

Unexpected Visitors – The Taxmen Cometh

You are an owner of a popular dumpling restaurant. Thursday afternoon, not long after you finished the lunch service, a group of people showed up at your door and announced they are here to search your business premise. The group is mixed with policemen, IRD officers and Immigration officers. You are in total shock, as are your staff. Your first thought was: you cannot search my restaurant without a warrant. Guess what the answer is that you will get: "YES, WE CAN!"

Yes, THEY CAN. Inland Revenue's search and seizure powers under section 16 of the Tax Administration Act 1994 ("TAA") are surprisingly wide and in most cases, they are wider than the police and several other Crown agencies who can only search your business premise with your consent or a search warrant. (Please refer to Jack Cheng's recent blog). The power under section 16 of TAA is in general a warrantless power of entry. The Commissioner, or any authorised IR officer, when considered necessary or relevant for the purpose of collecting any tax or carrying out any lawful function conferred on the Commissioner, has the right to:

- Arrive unannounced and access the business premise fully and freely;
- Access documents, make copies of them and take them away from the premise (consent or warrant must be obtained in order to remove documents);
- Access your computer and remove computer hard drives if required;
- Bring locksmiths to unlock the keys and enter into the premise even you're not there;
- Request assistance from police and immigration to assist in the search process; and
- Interview your staff about the business at the premise without you supervision.

These search and seizure powers are not used very often. Generally, the powers will be exercised when in the Commissioner's opinion other means of obtaining information are inappropriate or inadequate. However, it is not necessary that the Commissioner has to use other information gathering powers before they exercise section 16 search powers. It is accepted that section 16 search powers are very effective and can provide considerable useful material for Inland Revenue in connection with some particular industries, such as restaurants and cafes.

IRD officers will apply best practice in using the search powers to ensure compliance with New Zealand Bill of Rights Act 1990. You must co-operate with reasonable requests such as giving keys to the cash drawer and providing computer passwords. You must assist by answering all proper questions. Contact your lawyer as soon as IR officers arrive and do not try to obstruct, protest or destroy documents as you may end up being liable for prosecution. The penalties for such offences range from fines to sentences of imprisonment.

These powers are granted to the Commissioner to enable her to carry out her statutory duties. These duties include those set out in sections 6 and 6A, to protect the integrity of the tax system and to collect over time the highest net revenue practicable within the law, having regard to the Commissioner's resources, the importance of promoting compliance and the compliance costs incurred by taxpayers.

QCL Tax team:

Just had an unexpected visit by IRD? Feel frustrated about the situation? Just been called in for the first interview? Talk to us, we will explain to you about your options and help you to go through this process.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.

About the author

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