Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill

Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill

Volume 2

Simplifying filing requirements for individuals

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Policy matters

SIMPLIFYING FILING REQUIREMENTS FOR INDIVIDUALS

Overview

The bill contains a number of amendments which deal with income tax and Working for Families tax credit return-filing requirements for individuals. The purpose of the changes is to reduce the use of paper forms in administering the tax system, instead moving towards greater use of online services and technology. The effect should be an overall reduction in compliance costs for taxpayers and greater operational efficiencies for Inland Revenue.

Under the current rules, income filing obligations for individuals fall into two broad groups. The first group is those taxpayers who are required to file income tax returns. It includes those who earn income that is not taxed at source, such as business income and investment rental income, those who receive income that has been taxed at source such as salary or wages but at an incorrect withholding rate, and those that are entitled to Working for Families tax credits. The second group is those taxpayers who are not required to file a tax return but may choose to do so. It includes those who have earned income subject to tax at source such as salary or wages that has been withheld at the correct rate.

Depending on the nature of the income earned, a person files either an IR 3 income tax return or is issued an income statement (also known as a personal tax summary (PTS)). Inland Revenue either issues a PTS or the taxpayer requests one. Taxpayers whose income comprises mainly salary or wages and resident withholding income (such as interest and dividends) may receive a PTS.

The bill provides for:

- The removal of the requirement for the Commissioner to issue PTSs to certain taxpayers. These taxpayers will now be required to file tax returns. This proposal will remove the distinction between the two major income tax forms for individuals and effectively result in their amalgamation.
- The requirement for taxpayers who are not required to file tax returns, but who choose to do so anyway, to file for the previous four years, in addition to the year in which they have chosen to file. This is to prevent taxpayers filing only in the years that they are due refunds (known as "cherry picking").
- The de-coupling of the requirement for a taxpayer to file an income tax return or receive a PTS merely because they receive Working for Families tax credits.

These proposals will apply for the 2014–15 and later tax years.

Implementation of these proposals will be supported by an Inland Revenue-driven strategy aimed at moving taxpayers to electronic services.

As noted in the Minister of Revenue's letter of 20 March 2012 to the Committee, Inland Revenue officials have been reconsidering whether these proposals could be implemented in a manner that is less resource- and system-reliant. Inland Revenue's systems are currently under significant pressure and the resourcing of systems changes is constrained. Not proceeding with the "amalgamation" of the individual tax forms proposal will allow a less resource- and system-reliant solution to be implemented while still achieving the policy outcomes being sought.

In addition, given that Inland Revenue has a number of significant policy initiatives to implement in the coming years, such as the student loan redesign, child support changes and developing its Business Transformation blueprint and future operating model, deferring the implementation date of the other return filing proposals would provide some flexibility for the Department. This will enable the implementation of these proposals to be integrated with Inland Revenue's Business Transformation programme and new operating model.

Issue: Amalgamating the income tax forms

Submission
(Matter raised by officials)

The proposal to amalgamate the two main income tax forms for individuals (the IR 3 and the PTS forms) should be removed from the bill.

Comment

As previously indicated, Inland Revenue officials have been reconsidering how this suite of proposals contained in the bill could be implemented in a way that is less resource- and system-reliant. Not proceeding with the income tax form amalgamation proposal would allow a less resource- and system-reliant solution to be implemented. The amalgamation proposal would have given rise to administrative benefits and savings which are separately being realised as part of the implementation of Inland Revenue's e-service strategy. Removing the amalgamation proposal from the bill would not have any impact on the fiscal savings from this suite of proposals.

The result will be that the two paper forms, the IR 3 and the PTS, will continue to be used according to current practice. However, in the e-services environment, the distinction will become less apparent as the environment being created will be a more taxpayer-centered return.

The practical effect of this submission is that provisions relating to the issue and administration of PTSs will continue to apply. The amendments in the bill proposing to repeal these provisions in the Tax Administration Act 1994 and the Income Tax Act 2007 will therefore be removed.

Recommendation

That the submission be accepted.

Submission

(KPMG)

The current system of different tax return forms creates confusion among taxpayers over which form they must file, and a rationalisation of these forms is a welcome change. However, it is important that the replacement form is clear, simple to complete and requires minimal compliance costs. The forms should include as much pre-populated information as possible. Although supportive of the return being web-based, there should be accommodation for those taxpayers unable to or uncomfortable with filing online, and assistance and education should be offered.

Comment

Officials agree with the tenor of the submission.

However, given that officials are recommending not to proceed with the proposal to amalgamate the income tax forms for individuals, there will continue to be different tax forms for individuals. While the intention is to move individuals to online filing, a paper alternative will continue to be available.

Recommendation

That the submission be noted.

Issue: There should be a consistent filing requirement for all recipients of Working for Families tax credits

Submission

(KPMG)

Since some Working for Families tax credit recipients will still be required to file income tax returns, it would be simpler to have a consistent filing requirement for all recipients of the credits. There is concern that a new process will add to the information filing requirements of this group, when instead the process should be further simplified. The Committee should therefore test with officials the rationale for a new information collection process for family assistance recipients, rather than a simplification of an existing or proposed return process.

Comment

The basis of the proposal in the bill is that the need for a person to determine their annual income tax liability is not required to assess a taxpayer's entitlement to Working for Families tax credits. What is actually needed to assess entitlement is their income information, not their annual income tax liability. This has become more relevant since the definition of "income" for Working for Families was broadened to include information that is not typically included in an income tax return.

The proposal to remove the income tax filing requirement will not add additional filing requirements for any taxpayers, and will reduce the compliance cost of this activity for approximately 75 percent of Working for Families recipients. The remaining recipients will be required to file for reasons other than their entitlement to the tax credits. All recipients will still be required to undertake a year-end "square-up" of the tax credits and income they have actually received, as per the current process. This is necessary to ensure that people received their correct entitlement.

Officials do not consider that a general income tax filing requirement is necessary for these taxpayers. In addition, the proposal as it currently stands should significantly decrease the compliance costs placed upon this group. Those Working for Families recipients who are not required to file a return can still choose to file one.

Recommendation

That the submission be declined.

Issue: Reducing compliance costs and making use of smart technology

Submission
(New Zealand Institute of Chartered Accountants)

The proposed changes in the bill fail to deliver any material compliance cost savings to businesses. The initiative to develop and make better use of smart technology as outlined in the discussion document and online forum *Making tax easier* is progressing at glacial pace. Reform is needed with respect to the way in which small businesses calculate and pay their income tax and calculate and account for PAYE, such as making certain types of source-deducted income (income subject to RWT, scheduler payments and royalties for example) subject to a final tax. People who receive income that is subject to source deductions and who also receive social assistance should have their tax liability decided by source deductions.

Comment

The changes in the bill that relate to PAYE are, for the main part, aimed at reducing compliance costs for individuals.

Options to progress Inland Revenue's use of electronic technologies as the main form of service delivery were outlined in *Making tax easier*. Many of the submissions noted concern at mandating electronic services, arguing that this form of service delivery may not be suitable for some taxpayers who are uncomfortable about using computers and technology, and who may not have access to the necessary tools in order to comply. The proposals in the bill therefore aim to strike a balance between these concerns, and the need for Inland Revenue to deliver better and smarter services, with greater use of smart technology.

In considering the submission on making certain source-deducted income subject to a final tax, officials note that a variant of this was outlined in *Making tax easier*. The proposal in the discussion document was that taxpayers in steady employment for 11 or more months of the year who derive the bulk of their income from salary and wages should have their PAYE deductions treated as "full and final" and so should be unable to file an income tax return. The submissions received on this point were, for the most part, in strong disagreement with it. Submitters argued that taxpayers have a right to seek any over-deductions of income, particularly given the potential for this. However, as PAYE withholding becomes more accurate, there may be a case for revisiting this proposal.

Recommendation

That the submission be noted.

Issue: Unique identifying numbers for individuals

Submission
(New Zealand Institute of Chartered Accountants)

All taxpayers should have a single unique identifying number for dealing with government.

Comment

The Government recently announced as part of its Better Public Services programme two result areas that relate to improving interaction with government. These result areas are:

- New Zealand businesses have a one-stop online shop for all government advice and support they need to run and grow their business; and
- New Zealanders can complete their transactions with the Government easily in a digital environment.

A single business identifier is likely to be considered as part of this work.

Recommendation

That the submission be noted.

REQUIRING TAXPAYERS WHO ELECT TO FILE TAX RETURNS TO FILE ACROSS THE PREVIOUS FOUR YEARS

Issue: The four-year filing rule should not proceed

Submission
(KPMG)

Although there is asymmetry from being able to file for a refund while not being required to file when tax is owed, the result is a fiscal risk to the Government and a foreseeable consequence of the filing reforms of the late 1990s that removed the requirement to file for the majority of taxpayers. Since tax withholding systems collect, on average, the right amount of tax, no further square-up should be required. Requiring taxpayers to file over four additional years will add to compliance and administrative costs, and could be viewed as an attempt by Inland Revenue to restrict access to refunds.

Comment

The reforms of the 1990s did not anticipate the practice of "cherry picking" refunds and the extent to which it occurs. The rate at which personal tax summaries are requested by taxpayers has increased very significantly in recent years. Approximately 200,000 personal tax summaries were requested over a period of five years up to 2008; by 2010 this number was reached in the space of seven months. There has also been a corresponding increase in the rate and quantity of refunds issued over the same period. It is appropriate to address the inequity with the returns filing system that the practice of "cherry picking" has demonstrated.

Officials consider that requiring taxpayers who elect to file tax returns across the previous four years does not place an unreasonable compliance burden upon this group. This is because most of this group already either currently files for the four years, or at a minimum, completes the initial steps to determine whether they are due a refund or have tax to pay. The main difference is that they decline to complete income tax filing for those years when they have tax to pay. Therefore, the proposal does not materially increase the compliance burden of income tax filing relative to the tax filing activities that they currently perform.

Despite the small increase in compliance costs at the margin, this change is necessary to prevent the significant loss in Crown revenue that occurs under the current rules.

Recommendation

That the submission be declined.

Issue: The length of the four-year rule

Submission
(Corporate Taxpayers Group)

Although cognisant of the problem of "cherry picking" refunds, the proposed four-year rule is confusing and places a high compliance burden upon taxpayers as it will require them to search back through their records from the previous four years. This is not justified for taxpayers who for legitimate reasons may be required to file. The reforms will increase taxpayer interactions with Inland Revenue due to their complexity. A two-year retrospective filing requirement is more suitable than the proposed four-year period.

Comment

Officials consider that the proposed four-year filing requirement is not substantially more confusing or compliance-heavy than the status quo. Taxpayers routinely check across the previous four years to identify those years in which they are due a refund and filing for these years is a small extension to this process.

The proposal will not apply to taxpayers who are, for whatever reason, required to file an income tax return. The four-year filing requirement will only apply to taxpayers who choose to file a tax return. It allows taxpayers who are not otherwise required to file to choose between low compliance costs, or accuracy of income tax paid.

Four years is the current cut-off point for filing personal tax summaries retrospectively. Changing the rule to a two-year retrospective filing requirement is arbitrary and does not align with the existing filing framework. It would also fail to fully address the problem of "cherry picking", unless there was a subsequent policy change to restrict retrospective filing to the previous two years, which would limit taxpayers' access to claiming refunds in those additional back years. It should also be noted that taxpayers will still be entitled to view the salary and wage information that Inland Revenue holds about them, and subsequently make a decision regarding filing based on their net position.

Recommendation

That the submission be declined.

Issue: Refinements to the proposal

Submission
(New Zealand Institute of Chartered Accountants)

While broadly in support of the proposal, source-deduction information should be easily obtainable from Inland Revenue, and no late filing penalties should apply in respect of tax returns for prior years filed by taxpayers who had no obligation to file.

Comment

Individuals are currently able to obtain from Inland Revenue information that it holds on source deductions that have been made from their salary or wage income.

Officials agree that as a matter of policy, late filing penalties should not apply to individuals who choose to file but otherwise would not have been required to do so. Under current law, late filing penalties do not apply to persons whose filing obligations are governed by section 33A of the Tax Administration Act 1994.

Recommendation

That the submission be noted.

Issue: Commissioner's discretion with respect to the four-year filing rule

Submission
(New Zealand Institute of Chartered Accountants)

Taxpayers who choose to file an income tax return should be entitled, on application to the Commissioner, to have the four-year filing requirement disregarded, due to the complexity of the rules and potential for taxpayers to erroneously expect a refund as a result of filing.

Comment

Officials do not consider this discretion to be necessary, as taxpayers have access to the salary and wage source deduction information that Inland Revenue holds about them and can do the necessary calculations to determine whether they are due a refund or instead have tax to pay before they file any returns. Inland Revenue provides online calculators and information to assist with this.

Providing a discretion would be difficult to administer, as it would require the Commissioner to make an objective assessment about whether the taxpayer had filed in error or not. It would also potentially increase the number of contacts with Inland Revenue, and require manual interventions to Inland Revenue's IT systems.

Recommendation

That the submission be declined.

Issue: Excluding certain taxpayers from the application of the four-year rule

Submission
(New Zealand Institute of Chartered Accountants)

Taxpayers who do not work a full tax year and who are due a tax refund should be excluded from the four-year filing requirement.

Comment

Individuals who do not work a full tax year are likely to have their income over-deducted and therefore be due a refund of PAYE withholdings. This is because the PAYE system calculates the PAYE for a pay-period as if the person will earn that pay-period amount for the full year. Individuals for whom this could apply include people who go on parental leave, and retirees in the year in which they cease employment.

However, excluding these taxpayers from the application of the four-year filing requirement would be difficult to administer, as it would substantially increase contacts with Inland Revenue and require, in particular, manual interventions to Inland Revenue's systems. It also raises the question of whether other taxpayers who are over-deducted for other reasons should be excluded from the coverage of the four-year filing rule, such as taxpayers who receive a pay increase.

One option for addressing this concern is to set a level above which refunds could be paid out for a particular year, without requiring the taxpayer to file for the previous four years. This would go some way in addressing the potential for large over-deductions caused by a period of unemployment during a tax year. It also raises the same equity issues mentioned above in relation to other types of over-deductions, and has similar operational issues.

The potential impact from applying the four-year rule to taxpayers who do not work for part of the year is that they pay the correct amount of income tax. In that sense, they are not disadvantaged relative to what should have been withheld from their income.

Finally, the notion that taxpayers unfamiliar with filing returns will suddenly be required to file for a number of years in order to receive a tax refund for the current year is not a significant concern. Most taxpayers will currently check for refunds in all previous years, choosing not to finish the process for years when tax is payable. There is also a very active industry built around firms completing this process on behalf of taxpayers should they not wish to undertake it themselves.

Recommendation

That the submission be declined.

Issue: Improving the drafting of proposed new section 33AA of the Tax Administration Act 1994

Submission
(New Zealand Institute of Chartered Accountants, Matter raised by officials)

Although the proposed new section 33AA of the Tax Administration Act 1994 is an improvement on the existing section 33A (that it purports to replace), improvements could be made to make it easier to understand. *(New Zealand Institute of Chartered Accountants)*

The drafting improvements included in the new section 33AA should be incorporated into the legislation given that current rules relating to the issuing of personal tax summaries will remain in place. *(Matter raised by officials)*

Comment

Filing requirements for individuals begin with the principle outlined in section 33 of the Tax Administration Act, which states that all taxpayers, other than those to whom section 33A applies, are required to file. Section 33A and its redrafted version then goes on to outline which taxpayers do not have to file. As a consequence of the initial broad statement requiring all taxpayers to file, new section 33AA is framed negatively. Although this drafting can appear unintuitive, it is highly important that the initial principle be framed as broadly as possible, in order to apply generally.

One of the consequences of not proceeding with the amalgamation of the income tax forms for individuals is that the provisions relating to issuing of personal tax summaries will remain in place. Officials consider that the improvements in drafting made in the new proposed section 33AA should be retained in the bill.

Recommendation

That the submission from NZICA be noted and the officials' submission be accepted.

Issue: Updating the income threshold within new section 33AA

Submission
(New Zealand Institute of Chartered Accountants)

The income level of $200 used in new section 33AA (and the current section 33A) of the Tax Administration Act 1994 should be updated to a higher level, between $500 and $1,000.

Comment

The $200 income level referred to in this submission is the level of income used generally within the provision to provide the tipping point under which an acceptable level of error can occur before a taxpayer will be required to file an income tax return. An example of this is in relation to taxpayers who earn income that is subject to resident withholding tax. If a taxpayer earns more than $200 of this type of income and this income is taxed at a rate other than their marginal rate, they will be required to file a return.

The policy changes in the bill do not extend to a reconsideration of these income levels. Furthermore, any increase in these will have a fiscal cost.

Recommendation

That the submission be declined.

Issue: Links between the PIR rules and the return filing rules

Submission
(New Zealand Institute of Chartered Accountants)

The links between the portfolio investment rate (PIR) rules and the return filing rules should be clarified. Portfolio investment entity (PIE) income that is not excluded income is taxable income and should be returned. However, there is no equivalent $200 income threshold as exists for other types of income such as income subject to resident withholding tax (RWT).

Comment

It is intended that PIE income that is not excluded income is covered by the general $200 threshold in new section 33AA(1)(a)(ii) for income that is not subject to withholding.

Recommendation

That the submission be declined.

Issue: The redundancy tax credit

Submission
(New Zealand Institute of Chartered Accountants)

The redundancy tax credit or similar relief should be extended to cover loss of earning payments made by the Accident Compensation Corporation (ACC) that relate to prior or multiple years.

Comment

The policy changes in this bill do not extend to consideration of the redundancy tax credit. The redundancy tax credit was repealed recently with effect from 1 October 2011.

However, the issue with payments of this kind is that despite the fact that they may relate to prior years, they are taxed in the year in which they are received, and may be taxed at a higher marginal rate than they would have if the income had actually been received in the year(s) to which it relates. This is because these taxpayers are typically cash-basis taxpayers, and so are taxed on their income at the time they receive it. The tax treatment of ACC back-dated compensation is the same as that for other lump sum payments, such as bonuses and long service leave.

Recommendation

That the submission be declined.

Issue: Applying the four-year rule

Submission
(Matter raised by officials)

Under the current drafting of the four-year rule, it is possible that taxpayers could choose to file for one of the previous years in which they are due a refund, and have the four-year rule apply from that year.

For example: It is now July 2020 and Sarah is aware she has a credit of $100 for the 2018 year, but a debit in the 2019 and 2020 tax years.

2020	2019	2018	2017	2016
(10)	(50)	100	20	10

Sarah chooses to file for the 2018 tax year. The four-year rule is triggered and she also has to file for 2017 and 2016, but no further back because of the statute bar.

Comment

The policy intent of the four-year rule is that the relevant four-year period should start from the most recently ended tax year.

The scenario outlined in the example above would be inconsistent with the policy intent. Officials therefore recommend that the four-year rule be clarified to apply from the most recently ended tax year and not from the year for which the taxpayer is choosing to file. So, in the example, if Sarah wanted in 2020 to square up for 2018, she would need to file for 2020, 2019, 2018, 2017 and 2016.

Recommendation

That the submission be accepted.

Issue: Application of late payment penalties and interest

Submission
(New Zealand Institute of Chartered Accountants, Matter raised by officials)

Late payment penalties and use-of-money interest should not be imposed on tax debts that arise from the requirement to file returns for the previous four years. People should be given a new due date for such debts and late payment penalties and use-of-money interest should apply from that date if payment is not made.

Comment

Late payment penalties and use-of-money interest typically apply when a taxpayer does not pay their tax by the due date for a particular tax year.

Under the proposals in the bill, taxpayers who file for a previous year (due to the operation of the four-year rule) and have a debit, would be subject to late payment penalties and use-of-money interest from the original date that the debit would have been due, had the taxpayer been required to file a return.

Officials consider this would be unfair. To apply penalties and interest to amounts arising from tax years when taxpayers were not required to file would effectively undermine the principles underlying section 33A and the proposed section 33AA of the Tax Administration Act 1994. To avoid penalties and interest applying, a new due date for payment will need to be set. If payment does not occur by this date, late payment penalties and use-of-money interest will apply from that date.

Recommendation

That the submission be accepted.

Issue: Offset of credits and debits within four-year period

Submission
(Matter raised by officials)

Any credits and debits that arise during the four-year square-up period should be able to be offset against each other.

Comment

Under the current tax rules, an income tax refund due for an income year may be offset against any income tax owing from previous income years (that is, tax unpaid after the due date for payment). However, to ensure that taxpayers are not subject to late payment penalties and use-of-money interest for returns required to be filed as part of the four-year square-up rule, a new due date will be set (see above submission).

The effect of this will mean that any credits will not be able to be offset against a debit as the debt is not due. The result will be that any refunds will be paid to the taxpayer and tax owing will be payable by the due date. The following example demonstrates this outcome:

Sarah is not required to file returns and chooses to file for the 2020 year. As a result she is issued PTSs for the 2016 to 2019 tax years.

2020	2019	2018	2017	2016
100 – refund	50 – refund	(60) – tax to pay	20 – refund	(50) – tax to pay

Sarah would be paid refunds totalling $170 and be liable to pay tax of $110 by the new due date (two months after issue of statements).

For administrative ease and to prevent the non-payment of any tax due, officials recommend that any credits and debits arising as a result of the application of the four-year square-up rule be able to be offset against each other. That is, any debit for a year should be treated as being due from its original due date for the purpose of offsetting it against any refund due.

Recommendation

That the submission be accepted.

DEFERRING THE APPLICATION DATE

Submission
(Matter raised by officials)

The application date of the 2014–15 tax year should be deferred until the 2016–17 tax year, and the application date should be able to be set earlier by an Order in Council.

Comment

As noted previously, Inland Revenue is under significant resourcing pressure to implement a number of policy changes, such as student loan redesign, child support and the proposals in this bill over the short- to medium-term. Furthermore, the Department is in the process of developing its Business Transformation blueprint and its future operating model. This will lay the foundations for the information technology platforms and business processes it will operate in the future. To provide greater organisational flexibility to implement these proposals, officials propose that the application date be deferred but be able to be set earlier by an Order in Council.

We propose that the application date be deferred by two years to the 2016–17 tax year. Furthermore to provide flexibility, we further propose that the implementation date be able to be set by Order in Council if it was decided to implement the proposals from an earlier tax year.

Recommendation

That the submission be accepted.

ISSUES RAISED BY SPECIALIST TAX ADVISER TO THE COMMITTEE

Issue: Requirement to file a return

Submission

Taxpayers who are not exempt from filing a return or being issued a PTS and who are required by the law to be issued (or request) a PTS may not be aware of their obligations. For example, a person who earns more that $200 of interest or dividends who did not have resident withholding tax deducted at their correct marginal tax rate. Furthermore, this obligation to file applies even when the taxpayer used a higher withholding rate than their marginal tax rate.

If a taxpayer is required to be issued (or request) a PTS and does not fulfil this obligation, the taxpayer may be subject to a late filing penalty and prosecution for failing to provide information to the Commissioner when required to do by a tax rule.

Comment

In practice, Inland Revenue identifies, based on the information it holds, taxpayers who should be issued a PTS. The issue of PTSs by Inland Revenue includes taxpayers who are entitled to Working for Families tax credits, those issued special tax codes and those who earned more than $200 of employment income and used a flat withholding rate (such as the casual agricultural workers' code or an incorrect secondary tax code). Inland Revenue was provided with some legislative flexibility in the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 to manage the issue of PTSs. In particular, it provided the Department with discretion in selecting who should be issued a PTS.

Inland Revenue informs taxpayers of their tax return filing obligations (including the need to request a PTS) in a number of ways. Customer research and feedback shows that just providing the criteria directly to taxpayers in a written format, even on the website, is not effective in supporting compliance. As a result, the "required to file" criteria has been incorporated into two online calculation tools:

- one for taxpayers to determine if they are required to file an IR 3 or request a PTS; and
- the online "Personal Tax Summary" Calculator tool (most popular online tool for end-of-year tax).

These tools are available for the current 2012 tax year and previous years. In mid-2012 Inland Revenue will be launching these services within its secure online services system as this increasingly becomes taxpayers' first point of contact.

Each year Inland Revenue undertakes an advertising campaign to make sure taxpayers are aware of their end-of-year tax obligations and entitlements as well as services available to support those obligations. In 2012 this campaign includes television, online, radio and magazine advertising as well as a text messaging campaign to selected groups. This campaign directs taxpayers to Inland Revenue's online campaign pages at www.ird.govt.nz/tax2012. From this page taxpayers can directly access both the "required to file" and "Personal Tax Summary" calculators for the current year, and links to previous years.

As part of the communication strategy mentioned above, Inland Revenue has an agreement with payers of RWT and NRWT to incorporate key messages to taxpayers on their annual statements or certificates that the taxpayer may be required to file a return and to refer to our website. We also issue communications to key external parties such as tax agents to advise changes to any products or processes. Tax agents can also access the information and services online.

In developing the rules to determine which taxpayers are obliged to file returns or be issued with PTSs, it is important to take into account perceptions of fairness. The current rules are neutral as to whether a person has had tax over- or under-withheld at source. Instead, they focus on the correctness of the rates. If the rules only focussed on placing filing requirements on taxpayers to be issued with PTSs if they were under withheld at source, there could be concern that the filing requirements were biased towards the revenue, despite the fact that a person could choose to file if they were over-withheld. The impact of this would be more pronounced with the implementation of the four-year square-up rule. Officials consider that the current rules strike the appropriate balance.

Under current law, a person to whom section 33A of the Tax Administration Act 1994 applies (and this includes persons who are required to request a PTS) is not liable for the late filing penalty if they do not file or do not file on time. This exclusion will continue to apply given the distinction between IR 3 and PTS filers will continue if, as officials have recommended, the amalgamation of the tax forms does not proceed.

While a taxpayer who is required to request a PTS could be prosecuted for not filing a PTS, it is very unlikely. Prosecution action is usually a last resort to ensure that taxpayers comply with their obligations. Furthermore, prosecuting a person who is due a refund is unlikely to promote voluntary compliance by taxpayers in the broader context. The Commissioner is responsible under sections 6 and 6A of the Tax Administration Act 1994 for protecting the integrity of the tax system and the care and management of the Inland Revenue Acts – including promoting voluntary compliance. Prosecuting such cases would generally not be consistent with this statutory responsibility. Officials are not aware of any person being prosecuted for not requesting a PTS.

Recommendation

That the submission be noted.

Issue: Tax records being available to meet filing obligations

Submission

A taxpayer who is subject to the four-year square-up rule may not hold or have access to sufficient income and tax records to meet their filing obligations. A consequence of not being able to file a correct return could be prosecution for knowingly filing an incorrect return. This could lead to prosecution and the imposition of a fine by the courts.

Comment

As noted in the Committee's specialist tax adviser's report, a person to whom section 33A applies is only required to retain tax records relating to income that has been deducted at source for 12 months after the expiry of the tax year to which they relate. Officials do not consider it is appropriate to extend the record-keeping requirements for such taxpayers to deal with the four-year square-up.

Inland Revenue receives salary or wage information from employers and interest and dividend information from payers of resident withholding income. All this information is input into Inland Revenue's computer system. Any salary or wage income and tax withheld details are pre-populated in a PTS issued (or requested). Inland Revenue's systems cannot currently pre-populate interest and dividend information held. Furthermore, as only one IRD number is provided to payers of interest and dividends the allocation of income from joint bank accounts is problematic. If a taxpayer requests details of their resident withholding income, Inland Revenue has the ability to access and provide this information.

In addition, a taxpayer can access the resident withholding income information from the payer of the income. From discussions with one bank, they would charge a small service fee for providing this information. This expenditure would be deductible for tax purposes as a cost in determining their tax liability.

Furthermore, the current provisions relating to PTSs allow a person to ignore including in the return gross income from employment, interest or dividends if that amount is $200 or less. This provision will continue to apply if the amalgamation of returns proposal does not proceed.

For the reasons noted above, it is very unlikely that the Department would prosecute a person who is required to file a PTS for filing an incorrect return.

Recommendation

That the submission be noted.

Issue: Circumvention of the four-year square-up rule

Submission

It is easy for a person to circumvent the four-year square-up rule by ensuring that for a particular year that they think they are entitled to a refund they ensure that they are required to file a PTS. For example, using an incorrect RWT rate if the person receives interest over $200.

Comment

Officials acknowledge this risk but consider that the risk is quite low. Of those taxpayers who requested a PTS for the 2009–10 tax year, approximately 7 percent of them returned interest and dividends. Officials intend to monitor this risk.

Recommendation

That the submission be noted.

Other policy matters

SHAREHOLDER DIVIDEND STATEMENTS AND MĀORI AUTHORITY DISTRIBUTION NOTICES

Submission
(Chapman Tripp)

Companies must provide dividend statements to shareholders when they pay a dividend. The Electronic Transactions Act 2002 allows companies to meet this requirement by emailing statements to their shareholders. This should also be made explicit in the Tax Administration Act 1994.

Comment

Officials understand that the Electronic Transactions Act allows companies to meet the requirement to provide dividend statements to shareholders by making the statement available electronically to their shareholders (as long as the recipient consents to receiving the statement in that way).

Officials agree that this should be made explicit in the Tax Administration Act 1994 for legislative consistency and ease of use.

Officials note that the Electronic Transactions Act also permits Māori authorities to meet the requirement to provide Māori authority distribution notices by making the notice available electronically to the recipient, when the recipient consents to receiving the notice in that way. This should also be made explicit in the Tax Administration Act.

Recommendation

That the submission be accepted, and also extended to Māori authorities.