

Targeting serious crime

*A government discussion document about the sharing
of tax information to prevent serious crime*

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CHAPTER 1

Introduction

Overview

- 1.1 Inland Revenue currently provides resources and expertise to certain enforcement agencies to help detect and prevent organised crime. However, taxpayer secrecy rules currently prevent Inland Revenue from sharing information with other enforcement agencies.
- 1.2 One of the aims of the Government's Better Public Services reforms is to ensure the public sector undertakes a more collaborative, cross-agency approach to supporting citizens and gaining efficiencies. The Prime Minister recently set 10 challenging results for the public sector to achieve over the next three to five years.¹ Two areas of focus relate to reducing crime rates and reoffending.
- 1.3 Making better use of information and information-sharing between government agencies has been identified as one means of gaining greater efficiencies and improved outcomes from the public sector. Improved information-sharing between Inland Revenue and other enforcement agencies has been identified as a means to both improve cross-agency collaboration and contribute to the Government's goals of reducing crime.
- 1.4 Building on recent reforms to Inland Revenue's secrecy rules, the Government has considered the possibility of an increased role for Inland Revenue in sharing information with enforcement agencies. This discussion document proposes that Inland Revenue may share information with other enforcement agencies where it might be an advantage in dealing with serious offences.
- 1.5 Expanding the information Inland Revenue shares with other government agencies is not without risk. The Government recognises that confidentiality is an important aspect of taxpayers' comfort when providing information to Inland Revenue. There is also a risk of Inland Revenue being distracted from its core tax role. The Government is therefore only considering information-sharing when the benefits to society from such sharing are clear. For the purposes of this round of consultation, that means limiting information-sharing for law enforcement to cases of serious offences. Further information-sharing proposals are likely to be considered.

¹ The Prime Minister's Results for New Zealanders, released on 15 March 2012, http://www.beehive.govt.nz/sites/all/files/The_Prime_Minister's_results_for_New_Zealanders.pdf

- 1.6 The Government takes very seriously the need for agencies to protect taxpayers' privacy and secrecy. Therefore strict processes would be required for any increased information-sharing. Inland Revenue has many years' experience in successfully exchanging sensitive information with New Zealand's international tax treaty partners and these processes offer a model (which is highly regarded internationally) for domestic exchange of information on serious offence.

Purpose of this discussion document

- 1.7 The Government believes the proposals set out in this document will provide benefits to society. However, it also understands that trust in government use of information is crucial. The Government therefore wishes to canvass public opinion and ensure that any sharing of information follows a process that is acceptable to the public.
- 1.8 Your views on the advantages and disadvantages of this proposal and, if sharing does take place, when and what controls should be in place are welcomed.
- 1.9 To support consideration of the proposals, Inland Revenue commissioned research to help inform its advice to Government. The research was designed to obtain the views of a number of stakeholder groups regarding the use of Inland Revenue information to assist law enforcement agencies. An advisory group, comprising representatives from the Ministry of Justice, New Zealand Police, the Office of the Privacy Commissioner, Victoria University of Wellington and Inland Revenue, oversaw this research project.
- 1.10 A summary of the research findings is included in Chapter 3 of this discussion document. The full research results can be found at www.taxpolicy.ird.govt.nz

Summary of proposals

- 1.11 The Government proposes allowing Inland Revenue to share information with other enforcement agencies:
- when the offence is committed by an individual and is punishable by imprisonment of four years or more; or if a similarly serious offence is committed by a body corporate which would be punishable by imprisonment of four years or more if it had been committed by an individual;
 - when there are reasonable grounds for the agency identifying the possible offence to suspect that a serious offence has been committed, is being committed, or will be committed;
 - when there are reasonable grounds for Inland Revenue to suspect the information it has is relevant to the prevention, detection or investigation of, or is evidence of, a serious offence that has been committed, is being committed, or will be committed; and

- when Inland Revenue is satisfied that:
 - the information is readily available within Inland Revenue;
 - it is reasonable and practicable to communicate the information; and
 - it is in the public interest to communicate the information.

How to make a submission

1.12 The Government invites submissions on the proposals in this discussion document.

1.13 Submissions should include a brief summary of major points and recommendations. They should also indicate whether it would be acceptable for officials from Inland Revenue, the Ministry of Justice and New Zealand Police to contact you about your submission to discuss the points raised.

1.14 Submissions should be made by 21 May 2013 and be addressed to:

Sharing Inland Revenue information to support law enforcement
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140

Or email: targetingseriouscrime@ird.govt.nz

Readers may also wish to access the online forum: <http://targetingseriouscrime.ird.govt.nz> which has been launched in tandem with this discussion document.

1.15 Submissions may be the source of a request under the Official Information Act 1982, which may result in their publication. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with that Act. If you think any part of your submission should properly be withheld under the Act, you should indicate this clearly.

CHAPTER 2

Background

In addition to assessors and officers being sworn to secrecy, other precautions are taken to protect the taxable value of a man's property becoming known.

Clutha Leader, Volume VI, Issue 343, 7 May 1880, Page 3

- 2.1 The effective administration of the New Zealand tax system relies on the voluntary compliance of taxpayers. Critical to this compliance is taxpayers having trust in Inland Revenue that taxpayers' information will not be disclosed inappropriately. However, to operate the tax system efficiently, Inland Revenue sometimes needs to disclose information to taxpayers and third parties when it is reasonable to do so. An appropriate balance is needed in situations when these principles are inconsistent.
- 2.2 Provisions protecting taxpayer confidentiality have been in place for over 130 years, since the introduction of the Property Assessment Act 1879. The Court of Appeal has said that the tax system *...rests on the assurance provided by stringent official secrecy provisions that the tax affairs of taxpayers are solely the concern of the Revenue and the taxpayers and will not be used to embarrass or prejudice them.*²
- 2.3 Today, the current secrecy rules in section 81 of the Tax Administration Act 1994, continue to provide a strict rule of taxpayer secrecy. They provide that, as a general starting point, Inland Revenue officers must maintain (and assist in maintaining) the secrecy of all matters relating to various tax Acts administered by the Commissioner of Inland Revenue. Further, section 6 of the Tax Administration Act states that taxpayer confidentiality forms a key part of the integrity of the tax system.
- 2.4 At the same time, the Tax Administration Act recognises that the duty to maintain secrecy cannot be absolute and so there is a list of targeted exceptions to the general secrecy rule. There is also a general exception which provides that disclosure is permitted if it is for the purpose of carrying into effect the Inland Revenue Acts and certain other tax-related legislation.
- 2.5 The first specific statutory exception to tax secrecy was introduced in 1946, in relation to international double taxation agreements.³ The Inland Revenue Department Act 1974 contained further statutory exceptions, including permitting sharing with the then Department of Statistics.⁴

² *Knight v Barnett* (1991) 13 NZTC 8014 (CA) at 8,016.

³ Land and Income Tax Assessment Amendment Act 1946, section 5(5).

⁴ Inland Revenue Department Act 1974 section 13(4).

- 2.6 For most government agencies, the Privacy Act 1993 regulates information-sharing between agencies. The Privacy Act contains an express exception to principle 11 (which prevents disclosure) permitting disclosures made in order to “avoid prejudice to the maintenance of the law”. However Inland Revenue is subject to additional statutory secrecy requirements, and therefore the Privacy Act “maintenance of the law” exception does not apply.

Example scenario: GST refund audit resulting in identification of possible investor fraud

In an investigation of a GST refund it becomes apparent that a taxpayer is lending funds on aggressively structured terms to high-risk borrowers at artificially ramped-up prices. Investors therefore have a false view of the profitability of the company.

Under the current rules, Inland Revenue cannot share this information. Under the proposed rules, Inland Revenue would be able to provide information on the transaction, and associated parties to the transaction, to the Police and the Financial Markets Authority on the basis of there being reasonable grounds to suspect a fraud is being committed.

Current exchanges of Inland Revenue information

- 2.7 While the general rule regarding taxpayer information is one of strict secrecy, there are a number of targeted exceptions to this rule. In relation to these targeted exceptions, Inland Revenue currently has information-sharing agreements with more than 20 other government departments.
- 2.8 Under these agreements, Inland Revenue can provide information to agencies such as:
- the Accident Compensation Corporation, to identify ACC levy payers, and to calculate and collect premiums and residual claims levies;
 - the Ministry of Social Development, to help the Ministry identify people who qualify for a community services card, identify benefit overpayments, and locate debtors and recover benefit overpayments;
 - the Department of Internal Affairs, to assist in its role of administering charities;
 - the Ministry of Business, Innovation and Employment (Labour), to verify entitlement to parental leave payments;
 - the New Zealand Customs Service, to ensure interest is applied correctly to the student loans of New Zealand and overseas-based borrowers, and to help locate and contact child support defaulters;
 - the Ministry of Justice, to enable it to locate people with outstanding fines and enforce payment; and
 - Statistics New Zealand, for statistical purposes.

- 2.9 Information can be matched for verification of various entitlements of private individuals or for statistical purposes.
- 2.10 There are currently no provisions in the Tax Administration Act, nor any agreements in place, that permit information to be shared or provided in relation to serious offences. There is no law presently allowing Inland Revenue to make agreements generally in relation to serious crimes. As noted, the “maintenance of the law” exception to principle 11 in the Privacy Act 1993, which allows other agencies to disclose information regarding criminal offending, is not available to Inland Revenue. There is provision for sharing with the New Zealand Police in relation to action taken by the New Zealand Police under section 98(1) of the Criminal Proceeds (Recovery) Act 2009. This is however, a highly specified and limited information-sharing provision, relating to actions to recover criminal assets.
- 2.11 In August 2011, the Ministry of Justice released a paper, *Strengthening New Zealand’s resistance to organised crime, an all-of-government response*, which identified the need for improved domestic and international information-sharing, legal assistance and coordination.
- 2.12 While Inland Revenue participates in cross-agency prevention and detection of organised crime, it is unable to share taxpayer-specific information with other participant agencies under the current legislation. Inland Revenue’s role as participant in these situations is limited to sharing general technical expertise on matters such as company structuring or legal issues.

Example scenario: Providing wage and salary information to support investigation of immigration crime

Labour and immigration investigators at the Ministry of Business, Innovation and Employment begin an investigation into individuals suspected of people trafficking. This involves foreign nationals being brought into New Zealand under false pretences to work illegally for New Zealand employers in conditions that fall well short of minimum labour standards.

Under the proposed rules, provided an applicable memorandum of understanding was in place, the Ministry of Business, Innovation and Employment could request relevant wage and salary information held by Inland Revenue. This could provide crucial evidence to disprove the validity of employment agreements signed and statements made by the employers to conceal the offending.

Australian position on sharing information to combat serious offences

- 2.13 In Australia, legislation passed in 2010 allows information held by the Australian Tax Office to be disclosed to specified law enforcement agencies to combat serious offences (defined as offences that carry a sentence of more than 12 months and can be tried by jury).⁵ Information can also be disclosed to taskforces and Royal Commissions. Previously, the Australian position was to allow information to be disclosed to law enforcement agencies, but this information could not be used for the prosecution of offences. This restriction has now been removed.
- 2.14 According to Australian officials, the most common circumstance in which information is provided under the Australian provision is following a request by an enforcement agency (rather than proactive sharing by the Australian Taxation Office).
- 2.15 The Australian legislation also governs the use of information once it has been disclosed to a law enforcement agency and sets out penalties for misuse of the information. Disclosure is permitted to authorised law enforcement agency officers when the disclosure is for the purpose of:
- investigating a serious offence;
 - enforcing a law, the contravention of which is a serious offence; or
 - making, proposed or possible making, of a “proceeds of crime” order.
- 2.16 Disclosures are also permitted to:
- an authorised Australian Security Intelligence Organisation (ASIO) officer for the purpose of performing ASIO’s function under subsection 17(1) of the Australian Security Intelligence Organisation Act 1979;
 - a Project Wickenby officer, or a court or tribunal when the disclosure is for or in connection with a purpose of the Project Wickenby Taskforce⁶;
 - a taskforce officer of a prescribed taskforce, or a court or tribunal where the disclosure is for, or in connection with a purpose of the prescribed taskforce;
 - a Royal Commission (if the Letters Patent declare that the Royal Commission is one to which disclosure is permitted) where disclosure is for the purpose of the Royal Commission conducting its inquiry;
 - a State or Territory Royal Commission, commission or board of inquiry (if the regulations declare that disclosure is permitted) where disclosure is for the purpose of:
 - investigating a serious offence;

⁵ Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010 (Cth).

⁶ The Project Wickenby Taskforce is a cross-agency taskforce comprising eight Australian federal agencies, including the Australian Taxation Office. The key aims of the Taskforce are to address international tax evasion in the Australian tax system and to deter, detect and disrupt internal tax evasion and money laundering.

- enforcing a law, the contravention of which is a serious offence;
or
- the making, or proposed or possible making, of a “proceeds of crime” order.

2.17 The Australian Project Wickenby Taskforce provides an example of the effectiveness of tax authorities working with other law enforcement agencies. While largely tax fraud-focused, the Taskforce has also achieved significant results in dealing with money laundering and recovering proceeds of crime through inter-agency cooperation and information-sharing. The Taskforce’s activities include intelligence-sharing, tax audits, criminal investigations, prosecutions and education programmes.

International conventions regarding domestic information-sharing

2.18 In response to increasing concerns over money laundering, the Financial Action Taskforce on Money Laundering (FATF) was established by the G-7 Summit held in Paris in 1989. FATF, which includes New Zealand, was given the responsibility of examining money-laundering techniques and trends, reviewing actions which had already been taken at a national or international level, and setting out further measures to combat money laundering.

2.19 In April 1990, FATF issued 40 recommendations which were intended to provide a comprehensive plan of action to fight money laundering. In 2001, a further eight special recommendations in relation to terrorist financing were added. In October 2004 FATF published a ninth special recommendation further strengthening the agreed international standards for combating money laundering and terrorist financing.

2.20 A thorough review of the recommendations was completed in February 2012 with the publication of the revised FATF recommendations. The revised recommendations have been extensively amended for a variety of purposes including: to deal with threats such as financing the proliferation of weapons of mass destruction, to allow a risk-based approach to regulation and compliance; and to place greater emphasis on effectiveness of implementation of the standards.

2.21 The revised recommendations are intended to strengthen global safeguards and protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime. Sharing Inland Revenue information on serious offences would be consistent with the goals of FATF as information sharing is a key aspect of the FATF recommendations.

2.22 New Zealand is also a party to the United Nations Convention against Transnational Organised Crime (UNTOC). This convention requires participant parties to operate within their domestic capability to combat organised crime, and co-operate internationally to protect the international system from exploitation by organised criminal groups and networks.

- 2.23 In addition, New Zealand is a party to other multi-lateral treaties and involved in international forums which set or monitor best practices relevant to combating organised crime – for example, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Asia Pacific Group on Money Laundering, concerned with implementation of the FATF recommendations in the Asia-Pacific region.
- 2.24 The New Zealand model has been identified as out of step with current international practices, which involve a high degree of cooperation between revenue authorities and law enforcement agencies, and use tax information in the detection and prosecution of both tax and non-tax crimes.
- 2.25 The OECD has identified New Zealand as unique in that prosecutions are often carried out directly by agencies such as Inland Revenue, the New Zealand Police or the Serious Fraud Office. The Secretariat has invited comment from New Zealand about what is essentially the tension between inter-agency prosecution co-operation and tax secrecy legislation. This discussion document focuses on that tension.

CHAPTER 3

Public attitudes to information-sharing

- 3.1 In 2010 Inland Revenue partnered with Colmar Brunton and the Chair of e-Government at Victoria University of Wellington to conduct research to better understand the public's views on information, confidentiality of information and information-sharing between agencies.⁷
- 3.2 Following the initial research project, Inland Revenue has undertaken further research specifically investigating attitudes towards sharing Inland Revenue information to improve the Government's response to serious crime.

The initial research project – public attitudes to information-sharing in the course of providing online services

- 3.3 The initial project took a qualitative research approach to explore attitudes of New Zealanders towards the collection, management and sharing of personal information, specifically in the course of providing online services. The project was carried out by researchers from Victoria University of Wellington, Inland Revenue and Colmar Brunton. A project advisory group consisted of representatives from Inland Revenue, the Ministry of Social Development, the State Services Commission and the Office of the Privacy Commissioner.
- 3.4 The project undertook a review of national and international research in the field and carried out semi-structured interviews with Inland Revenue staff about the conditions and future directions of providing online integrated public services. There were then 10 intensive focus group sessions with a total of 63 members of the public.

Key findings

- 3.5 Most research participants had a positive attitude towards information-sharing, believing the practice enabled better public services and increased service effectiveness. The majority considered the Government's information-sharing intentions and practices to be benign, and most placed high trust in the Government and its agencies.
- 3.6 However, some thought greater information-sharing increased the power imbalance between government and citizens, and eroded trust. Participants with a high dependency on social services, and Māori, Pasifika or self-employed participants were more likely to hold these attitudes.

⁷ *Public attitudes to the sharing of personal information in the course of online service provision* (Lips, Eppel, Cunningham & Hopkins-Burns, 2010).

- 3.7 Although participants were prepared to provide personal information to organisations in return for improved public services or other personal or collective benefits, they saw the need for government agencies to play by the rules by using the information provided only for its intended purpose and asking clients for consent.
- 3.8 Participants had little knowledge of how their personal information was stored, used or shared by government agencies. Further, they believed that greater sharing of information occurred than actually does in practice.
- 3.9 The accuracy of the information government agencies collected was of concern, particularly information used to categorise clients or determine their eligibility for social services.
- 3.10 Sensing a lack of transparency or encountering incompetent staff during a service interaction made participants uncomfortable and contributed to a desire for greater control over their personal information.
- 3.11 Participants supported information-sharing between agencies that were related by their roles and responsibilities, such as a social service cluster between Inland Revenue, Work and Income, and Housing New Zealand.
- 3.12 Participants shared personal information with government agencies to obtain a public service. Similarly, participants expected information-sharing between agencies to occur in order for them to obtain a public service – not for the explicit benefit of government agencies.

Conclusions

- 3.13 The study suggested the context in which information-sharing between government agencies occurs is particularly important.
- 3.14 Findings indicated that information-sharing between government departments and agencies should occur with the customer in mind. Ideally the context within which personal information is shared should feature the following characteristics:
- be transparent and have clearly defined boundaries;
 - be customer-centred and give the customer control;
 - be relevant to the specific public service cluster;
 - occur as part of a multi-channel service delivery strategy; and
 - relate to the customer's service need.

Specific research on information-sharing in relation to dealing with serious crime

- 3.15 Inland Revenue partnered with an external research firm to conduct interviews and an online survey. The purpose of the research was to better understand how Inland Revenue's involvement in information-sharing to support the Government's response to serious crime could affect perceptions of the integrity of the tax system.
- 3.16 To support the research, an advisory group was established, comprising representatives from the Ministry of Justice, New Zealand Police, the Office of the Privacy Commissioner, Victoria University of Wellington and Inland Revenue.
- 3.17 Participants included senior government officials, experts in tax, law, media and information communication technologies, tax agents and intermediaries, and members of the business community.
- 3.18 The study employed a mixed-method approach, combining qualitative in-depth interviews with an online survey. In relation to identifying and/or stopping serious offending, the research sought to understand what information-sharing activities or practices are considered acceptable, the types of information that should be shared, and if increased information-sharing would have an adverse effect on the integrity of New Zealand's tax system.
- 3.19 Four hypothetical information-sharing scenarios were developed for this study. The first involved Inland Revenue sharing information with New Zealand Police after discovering a serious offence during an audit. The second involved Inland Revenue sharing taxpayer information with members of a taskforce, and the third involved sharing a set of risk assessment scores with the New Zealand Police. The final scenario involved Inland Revenue supporting the Department of Internal Affairs by providing expertise and information.
- 3.20 The scenarios were deliberately designed to test the boundaries of acceptability of Inland Revenue's involvement in cross-government information-sharing actions. These scenarios were not proposals but a way to determine what was and was not considered acceptable by the public.
- 3.21 Details about the research can be found at www taxpolicy.ird.govt.nz.
- 3.22 Overall, the research found that Inland Revenue's participation in information-sharing actions to address serious crime was considered to be acceptable if it was "fit-for-purpose". If the Government proceeds with this approach a number of concerns raised by the research participants must be addressed. These include balancing the:
- individual's right to privacy with the social benefits to society;
 - nature of the serious crime with the type and breadth of information requested;

- authority of the information with the ability of Inland Revenue to supply it; and
- the intended and potential use of the information with the risk of error and its misuse.

3.23 It is also clear from the interview and survey data that cross-government information-sharing to address serious offending is an all-of-government issue and is not specific to Inland Revenue. Further, legislation must underpin any fit-for-purpose information-sharing action and this should signal the permission, controls and transparency the public requires.

3.24 Finally, tax secrecy does not appear to be a significant concern when considering Inland Revenue's involvement in cross-government information-sharing to address serious crime. However, the potential impact on citizens' trust in Inland Revenue and subsequent impact on the integrity of the tax system would need to be considered. Provided the Government communicates that Inland Revenue will share specific taxpayer information only under specific circumstances, both trust and integrity will be maintained in spite of selectively relaxing tax secrecy regulations to identify and stop serious crime.

CHAPTER 4

Information-sharing and protection of private information

- 4.1 Key issues in balancing information-sharing with protection of private information are setting a threshold for the definition of serious offences and having robust processes around that threshold to respect privacy.
- 4.2 The proposal is to allow Inland Revenue to release information only:
- in relation to serious offences, being those punishable by imprisonment of four years or more, or, if committed by a body corporate is punishable by a fine only, but that would be punishable by imprisonment for four years or more if committed by an individual;
 - when there are reasonable grounds for the agency identifying the possible offence to suspect that a serious offence has been committed, is being committed, or will be committed;
 - when Inland Revenue considers there are reasonable grounds for suspecting the information is relevant in the prevention, detection or investigation of, or be evidence of, a serious offence that has been committed, is being committed, or will be committed; and
 - when Inland Revenue is satisfied that:
 - the information is readily available within Inland Revenue;
 - it is reasonable and practicable to communicate the information; and
 - it is in the public interest to communicate it.

Information released for serious offences only

- 4.3 We propose that New Zealand take a similar approach to that taken in Australia,⁸ namely that disclosures to defined law enforcement agencies are permitted but only in relation to serious offences.⁹ The Government considered and rejected a list of specified offences in relation to which Inland Revenue could share information as being impractical and hard to maintain. Instead, we propose a simple threshold of a serious offence. This would be when the offence is committed by an individual and is punishable by imprisonment of four years or more; or if a similarly serious offence is committed by a body corporate which would be punishable by imprisonment of four years or more if it had been committed by an individual.

⁸ As set out in chapter 2.

⁹ In Australia a serious offence is defined as one which carries a penalty of 12 months imprisonment or greater. We consider this threshold is somewhat low.

- 4.4 The threshold represents a judgement on what society views as a “serious offence”. A four-year threshold aligns with the threshold test for the offence of participation in an organised criminal group (set out in section 98A of the Crimes Act 1961). The four-year period is also consistent with the definition of a “serious crime” contained in the United Nations Convention against Transnational Organised Crime.
- 4.5 The threshold also includes offending carried out by bodies corporate. As a body corporate cannot be imprisoned, the threshold for “serious offending” by a body corporate is aligned to the penalty that would apply if the offending were carried out by an individual.¹⁰ Therefore offences are treated equally, regardless of whether committed by an individual or a body corporate.
- 4.6 The test for releasing information should be as consistent as possible with the production order framework in the Search and Surveillance Act 2012. The agency requesting information (or Inland Revenue in the case of proactive disclosures) must therefore have reasonable grounds for suspecting that a specified person has committed, is committing, or will commit a serious offence, before a disclosure can be made.
- 4.7 Where the request is made by an agency to Inland Revenue, the burden for identifying reasonable grounds will fall on the agency making the information request. The requesting agency is best placed to make this assessment and will therefore be responsible for making the assessment. In then making a request, the agency is doing so on the undertaking that they are satisfied that reasonable grounds exist. Where Inland Revenue is making a proactive disclosure, Inland Revenue would be responsible for satisfying itself that there were reasonable grounds to suspect that a serious crime had been, was being, or would be committed.
- 4.8 Some cases will occur when a serious offence is suspected and information is shared by Inland Revenue but ultimately a person may not be charged with that serious offence but a lesser offence which may not have a maximum term of imprisonment of four or more years. Inland Revenue’s information would still be available for use by the enforcing agency in these cases. The alternative, that the information could not be used when a lesser charge is ultimately brought, is unattractive because the decision to share should be made on the information reasonably available at that time rather than after the event.

¹⁰ This approach is consistent with that taken to categorise offences for procedural purposes in the Criminal Procedure Act 2011 – see the section 6 definition of a category 3 offence.

Agencies Inland Revenue proposes to share with

- 4.9 The Government proposes allowing Inland Revenue to share information with any government agency that prosecutes offences meeting the proposed serious offences standard. This could potentially include a range of agencies, in addition to the New Zealand Police (for example, the Ministry of Primary Industries, the Department of Internal Affairs, the New Zealand Defence Force and the Ministry of Business, Innovation and Employment). However, in practice, the majority of any sharing would be done with the New Zealand Police and those agencies prosecuting serious offences in the financial sector.
- 4.10 To give the public comfort that Inland Revenue will not conduct widespread taxpayer-specific information-sharing, a further filter is proposed, namely that information can be shared only when Inland Revenue and the other agency have a published memorandum of understanding.
- 4.11 It is expected that the number of cases of sharing will ramp up slowly to ensure that systems and processes can be established and tested for robustness. The actual number of cases when Inland Revenue will share information is hard to judge, but using information-sharing for criminal proceeds asset recovery purposes as a base case, the likely number is 400 to 600 cases per year from New Zealand Police. The Police are expected to be the most significant user of the proposed change in policy.

International sharing of information on serious offences

- 4.12 By virtue of New Zealand's double tax agreements, Inland Revenue is currently able to share information with certain foreign tax authorities. Further, New Zealand may provide and seek from other countries formal mutual legal assistance for the investigation or prosecution of a criminal matter pursuant to the Mutual Assistance in Criminal Matters Act 1992 (MACMA), which allows requests to be made under that Act, or on the basis of any relevant Convention or treaty covering mutual assistance, or where a foreign country is simply prepared to provide assistance.
- 4.13 The MACMA allows New Zealand to receive requests from all countries. It also allows for a broad range of assistance to be provided, including the registration of foreign restraining or forfeiture orders against the proceeds of criminal activity perpetrated in another country.
- 4.14 It is proposed that Inland Revenue be able to provide to other countries information about serious offences in accordance with the MACMA and any relevant treaty. This would be pursuant to a request made from the "Central Authority" in the foreign country to our Attorney-General. This would be either on request under MACMA or another regime or, in appropriate cases, on Inland Revenue's initiative under a non-MACMA regime. The best way this could be managed is through using Crown Law as the channel for this communication rather than setting up multiple channels which may have infrequent use.

Reasonable grounds

- 4.15 When the serious offence standard is met, it is proposed that Inland Revenue must also consider whether there are reasonable grounds for suspecting the information is relevant in the prevention, detection or investigation of, or there is evidence of, a serious offence that has been committed, is being committed, or will be committed.
- 4.16 This is broadly consistent with the production order regime in the Search and Surveillance Act 2012, which allows for the provision of evidence or any other item, tangible or intangible, of relevance to the investigation of the offence.¹¹ It is slightly broader in that it is clear that information can be provided in relation to the prevention and detection of offences reflecting that the nature of Inland Revenue's information is more likely to indicate an offence or possibility of an offence, rather than be clear evidence of an offence.
- 4.17 In determining whether the information Inland Revenue holds is relevant, it may be necessary for Inland Revenue to seek further details from the requesting agency. In addition, sufficient information will need to have been provided to ensure that a match is made to the correct individual or entity regarding which information is sought. There is also a question about whether Inland Revenue can then retain this information and use it for more general tax purposes.
- 4.18 Examples of the information that Inland Revenue may share under requests include:
- ***Information Inland Revenue holds on a specified person:*** This may include their IRD number, entity information, the taxes for which they are registered, income history, tax payment history (including any compliance issues), types of income, expenses, asset and liability information, and actions taken or planned to be taken in relation to the specified person. The information provided may relate to a victim of a serious offence rather than the perpetrator of the offence.
 - ***Information Inland Revenue holds on other persons or entities that are associated with, or related to, the specified person:*** This may include information necessary to understand beneficial ownerships or the nature of the structures the specified person is involved with.
 - ***Information Inland Revenue holds that is aggregated, derived or inferred that is relevant to the specified person (or associated or related persons):*** This may include judgements about compliance behaviour, and judgements on possible approaches by the specified person to compliance with tax and other legal obligations. Information shared would include documents Inland Revenue may have that would support another agency's enforcement action.

¹¹ This test is also consistent with that used in the UK when considering whether a production order should be issued for HMRC information.

- 4.19 As noted in Chapter 3, research has indicated that overall, the sharing of information by Inland Revenue was seen as acceptable by research participants, as long as the information shared is fit-for-purpose. A requirement that information must be suspected to be of value in relation to the serious offence in question helps to ensure any information provided is fit-for-purpose.
- 4.20 Information such as the post-analysis suspicious transaction reports received by the New Zealand Police from financial institutions is considered to meet the reasonable grounds threshold for Inland Revenue to release information to the New Zealand Police. In these cases the goal of the New Zealand Police will be to improve their intelligence around a possible serious offence.

Example scenario: Investigation of missing person suspected to be a probable homicide victim

During a missing person investigation, enquiries indicate that it is unlikely the person has gone missing of their own volition but rather that it is likely the person has been the victim of foul play. A body has not been located.

Under the proposed rules, New Zealand Police could request that Inland Revenue check for any tax activity in relation to the missing person on the basis that there are reasonable grounds to believe a homicide has been committed. Any information provided on the individual's tax activity (or lack of activity) would need to be relevant to the investigation.

Practicality of releasing the information

- 4.21 A final test is proposed to ensure the appropriate use of Inland Revenue's resources. The test is essentially one of balancing the benefits of releasing information and the costs of preparing that information for release. Information would be provided only when:
- the information is readily available within Inland Revenue;
 - it is reasonable and practicable to communicate the information;
 - it is in the public interest to communicate it; and
 - the resources are available to Inland Revenue.

Ensuring transparency of information-sharing and good process

- 4.22 Section 21 of the New Zealand Bill of Rights Act 1990 states:

Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.

- 4.23 A primarily administrative decision-making approach for release of information is proposed. The decision about whether the serious offence requirement is met will lie with the agency identifying the serious offence. This could be Inland Revenue but the most common case will be another agency, such as the New Zealand Police. In relation to the information being of value and practical to disclose, it is proposed that Inland Revenue will make this decision. The administrative approach is consistent with the Australian model for this type of disclosure.
- 4.24 The key advantage of the proposed process is its efficiency, as decisions can be made quickly and at low cost. However, to ensure appropriate accountability it is proposed that if the information provided by Inland Revenue is used in a prosecution by another agency, at the time criminal disclosure obligations are triggered, the alleged offender must be informed that information was provided by Inland Revenue. This would enable the affected taxpayer (the alleged offender) to challenge the decision to release the information if they wish. At this point the Court may consider the evidence is inadmissible, either due to a problem with the release of the information or on other Evidence Act 2006 grounds (as is standard in the existing criminal disclosure and evidence admissibility processes).
- 4.25 This approach would have three benefits:
- preserving the affected person's privacy interests and rights under section 21 of the New Zealand Bill of Rights Act 1990;
 - ensuring that judicial scrutiny of the process is available when the information provided is used, but not burdening the judiciary with every information request or provision; and
 - providing a mechanism to ensure that decisions to release information are robust and appropriate by allowing for decisions to be reviewed.
- 4.26 In addition, should an individual have concerns about how their information has been treated they will be able to either use the internal complaint procedures of the agency concerned (Inland Revenue and/or the relevant enforcement agency) or seek assistance from the Office of the Privacy Commissioner.

Ensuring robust administrative processes

- 4.27 It is proposed that there be a legislative requirement on agencies that a memorandum of understanding be entered into before Inland Revenue is permitted to share information. This will ensure appropriate processes and protections are clearly agreed between the parties before any sharing takes place. Each memorandum will make clear that Inland Revenue will not approach information release in an ad-hoc manner but rather with reasonable and robust decision-making processes being in place in both agencies. There will be requirements around security and on-use of information.

- 4.28 Bulk transfer of information is not proposed. Information will instead be provided on a case-by-case basis by Inland Revenue. Inland Revenue takes very seriously its legal obligations to protect taxpayers' secrecy and privacy rights. These rules are rigorously applied unless Parliament has sanctioned the release of certain tax information to other agencies for the greater public good of all New Zealanders.
- 4.29 Pursuant to international double taxation agreements, Inland Revenue has had many years of experience exchanging taxpayer and other sensitive information with New Zealand's tax treaty partners. The team responsible for conducting such exchanges is very skilled in handling sensitive material and treating it accordingly.
- 4.30 New Zealand's tax treaty exchange of information programme has recently been examined in detail by the OECD and the Global Forum and is highly regarded internationally. The process for dealing with exchanges of information internationally therefore offers a suitable model to follow when considering sharing Inland Revenue information domestically with relevant New Zealand enforcement agencies.
- 4.31 Inland Revenue and the relevant partner enforcement agencies will be required to follow the rules for sharing serious offence information (including using it only for the nominated specific purposes). Any breaches of those agreed rules would be treated as serious, and appropriate sanctions would be applied accordingly, as is currently the case for other privacy or secrecy breaches.
- 4.32 It is proposed that dedicated liaison points be established in each relevant agency with suitable oversight by appropriately qualified senior officer(s) that would conduct the actual exchanges of information. Only a few key personnel in each agency would have the power to engage in sharing information with a partner agency's liaison team. In this way, consistency of approach and management can be assured and a good working relationship built up between relevant partner agencies to quickly address any operational issues that might arise.
- 4.33 Appropriate IT encryption solutions can be used to ensure that the physical transmission and sharing of protected data is done in a lawful way and that any loss of data in transit is avoided.
- 4.34 To support a transparent process, it is also proposed that Inland Revenue's Annual Report outlines the sharing of information that has taken place. Inland Revenue would work with the Ministry of Justice to establish the details of such reporting.

Legislative framework

- 4.35 Two possible alternatives have been considered for the legislative framework to govern the proposed sharing:
- an information-sharing agreement authorised by Order in Council under part 9A of the Privacy Act 1993; or
 - enacting a new stand-alone framework in the Tax Administration Act (a new specific exception to section 81).
- 4.36 The Privacy Amendment Act 2013 amended the Privacy Act 1993 and the Tax Administration Act to improve public service delivery by facilitating information-sharing between government agencies when there is a public service benefit. It allows information-sharing agreements to be authorised by Order in Council following a mandated process of consideration and consultation, including with the Privacy Commissioner.
- 4.37 The Tax Administration Amendment Act 2013, allows personal information about an identifiable individual to be supplied by Inland Revenue, when an information-sharing agreement authorised by an Order in Council in accordance with the Privacy Act 2013 is in force. This acts as an exception to section 81 of the Tax Administration Act in respect of information about individual taxpayers, but not information about taxpayers that are non-individuals, such as companies. While it is expected that the majority of information-sharing under this proposal will relate to individuals, more generally consideration is being given to a further amendment to the Tax Administration Act to apply the Privacy Act framework (or something similar) to information-sharing about non-individuals.
- 4.38 The Government's preference is to use part 9A of the Privacy Act, recognising that an additional amendment to the Tax Administration Act may be necessary to enable the sharing of non-individual taxpayers' information in the same manner.
- 4.39 This information-sharing proposal falls within the framework contained in the Privacy Act. That framework offers appropriate consultation, oversight and protections. The Government prefers not to see further proliferation of individual rules for information-sharing between government agencies, preferring a consistent approach. A consistent approach also ensures that citizens can more easily access and understand the rules under which their information is able to be shared.

Sharing in practice

- 4.40 As Inland Revenue does not often come across serious crimes in the course of its day-to-day business, the most common example of information-sharing would be as a result of a request from the New Zealand Police or other enforcement agency when they suspect a serious offence has been committed, is being committed or will be committed.
- 4.41 Inland Revenue's financial focus means that, on the rare occasions serious offences are seen in the course of the department's activities, these offences tend to be financial in nature. However, sometimes Inland Revenue also becomes aware of non-financial crimes such as smuggling or drug offences.
- 4.42 This financial focus will also drive the type of information that is sought from Inland Revenue and, to an extent, the types of serious offences in relation to which information is sought. For example, it is more likely that Inland Revenue would have information that would assist the investigation of financial crime such as serious fraud or money laundering, rather than information that would assist in cases of serious physical offences.
- 4.43 An example of the type of offence Inland Revenue does occasionally discover is a recent investigation into PAYE offending. This investigation, carried out in relation to suspected tax offending, provided evidence suggesting that a businessman had set up complex business and tax structures, with appropriate cut-offs through a professional trustee company, to orchestrate tax evasion. This tax evasion was addressed as part of Inland Revenue's enforcement activities. However, the investigation also disclosed probable and significant fraud against another major government department and, incidentally, also a trustee. (The trustee was potentially liable to Inland Revenue for the PAYE on the basis of knowledge attributable to the trustee but actually committed by a dishonest accomplice of the businessman.) Inland Revenue was unable to advise the other department and the trustee which meant the businessman could not be stopped and the transactions could not be raised with other government enforcement agencies.

Example scenario: Income suppression resulting in identification of suspected wildlife smuggling

During a tax audit investigation it becomes obvious that significant funds flowing through a taxpayer's bank account are not related to the core business. Further investigation reveals the potential for this taxpayer to be involved in smuggling wildlife out of New Zealand. This is potentially an offence under section 44 of the Trade in Endangered Species Act 1989.

Under the proposed rules, Inland Revenue could inform the Department of Conservation of a suspected offence. Inland Revenue could then provide bank account information and records of statements made by the taxpayer in interviews to the Department of Conservation to assist with the investigation into the suspected offence.

Protections for citizens

- 4.44 The Government takes very seriously the need for agencies to protect citizens' privacy and to manage their information securely. Equally, government agencies need to be able to use and share information when appropriate, to deliver services and meet the needs of citizens, both individually and collectively as a society.
- 4.45 The controls and processes set out in this document have been designed to minimise any risk of a privacy breach occurring as a result of the proposed information-sharing. Sharing can only occur in a narrowly defined set of circumstances, requires a memorandum of understanding to be in place between Inland Revenue and the recipient agency, and will be carried out by a single small experienced team within Inland Revenue. Responsibility for sharing will sit with designated senior personnel in each involved agency.
- 4.46 Citizens have a number of rights and options available to them in terms of ensuring their information is treated appropriately, which will apply in relation to information shared under the proposed new rules:
- Individuals have the right under the Privacy Act 1993 to seek access to information held about them by an agency, and to seek to have that information corrected if it is not accurate.
 - If an individual has concerns about how their information has been treated they are able to either use the internal complaint procedures of the agency concerned (Inland Revenue and/or the relevant enforcement agency) or seek assistance from the Office of the Privacy Commissioner.
 - When information is provided under the proposed rules to an enforcement agency, and that agency proposes to use the information in a resulting prosecution, that information must be disclosed under the usual Criminal Disclosure Act 2008 obligations, and any dispute about the provision of the information will then be handled by the courts under the provisions of that legislation.
 - Inland Revenue officers who knowingly disclose information other than in accordance with the legally permitted exceptions to the secrecy rule face potential criminal liability under section 143C of the Tax Administration Act.
- 4.47 In the event that, despite the protections in place, a privacy breach does occur, designated senior personnel in the relevant agencies will meet immediately to assess the issue and manage the response. This is chiefly to ensure that any affected individuals are identified as quickly as possible and all necessary steps are taken to minimise and/or mitigate any risk to those individuals. If there is considered to be a risk of on-going breaches, information-sharing will be immediately suspended. The Office of the Privacy Commissioner will be notified and involved where this is appropriate.

Questions for submitters

4.48 Submissions on any of the matters outlined in this chapter are welcomed, including:

- whether it is reasonable to define a “serious offence” as one being punishable by imprisonment of four years or more;
- the approach of making information available to all enforcement agencies rather than simply the New Zealand Police;
- how information Inland Revenue receives from enforcement agencies to support their requests for information should be treated;
- whether it is acceptable to share tax information with international agencies;
- whether the proposed Privacy (Information-sharing) Bill framework is an acceptable mechanism for the proposed information-sharing, alongside a possible further amendment to the Tax Administration Act to extend its coverage to non-individuals; and
- whether it is reasonable to take a primarily administrative decision-making approach for release of information (compared with using court orders or requiring Ministerial approval) with alleged offenders being informed of the information being released if it is used in a prosecution (allowing any challenge to be undertaken to the admissibility of the material as evidence at this point).

CHAPTER 5

Benefits and risks of increased information-sharing

- 5.1 This chapter discusses whether the benefits of taxpayer secrecy outweigh the costs of not sharing information in relation to serious offences.

Benefits from increased information-sharing

- 5.2 The role of Inland Revenue has become increasingly complex. Correspondingly, the information held by Inland Revenue about individuals, families, relationships and personal lives has generally become more detailed. Inland Revenue manages sensitive information such as information on personal income, family relationships, child support and savings. People have a reasonable expectation that the information they provide will be treated confidentially. The Government does not intend to change this default position. It is considering whether that expectation of confidentiality should apply to information which may be relevant to the detection, prevention and prosecution of serious crime.
- 5.3 Possible benefits of increased information-sharing in relation to serious offending include:
- **A reduction in offending:** Society as a whole would benefit if those committing offences such as serious fraud were apprehended and stopped earlier or the offending was prevented altogether.
 - **Increased government effectiveness:** Tax secrecy may maximise tax revenue but this may be at the cost of the integrity of other government functions, such as preventing fraud, protecting investors, and preventing harm to vulnerable individuals and groups in society.
 - **Better use of specialist resources:** If more information were shared by Inland Revenue, other agencies could use their own resources more efficiently and conduct their investigations in a more timely and efficient manner. The availability of additional information may also, in some cases, result in investigations not being pursued against individuals or entities as the further information discloses that no offending is in fact occurring. This is both a more efficient use of specialist resources and potentially reduces the period of intrusion of law enforcement agencies into citizens' affairs.
 - **Alignment with international tax information-sharing norms:** There is increasing pressure internationally for greater information-sharing in order to combat organised and financial crimes. In relation to domestic information-sharing, New Zealand is currently out-of-step with international norms. This has the potential to adversely affect New Zealand's international agreements, result in New Zealand being on grey and black lists, and make it more difficult for New Zealanders to do business internationally.

- **Increased fairness:** Inland Revenue currently shares information to reduce social welfare abuse, but does not share information to prevent other crimes such as significant white-collar crime. This could be seen as discriminatory. It may also affect perception of fairness across the tax system and the fairness of government more generally.

Improving the Government's response to organised crime

5.4 The Government has an on-going programme of responding to organised crime. Currently, improvements are being made in the areas of:

- information-sharing;
- mutual legal assistance both domestically and internationally;
- protections against misuse of legal structures such as use of companies and trusts to alienate or disguise beneficial ownership;
- protection against bribery and corruption, money laundering and cyber-crime;
- investigation and enforcement; and
- protection against identity crime.

5.5 Inland Revenue's view is that the proposed amendments to the current secrecy rules could significantly increase the effectiveness of its contribution to the Government's response to organised crime. This conclusion is based on Inland Revenue's recent participation in a criminal taskforce. Inland Revenue's inability to share information affected the taskforce's efficiency by:

- not being able to provide relevant contextual information; and
- reducing the scope for Inland Revenue to be an effective part of the taskforce's efforts to achieve its goals.

5.6 Having access to Inland Revenue's information would have contributed to the taskforce achieving a speedier result.

Revenue impact

5.7 The Government does not see a tax revenue benefit from the information-sharing proposals. In fact, it is likely that tax revenue will be reduced to the extent that tax currently is paid on financial offences. However, any reduction in revenue is likely to be offset by revenue gains from reduced financial crime, some of which may be against the Government or against taxpayers who report less income as a consequence of the crime. On balance, the fiscal implications of this proposal are most likely neutral to the Crown.

Likely costs of increased information-sharing

- 5.8 The main risk is to voluntary compliance as taxpayers, both those who are committing serious offences and others, reduce their compliance with tax obligations because they find information-sharing by Inland Revenue unacceptable.
- 5.9 Inland Revenue believes that the impact on voluntary compliance by those who are committing serious offences is likely to be small. Its judgement is that those who commit crime tend to commit crime across all their responsibilities as citizens, including tax.
- 5.10 Based on research conducted by Inland Revenue, it is likely that only a small minority will disagree with the proposals and, as a result, attempt to modify their tax compliance. However, most taxpayers are likely to consider increased information-sharing improves both the fairness of government and the tax system.
- 5.11 There is some risk that information-sharing could result in a secrecy breach. This could bring information-sharing more generally into disrepute. A related point is that any information-sharing also carries a risk of sharing inaccurate information or information about the wrong individual or entity. However, officials have assured the Government their emphasis will be on the integrity of process and they will work closely with the Privacy Commissioner.

Conclusion

- 5.12 The Government believes the benefits of information-sharing with other enforcement agencies can be supported in the case of serious offences. The proposed information-sharing has several potential benefits, such as increased fairness, reduction in offending, increased government effectiveness and better use of specialist resources. The risks, chiefly the risk of reducing voluntary compliance, are likely to be small, and are outweighed by the potential benefits of the proposal.
- 5.13 The proposal is consistent with the key “fit-for-purpose” features identified by research participants as necessary to ensure sharing was within acceptable bounds.¹² It is less consistent with the features identified in the earlier research. In relation to the factors summarised at paragraph 3.14, we consider the proposal demonstrates transparency, defined boundaries and is relevant to the specific public sector cluster that is responsible for enforcement. Factors relating to customer control and service needs are not the focus of this discussion document.

¹² See chapter 3.

Example scenario: Investigation of identity fraud against Inland Revenue highlighting wider identity offence

Inland Revenue identifies an individual who has defrauded Inland Revenue using false identities. During investigation of the individual, Inland Revenue discovers that the same identities have been used to perpetrate frauds against other institutions including banks, government agencies and retailers.

Under the proposed rules, Inland Revenue could inform the New Zealand Police of the individual and provide relevant supporting information, including a list of those other taxpayers who may have been defrauded.

Questions for submitters

5.14 Submissions on any of the matters outlined in this chapter are welcomed, including:

- possible other benefits of information-sharing by Inland Revenue to prevent serious offences; and
- the judgement that the risks of Inland Revenue sharing information are minor if sharing is limited to serious offences.