office, as suggested in the IR240 booklet and that accordingly, the individual taxpayer portion of the complaint could not be sustained.

The second complaint involved the company and was based on the same grounds. In this case the company relied on a statement made in the Department’s 1997 IR4 Company Tax Guide, that ‘*All companies are paid interest if they are liable for provisional tax and the provisional tax they pay is more than their residual income tax...’.* The Department agreed that "The Company tax guide is incomplete in that it does not contain the proviso that this [statement] applies only to provisional taxpayers that have estimated their provisional income during the year."  In this case, the company did not use the "Estimate" method to calculate its provisional tax.

While the Department had a statutory duty to apply the rules for the payment of UOMI in strict accordance with the relevant legislation, the company was entitled to rely on the statement made in the 1997 IR4 Company Tax Guide. That guide made no references to other information which explained that UOMI was only payable in cases where the "Estimate" method for calculating provisional tax had been used. The company therefore had an expectation, held on reasonable grounds, of receiving UOMI in the event of overpayment of its provisional tax.

The view formed was that it would be unreasonable if the company was not compensated by the Department for the loss it had sustained by relying on incomplete and misleading information published by the Department. The complaint was sustained with the Department agreeing to make an ex-gratia payment to the company.

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