Taxation (Transformation: First Phase Simplification and Other Measures) Bill

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

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Prepared by Policy & Strategy, Inland Revenue, and the Treasury

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Electronic communications

OVERVIEW

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These amendments remove references throughout the Income Tax Act 2007, the Goods and Services Tax Act 1985 and the Tax Administration Act 1994, which restrict interaction with the tax system to paper-based transactions. In addition, the proposed amendments clarify the communication options available and provide general rules governing methods of communication delivery. The proposed delivery rules consolidate current practices and legal requirements and extend these to electronic communications putting emails, for example, on the same footing as paper letters delivered by post.

The changes in the Bill:

- establish the new communications framework, contained in new sections 14 to 14G, to facilitate the information flows between the Commissioner and a person, and between two persons where the tax legislation governs that interaction (refer to clause 74);
- update existing terminology referring to specific modes of communication, for example, the requirement for certain communications to be "in writing", with terminology corresponding to an appropriate tier in the communications framework (refer to remainder of clause numbers).

Submitters were generally supportive of the rationale for the amendments. However the submissions raised questions about the effectiveness of legislative change alone, and emphasised the need for administrative change and a positive commitment from Inland Revenue to make better use of electronic communication methods.

Submitters also highlighted concerns around the use of common verbs as "defined tiers" of communication options in terms of providing legislative certainty about which method was to be used and when.

Finally, submissions highlighted the importance of accurately gauging the necessary formality of certain communications when allocating a tier. For example, whether a document is required to evidence the communication or the consequences of a missed communication (including penalties or use-of-money interest). The example submitters were most concerned about was section 17 of the Tax Administration Act 1994, which governs the obligation to provide information when required by the Commissioner, which uses the term "request" in the title.

In response to submissions, officials are making the following recommendations to modify the proposals in the Bill:

- amendments to correct the drafting errors and cross-references as described in the comments below;
- amendments to ensure that any provisions where the term "requested" has been replaced with the term "required" are consistent with intended policy; and
- an amendment to clarify the inclusion of both "notify" and "notice" within the framework.

Officials also undertake to further consider whether an amendment to section 17 to formalise the Commissioner's stated practice is desirable, as well as any remedial amendments, where necessary, to correct unintended meaning changes as a result of these amendments.

Issue: Support for the amendment

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Covisory Partners, EY, KPMG)

Submitters support the rationale for the amendments proposed in the Bill to modernise and future-proof the means of communication in the legislation, and welcome the proposals to clarify the options available for communications. In particular the proposals to remove legislative barriers to electronic communications and the framework included in the Bill establishing general rules for communications are supported. Any amendments that are proposed that will facilitate easier communication with Inland Revenue and increase Inland Revenue's flexibility to communicate electronically are encouraged and supported by submitters.

Comment

Officials note the submitters' support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: Administrative changes required

No clause

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

We believe administrative changes are required, the Commissioner's internal operational policies, for example, in relation to the use of e-mail and accepting files sent digitally should also reflect the objective of the amendments. *(Chartered Accountants Australia and New Zealand)*.

The success of the Business Transformation proposals depends on a permissive tax administration framework and Inland Revenue's uptake and acceptance of the proposals, which will require a significant cultural change within the Department. (*KPMG)*

Comment

In the *Making Tax Simpler: A Government green paper on tax administration* and *Making Tax Simpler: Better digital services* discussion documents – released in 2015 as part of the Government's wider focus on transforming the way New Zealanders interact with the tax system – the Government indicated a clear vision for the future state of tax administration in New Zealand, which involved significant administrative changes for Inland Revenue. The discussion documents acknowledged that changes were needed to ensure that Inland Revenue could make better use of available and future digital technologies to provide more efficient services and to simplify interactions for taxpayers. To ensure that the integrity of the tax system and taxpayer confidentiality is maintained, it is necessary to roll out the use of the electronic communication technology following the Department's staged transformation programme.

Recommendation

That the submission be noted.

Issue: Rules should provide positive obligation for the Commissioner to use electronic communications primarily

No clause

Submission
(KPMG)

We consider there should be a positive mandate for Inland Revenue to communicate electronically as the primary mode unless other means of communication, such as letter by post, are necessary (for example, if a taxpayer does not have access to digital services). In our view, the Commissioner has yet to properly and fully embrace current technology, and our concern is that without a clear legislative mandate the Commissioner will resist the application of future technology. A positive obligation to communicate electronically would be useful in supporting a mind-set change at Inland Revenue.

Comment

Officials consider that the current approach, allowing for varied communication formality which can be tailored to suit individual circumstances, is preferred over a mandated approach where electronic methods of communication are preferred over others. This flexible approach takes into account both the fact that not all communications should attract the same level of formality as well as the fact – as noted in the *Making Tax Simpler: Better digital services* discussion document – no one size fits all. It is critical that as the tax administration systems are transformed to accommodate better use of digital technologies that services are flexible enough to accommodate taxpayer preferences and to accommodate those taxpayers who may have reduced access to digital services. In light of these underlying principles, officials do not consider a positive obligation for the Commissioner to use electronic communications would be the correct approach. Overall the proposed amendments, coupled with the Government's stated focus on embracing digital services for New Zealand's tax administration, should provide the impetus for change within Inland Revenue.

Recommendation

That the submission be declined.

Issue: The communication framework should apply to all provisions

Clause 74

Submission
(Russell McVeagh)

We note that not all interactions are governed by the proposed new framework, for example, section 17 does not use one of the defined terms. We submit the proposed framework should apply to all provisions of the Tax Administration, Income Tax, and Goods and Services Tax Acts, that govern interactions between the Commissioner and taxpayers.

Comment

The amendments were intended to encompass all of the interactions between the Commissioner and taxpayers, and taxpayers and third parties where the tax legislation presently governs these interactions. Therefore where presently the legislation does not expressly describe or require a communication, then the framework will not apply. Section 17 of the Tax Administration Act is unique in this regard and is discussed specifically further below. Officials intend to rely on the framework, once enacted, for future legislative developments to ensure consistency in governing communication under the tax legislation.

Recommendation

That the submission be noted.

Issue: Amendments should extend to stamp and cheque duties legislation

Clause 74

Submission
(New Zealand Law Society)

The proposed amendments do not apply to Part 6B of the Stamp and Cheque Duties Act 1971, which deals with the approved issuer levy. This omission should be rectified.

Comment

The proposed amendments only apply to the Income Tax Act 2007, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985. Therefore the remainder of the Revenue Acts, including the Stamp and Cheque Duties Act 1971, will require updating to align each Act to the proposed communication framework. Officials intend to continue work on the necessary

amendments to the remainder of the Revenue Acts and once the framework is enacted, will recommend follow-up legislative amendments in due course.

Recommendation

That the submission be noted.

Issue: Amendments should future-proof the legislation

Clause 74

Submission
(KPMG, Chartered Accountants Australia and New Zealand)

It is difficult to predict where technology will lead and the risk is that this amendment will restrict the Commissioner's ability to communicate with the appropriate technology in the future. The drafting should be considered to confirm that it allows for advances in technology so that Inland Revenue is not slow to respond to any changes. The framework needs to be flexible and to embrace digital communication however it develops. It should be possible to draft legislation in a broad way so that communication is not restricted to specific communication means and modes.

Comment

This amendment is intended to future-proof the legislation, by allowing for each category to be expanded without the need for further legislative change. Presently the defined communication modes have a set of available options for delivery (for example, in writing, electronic or on the telephone) as well as a broad category allowing for communication by "any other manner permitted by the Commissioner". This catch-all allows for the Commissioner to facilitate new technologies and permit their use without requiring specific legislative amendment. This flexibility allows for the legislation to move with technology with relative agility. Equally, if technology becomes redundant, the legislation can be easily updated through direct amendment to the framework, rather than requiring a re-visit of each operative provision.

Recommendation

That the submission be declined.

Issue: Use of common verbs creates uncertainty

Clause 74

Submission
(Chartered Accountants Australia and New Zealand, EY)

The use of different verbs to signal to taxpayers whether they can or must write, call or do something digital should be reconsidered as it will lead to confusion. It would be simpler to have electronic communication accepted unless a taxpayer is notified that another means is required. The use of a tiered system is not practical.

Comment

Officials acknowledge that the amendments, which specifically define commonly used verbs for the purposes of the tax legislation, do pose a risk of confusion for taxpayers who may not expect that the terms carry specific meanings. However, the definitions of the terms are permissive rather than mandatory, allowing for flexibility in communication mode. This flexibility should allow for taxpayers to communicate in accordance with the law without necessarily needing to refer to the definitions.

The tiered approach allows for varying formality in the definitions of the terms, which is a practical way for Inland Revenue to signal which communications are considered more significant (because they may require documented evidence, for example). Given the volume of communications processed by Inland Revenue (both received and sent) it would not be practical to provide an individualised approach for specific taxpayers or even taxpayer groups. Therefore providing flexibility, more generally, in which modes of communication are acceptable to the Commissioner allows for taxpayers to select whichever method they prefer best when communicating with Inland Revenue. For the Commissioner, choosing which method to use would depend on both the individual circumstances and the significance of the communication.

Finally, given that the existing definitions and procedural provisions relating to the giving of notices (for example, the postal delivery rules) have been maintained and extended to the electronic forms of communications, officials expect that taxpayers should be largely familiar with the procedures around the more formal modes of communication.

Recommendation

That the submission be declined.

Issue: Commissioner's express consent

Clause 74

Submission
(EY)

Where the proposed new provisions refer to using electronic communications, they generally require the person to comply with the Electronic Transactions Act, which includes the requirement for the person to seek the recipient's consent to the electronic communications. The new proposals specifically deal with the consent issue for taxpayers and others who may receive communication from the Commissioner but do not cover the Commissioner's position. To remove any doubt or uncertainty we suggest that there should also be express statutory provision that the Commissioner consents to the use of electronic communication and technology wherever the new provisions allow for this.

Comment

As noted in the *Commentary* to the Bill, wherever possible and practical, Inland Revenue staff seek from each individual recipient their consent for electronic communication. However, this may not always be feasible, particularly for large groups of recipients receiving a generic batch email notice or in circumstances where the email address is the only contact address available for the recipient as they are overseas-based, for example. In these circumstances requiring express consent from each individual is impractical and would unduly restrict electronic communications when compared with paper equivalents sent by post. As a result the general override in the existing notice provisions (see current section 14(7)) has been maintained and extended to cover the newly defined modes of communication (that is, to apply, inform and ask as well as to give notice).

However, in order to ensure that the systems requirements and processes are in place to protect taxpayers from misdirected electronic communications falling outside the net (for example, tax returns being sent via email to a generic Inland Revenue email address and never being picked up for processing) it is necessary for the Commissioner to phase in electronic communication as Inland Revenue's Business Transformation programme progresses. By not providing the Commissioner's express consent to all electronic communications, these amendments preserve the Department's ability to phase in new digital services.

The amendments are designed to allow for these services to "go live" once developed without the need for further legislative change. Therefore, if a fringe benefit tax return online filing system becomes ready for use for example, the Commissioner would simply generally consent to this electronic communication by making the service available on the Inland Revenue website and none of the governing legislative provisions would require updating. These amendments therefore are not intended to, for example, allow for immediate filing of tax returns by email where that service has not been made available to date. The Commissioner's consent can be given in specific circumstances for a particular matter through a consent agreement with the taxpayer or agent, or more generally by notice on Inland Revenue's website or through the provision of an online filing service or electronic contact address.

Recommendation

That the submission be declined.

Issue: Communications must be in writing where penalties could arise or time periods are triggered

No clause

Submission
(Corporate Taxpayers Group, New Zealand Law Society)

In any circumstances where there is a penalty for non-compliance or the communication triggers a time period in which a certain condition must be met or a certain action performed, the relevant communication should be in writing as they may subsequently be required for evidentiary purposes. Any communication from the Commissioner to a person that triggers a statutory time period, requires a response by a particular date, or where non-compliance by the person could result in criminal or civil liability, should be made in writing (either electronically or in print). This would avoid disputes over what was required and when a particular communication was made.

Comment

In developing the proposed amendments to the substantive provisions – as part of establishing the communications framework more generally – officials have taken care to ensure that the current practice and expectation about how communications are to be completed in individual circumstances is disturbed as little as possible. This means that for more formal communications (for example, those where a statutory time period may apply) if the governing provisions have previously required communication in writing or by registered post, the amendments should not allow for an informal communication mode (for example, oral conversation or phone call). To the extent that unintended changes have been made such that formal communications are no longer required to be in writing or electronic equivalents, officials will undertake remedial amendments as required.

Recommendation

That the submission be noted.

Issue: Commissioner's power to request information under section 17

Clauses 74 and 76

Submission
(Corporate Taxpayers Group, New Zealand Law Society, Russell McVeagh)

It is inappropriate for communication of a section 17 request to be via phone, orally in person or via email (albeit the Group is comfortable with a separate written letter of request being delivered via email). We submit that the Commissioner must "notify" a person from whom information is required pursuant to section 17. *(CTG)*

Section 17 is silent on how the Commissioner may require information to be provided, which is undesirable as a person who fails to provide information required under section 17 commits an

offence. The heading of section 17 should be amended to "information required" rather than information "requested". A request, as defined under the new framework, would be inappropriate for section 17 given that requests can be made by telephone or orally in person. The section should be amended to require the Commissioner to "notify" a person that information is required.

Comment

Section 17 provides a broad obligation for every person to provide information or documents to the Commissioner when required by the Commissioner. The title of the section describes the section as "information to be furnished on request of Commissioner". Officials note, however, that section 17 does not set out a manner for how a request for information must be communicated (that is, at present "request" is undefined).

As stated above, in developing the proposed amendments to the substantive provisions officials have taken care to ensure that the amendments do not unintentionally change the current meaning of the individual provisions, and this includes section 17. Nonetheless it is arguable that the meaning of section 17 has been altered by amending the meaning of the word "request" in the heading, which was not intended. Given the significance of this section and the potential consequences for non-compliance, officials prefer not to make hurried amendments to the meaning of section 17. This would include inserting the requirement for a notice into section 17, as suggested by some submitters, which would be a law change away from the status quo.

Furthermore, given that section 17 is predominantly relied on for formal requests for information as part of an investigation or audit, officials are confident that the risk of inappropriate use of section 17 (for example, formal request for audit information over a telephone call) is minimised by the Commissioner's clear departmental practice as discussed in the operational statement (OS 13/02) governing specifically section 17 notices. The OS outlines the procedures Inland Revenue will follow when issuing section 17 notices. It clarifies that although Inland Revenue staff will usually request information and documents without expressly relying on section 17, as this fosters a spirit of reasonableness and mutual cooperation, when information is not provided voluntarily or in a timely manner the Commissioner is able to use section 17 to demand the information by issuing a notice under the section. The OS clearly states that when information is demanded under section 17 a notice will be issued in writing.

However, to address the concerns raised by submitters, officials undertake to further consider whether an amendment to section 17, to formalise the Commissioner's stated practice, is nonetheless desirable.

Recommendation

That the submission be noted.

Issue: Responding to an information request in writing

Clauses 74 and 76

Submission
(Russel McVeagh)

The amendment to section 17 should be clarified to provide certainty that a person is able to respond in writing to an information request under that section. The objective of facilitating greater use of electronic and other new communication channels is achieved by allowing the Commissioner to specify other acceptable methods of furnishing requested information but maintaining, as a default, the ability to respond "in writing" provides certainty for taxpayers that written documents will be acceptable.

Comment

This amendment is intended to both update the language to reflect the fact that documents "in writing" may no longer be the preferred method of providing information and to allow for the flexible application of the section tailored to individual circumstances. The removal of the reference to "in writing" in section 17 is not intended to restrict the way in which a person communicates their response or disallow written responses to information requests. Although certainty in drafting is desirable, officials consider that re-inserting the words "in writing" as suggested in the submission would appear to set written communication as the preferred method of communication which is inconsistent with the intention to allow for flexible adoption of modern communication technologies.

Recommendation

That the submission be declined.

Issue: Requirement to provide information for a binding ruling

Clause 140

Submission
(New Zealand Law Society)

The amendment to section 91EE to remove the word "requested" and replace it with "required" would mean that an applicant for a binding ruling would commit an offence under section 143(1)(c) if they did not provide the relevant information. Presumably this is not intended. It would be simpler to remove the "by notice" and retain "request" which would allow for requests for further information to be made by phone or in person, which is often the case in ruling applications.

Comment

Officials agree that the extension of the offence in section 143(1)(c) to section 91EE is not intended. An amendment to address this concern has been proposed. The Bill contains other

similar amendments to sections covering other types of ruling applications, and officials have proposed further amendments to ensure the unintended extension has been corrected elsewhere in the Bill.

Recommendation

That the submission be accepted.

Issue: Legislative clarification for email bounce-back

Clause 74

Submission
(Corporate Taxpayers Group)

The Group recognises the need to ensure that a corporate taxpayer actually receives a communication, and we agree with the comments in the *Commentary* to the Bill that a notice should not be treated as delivered if it is simply sent to a generic email box at a company. The requirements for delivery by electronic means should be further enhanced by making it clear that in situations when an email bounces back to the sender (for example, due to the person having left the organisation or a response indicating the recipient is out of the office with no email access) it will not be treated as having been delivered.

Comment

Although failed communication is not desirable from an administrative and policy perspective, it is officials' view that the legislation is a blunt tool to address the risk of communication non-delivery. There are many circumstances that could give rise to a communication non-delivery and an email bounce-back is just one example. To effectively legislate to cover off all of the circumstances would clutter the provisions, which may nevertheless remain incomplete. Furthermore a specific email bounce-back provision would put electronic communications on a different footing to paper-based communications delivered via post, on which the legislation is silent on the treatment of returned mail, and could create undesirable opportunities for recipients to dodge communications or impede administrative action.

Officials consider that the risk of failed delivery is ameliorated by both the delivery rules (including the definition of an acceptable corporate body contact address) and the positive requirement when sending electronic communication for the Commissioner to first seek the recipient's consent to communicate electronically (except when there are reasonable grounds to suppose the electronic communication will be received by a person, in which case the recipient's consent will not be required). Inland Revenue will aim to always preserve integrity and confidentiality in its communications and therefore it can be expected to be responsive to failed communications even without an express legislative direction to that end.

Recommendation

That the submission be declined.

Issue: Legislative clarification for "received by the person"

Clause 74

Submission
(EY)

Further clarification of whether the reference to having reasonable grounds to suppose an electronic communication will be "received by the person" test is intended to be met by apparent or assumed receipt by the named addressee, would be desirable. We suggest including an express provision that a sender holding evidence of having sent an electronic communication to a correct (or appropriately notified) address would constitute reasonable grounds for supposing the communication had been received.

Comment

References to communication to be "received" by a person are contained in both the Tax Administration Act 1994 (in the current provision which refers to electronic delivery of notices) as well as the Electronic Transactions Act 2002 (which governs when a communication is received). Existing case law and interpretive guidance will therefore be useful in determining whether particular communications will be treated as received. The phrase is used twice in the amendment. First, as discussed above, it is used as a qualification to the provision which allows for the Commissioner to send electronic communications without first obtaining the recipient's consent. Secondly, it applies to electronic communications sent to addresses that are neither the electronic address provided to the sender nor the last known address. It is intended to provide additional protection against misdirected mail.

When an electronic communication has been sent to the address provided or last known address, the communication can be treated as received. Express provision, that a sender holding evidence of having sent an electronic communication to a correct (or appropriately notified) address would constitute reasonable grounds, would therefore not be necessary if an address is "correct or appropriately notified".

When the address is only "otherwise available" and the electronic communication has not been previously consented, the reasonable grounds of receipt are still required. Officials prefer to allow for judicial interpretation of what may constitute "reasonable grounds" in particular circumstances over strict legislative criteria which may not effectively canvass all of the circumstances that could arise.

Recommendation

That the submission be declined.

Issue: Legislative clarification of what "directly alerted to" means

Clause 74

Submission
(EY, New Zealand Law Society)

Further clarification of what is intended by the requirement that an addressee or intended recipient must be "directly alerted to the communication in some manner" in order to communicate on the internet or by other electronic means, would be desirable. In particular the concern here is to minimise any risk that the Commissioner can dispute the fact or validity of taxpayers' communication with the Commissioner. It is unclear what is required for the person to be "directly alerted"; the meaning should be clarified.

Comment

A communication via the internet will not always alert the recipient to the receipt of the message. Examples include posting a comment on an online newspaper article or posting a blog on a webpage. To protect recipients from mail going unnoticed, this condition is intended to ensure that electronic communications are used only where the recipient is alerted to the receipt of the communication, for example, via email or txt message.

Given the fact that the Commissioner has to consent to the receipt of electronic communication by either individual agreement with a person or more generally by providing an electronic communication channel (for example, myIR secure mail), it is unlikely that the use of a communication channel which does not "directly alert" the Commissioner of receipt would be consented to. For example, the Commissioner could give consent for electronic communication via email with Inland Revenue staff directly agreeing this with the sender or through a secure contact function via the Inland Revenue website. Therefore it is difficult to envisage a circumstance where the Commissioner would be in a position to dispute the receipt of electronic communications on the basis of there being no "direct alert".

Finally, officials note that this amendment has been modelled on similar provisions in the Student Loan Scheme Act 2011 which refer to the person being "directly alerted" in some manner. Officials are unaware of any concerns or disputes arising over what the phrase means within those provisions, to date.

Recommendation

That the submission be declined.

Issue: Legislative clarification of what “advising” means

Clauses 103, 124, 127 and 161

Submission
(EY, New Zealand Law Society)

The term “advising” is not defined; it is suggested that where “advising” is used, that an appropriate level of category of defined term is used instead. The term “inform” is currently used in various provisions dealing with the content of documents to be provided in tax disputes, to infer that the information provided is in sufficient detail to “inform” the other party of the grounds of the proposed adjustment, for example. The Bill has replaced these references with “advise” as “inform” is a defined term under the framework. The term “advise” arguably has a different meaning to “inform” and as a result of the amendment to these sections it could be assumed that Parliament intended to change the meaning of these provisions. Therefore it should be clarified that there has been no intended change in meaning as a result of these amendments.

Comment

The use of the term “advising” within the amendments is intended simply to replace the term “inform” where the defined term would cause uncertainty within the context of the individual provisions. For example, where the section requires a notice providing sufficient detail to inform the recipient of the circumstance, the use of the term “inform” would appear to allow for an oral communication despite the fact that the communication is intended to be via a notice (that is, the communication must be written or electronic). The change of wording is not intended to change the meaning of the provisions, and to the extent that unintended changes have been made, officials will undertake remedial amendments as required.

Recommendation

That the submission be noted.

Issue: Consistent use of the term “provide”

Clauses 92 and 201

Submission
(New Zealand Law Society)

The proposed amendments replace some references to “provide” within various sections with a new defined term within the framework but not all references to “provide”. We submit that the amendments be checked for consistency with reference to the term “provide” and ensure there are no unintended omissions.

Comment

The term “provide” is undefined and used extensively throughout the legislation, signalling that information must be given. This set of amendments replaces the term only to ensure the

provision uses a term defined by the communications framework or to simplify the drafting (for example, replacing "provide a statement in writing" with "notify"). Officials have re-checked the use of the term "provide" in the new amendments and have not discovered any un-intended uses. To the extent that unintended changes have been made officials will undertake remedial amendments as required.

Recommendation

That the submission be noted.

Issue: Legislative clarification of difference between "notify" and "notice"

Clause 74

Submission
(Russell McVeagh)

It is unclear how provisions of the Tax Acts that require a "notice" fit within the proposed communication framework. This should be clarified. An inference created by the amendments is that "notice" is not a derivative of "notifying", therefore the provisions should be clarified to indicate whether "notice" is intended to form part of the new framework.

Comment

Officials agree that the amendments should clarify the intention to capture both "notice" and "notify" within the framework.

Recommendation

That the submission be accepted.

Issue: Clarification of cross-reference in new section 14F

Clause 74

Submission
(New Zealand Law Society)

It should be clarified that new section 14F applies only to communications delivered by personal delivery, post, fax and electronic means. As the section is presently drafted, it could arguably be interpreted to apply to both written and oral communication due to the cross-reference to new section 14B (2).

Comment

Officials note the potential for uncertainty caused by the cross-reference and agree to a simple clarification of the intention for the section to apply, in line with its title, only to communications delivered by personal delivery, post, fax and electronic means.

Recommendation

That the submission be accepted.

Issue: Minor legislative drafting errors

Clauses 155, 159 to 162 and 164

Submission
(EY)

Several minor drafting errors are described in the submission, including some which do not form part of the amendments in this Bill. The suggested amendments relate to the following sections of the Tax Administration Act:

i. section 28, submission suggests that the section is missing the subject and that either including "any payer" or deleting the word "from" would resolve this issue; [not in Bill]

ii. section 106(1C), submission suggests that the section incorrectly refers to "provides" and should be changed to "does not provide"; [not in Bill]

iii. section 108B(1)(a), submission suggests there is no need to amend the use of the semi-colon as is provides both for situations where a further extension is agreed and where no such further extension is agreed;

iv. sections 126(1); 130(1) and(2); 136(6), (12) and (14); submission suggests these amendments are not required given that the sections are either no longer operative (that is, the time limits have lapsed) or apply in retrospect;

v. section 137(1)(a), submission suggests that the change from "requesting" to "seeking" is unhelpful as the term is undefined under the framework;

vi. sections 137(11) and 138R(8), submission questions whether it is intended that the delivery method be limited to registered post or whether personal delivery could be used.

The submitter raises one other concern with amending section 8(2E) of the Goods and Services Tax Act, as this section is no longer able to be used as the time period had lapsed.

Comment

Officials are grateful to the submitter for highlighting these drafting concerns and agree that clarifications of all of the sections should be made, except for the submissions referred to above at iii), v) and vi).

In submission iii), officials consider the use of the colon, as short-hand for the phrase "all or any of the following", in section 108B currently leads to confusion, as sub-paragraph (b) refers to

sub-paragraph (a). Therefore it is not possible to read the two sub-paragraphs as being separated by the phrase “all or any of the following” given that logically an extension of 12 months under sub-paragraph a) must first be obtained, in order for a further 6-month extension to be obtained under sub-paragraph (b). Officials consider the insertion of “and” between the two sub-paragraphs is sufficiently clear and that a 12-month period applies first and then a possible further 6 months.

In submission v), officials consider that the amendment is necessary to ensure that there is no confusion caused by the requirement for this section to be satisfied with a “notice” that either requires or “requests” for the objection to be heard by the Taxation Review Authority (TRA). Inclusion of the terms “notice” and “request” within the communication framework at different levels of communication formality means that they are therefore inconsistent in this context. To ensure that the section operates as intended, requiring the objector to communicate by notice, the term “request” (which is less formal than a notice) must be amended. Officials consider that the action intended by this provision is to either require or seek a hearing before the TRA. The term “seek” does not need to be defined for the operation of this section as the desired action must be communicated via a notice, which is a defined method of communication.

In submission vi), officials note that proposed new section 14D allows for both personal delivery and registered post. Therefore the proposed amendments to sections 137 (11) and 138 R(8) would allow for both methods of delivery.

Recommendation

That the submission be accepted, subject to officials’ comments.

ACCEPTING ELECTRONIC SIGNATURES

Clauses 72, 73 and 105

Issue: Support for the amendment

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

The submitters support the amendment to allow for documents to be “signed” with an electronic signature.

Comment

Officials note submitters’ support for the proposed amendment.

Recommendation

That the submission be noted.

Issue: Commissioner’s express consent

Submission
(EY)

The Electronic Transactions Act requires that the recipient consents to receiving the electronic signature. While it may be arguable that such consent is implicit in the legislation or should be able to be inferred from the Commissioner’s general conduct, we consider express statutory provision to that effect would be desirable.

Comment

This amendment is intended to provide the necessary consent for the use of valid electronic signatures on information provided to the Commissioner for taxpayers who comply with the Commissioner’s published guidelines. The guidelines will set out the criteria and technical requirements for the use of valid signatures as well as the nature of, and circumstances in which, the Commissioner accepts information under an electronic signature. Once developed, the guidelines will provide the detail of the circumstances in which electronic signature use is expressly consented to by the Commissioner. The criteria will be set by the Commissioner following consultation with interested parties.

Recommendation

That the submission be declined.

Issue: Legislation should cover more than just electronic signatures

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

Other unique identifiers such as encryption keys and biometric signatures should be accepted as a means of validating documents. This change needs to be future-proofed so that forms of consent (digital signatures) are also acceptable once the appropriate technology has been designed and tested. The proposal should be future-proofed to accommodate fast evolving communications technology.

Comment

The proposal is intended to be flexible to allow for the Commissioner to respond to new technologies. For this reason the proposed new section does not list all of the acceptable technologies or ways in which the technologies can be used; this detail will be covered in the guidelines. The term "electronic signature" is defined in the Electronic Transactions Act as a method used to identify a person and to indicate that person's approval of that information. This definition is very broad and therefore electronic signatures can arguably range from a name typed into a document, a pin number, the ticking of an internet check box or even a scanned image of a hand-written signature. The combination of the broad definition of "electronic signature" and the requirement for guidelines, will allow the Commissioner to approve the use of new technologies and to accept the use of new forms of electronic consent, by adding to the guidelines without the need for further legislative change.

Recommendation

That the submission be noted.

Issue: Express reference to "income tax" and "GST returns" under electronic signature

Submission
(Chartered Accountants Australia and New Zealand, EY)

For the purposes of removing doubt, explicit provision should be made for taxpayers to file income tax and GST returns under electronic signature.

Comment

As stated in the *Commentary* to the Bill, because of the legal significance of a signature it is important that the use of electronic signatures is secure and reliable for both taxpayers and Inland Revenue. To ensure that the necessary processes and systems requirements have been developed to allow for the secure and reliable use of electronic signatures it is important to phase in their use across the variety of communications received by the Commissioner. Therefore the proposed new section provides the over-arching consent for the use of electronic signatures and the guidance will provide the necessary detail as to which communications (for example, income tax or GST returns) and which technologies will be acceptable over time. To include some communications explicitly in the proposed new section with others allowed in the

guidelines could result in confusion and uncertainty. Furthermore, the explicit inclusion of some communications undermines the desired flexibility of this section, which aims to future-proof the legislation. If technologies change or tax administration changes there could be a need to reconsider the specific inclusion of these communications, which could require further legislative changes.

Recommendation

That the submission be declined.

Employee share schemes

OVERVIEW

Clauses 2(3), 52 to 54, 109, 204 and 222

Changes are proposed to the general PAYE collection rules in the Income Tax Act 2007 to improve the collection of tax on benefits received as employment income under an employee share purchase agreement. Share purchase agreements in this context are often referred to as "employee share schemes".

The changes proposed in the Bill:

- allow employers to choose to withhold tax using the PAYE rules on any employment income an employee receives under a share scheme; and
- require employers to disclose the tax value of any benefits an employee receives under a share scheme using the employer monthly schedule. This requirement applies to employers who choose not to withhold tax using the PAYE rules.

Submitters support the first change, subject to some modifications regarding scope and the timing when income information is supplied to Inland Revenue.

Submitters do not support the requirement to disclose the tax value of any benefit an employee receives under an employee share scheme. Submissions note that the requirement to use the employer monthly schedule to disclose the value of employee share scheme benefits will generate additional and unnecessary reconciliation work for employers. They are concerned that Inland Revenue's employer monthly schedule is not sufficiently sophisticated to deal with situations when amounts withheld under the PAYE rules do not reconcile with income. Submitters expect that Inland Revenue's Business Transformation programme will result in better systems which can deal with these computation issues.

Submitters also made technical comments about the amendments and their interaction with the Accident Compensation Act 2001 and the Holidays Act 2003.

In response to submissions, officials are making the following recommendations that would modify the proposal in the Bill:

- Large employers will for the most part be able to shift the recognition of benefits under an employee share scheme to the pay-period immediately following the purchase of shares or exercise of an option. The timing shift is to allow large employers sufficient time to compile information to support the required disclosures in the employer monthly schedule. A similar change is not required for other employers as they do not face the same time pressures to meet the statutory filing dates for the employer monthly schedule under the Tax Administration Act 1994.
- The obligation on employers to disclose the value of employee share benefits (when a decision is made not to withhold tax under the PAYE rules) is scaled back. The obligation to disclose will not apply in the following circumstances:
  - when an employee or an associate of the employee sells share rights to a non-associated third party;
  - when the share benefit arises from a "Commissioner approved" employee share purchase scheme; and

  - when share benefits are provided to a former employee.

- The decision to withhold tax under the PAYE rules will not be irrevocable. The decision to withhold tax can be exercised on a per employee basis. Officials note that in situations when tax is not withheld, Inland Revenue will still receive income information about the employee via the employer monthly schedule.

Minor changes and drafting clarifications are also proposed, including an amendment to the Accident Compensation Act 2001.

Effect of the recommendations

Under current law (the status quo), employees are responsible for disclosing the value of share benefits received under an employee share scheme and paying tax on those benefits. The Income Tax Act treats the employee as receiving employment income in the following situations:

- when the employee acquires shares – section CE 2(2);
- when the employee disposes of rights to acquire shares to non-associates – section CE 2(3);
- when an associate of the employee acquires shares – section CE 2(4); and
- when an associate disposes of rights to acquire shares to non-associates – section CE 2(5).

The proposal in the Bill shifts the obligation to disclose the value of employee share scheme benefits from the employee to the employer and allows the employer the option to withhold tax on benefits that are deemed to arise under section CE 2(2) and (4). Employees remain responsible for declaring and paying tax on income arising under sections CE 2(3) and (5) – the current treatment. The employee is also responsible for paying tax on income arising under section CE 2(2) and (4) if the employer chooses not to withhold tax (as under the current rules).

The range of outcomes is illustrated in the table below:

When income arises	**Current treatment**	**Proposed outcome**
When the employee acquires shares.	Employee must declare income and pay tax.	(i) Employer declares income for current employees. (ii) Employer may choose to withhold tax. (iii) Employee must pay tax if (ii) does not apply. (iv) Former employees must declare and pay tax unless (ii) applies.
When employee disposes of rights to acquire shares to non-associates.	Employee must declare income and pay tax.	Employee must declare income and pay tax.
When an associate of the employee acquires shares.	Employee must declare income and pay tax.	(i) Employer declares income for current employees. (ii) Employer may choose to withhold tax. (iii) Employee must pay tax if (ii) does not apply. (iv) Former employees must declare and pay tax unless (ii) applies.
When an associate disposes of rights to acquire shares to non-associates.	Employee must declare income and pay tax.	Employee must declare income and pay tax.

SIMPLIFYING THE COLLECTION OF TAX ON EMPLOYEE SHARE SCHEMES

No clause

Issue: Wider review of the tax treatment of employee share schemes needed

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

A review of the substantive taxation of employee share schemes and the wider policy settings for employee share schemes and employee option schemes should be given priority.

Comment

A review of the taxation of benefits under an employee share/option scheme is on the Government's tax policy work programme. A consultation document about the review is expected to be released in 2016.

Recommendation

That the submission be noted.

Issue: Support for proposed change

Clauses 2(3), 52 to 54, 109, 204 and 222

Submissions
(ANZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Covisory Partners, EY, New Zealand Law Society)

The submitters support the proposal to allow employers to choose to withhold tax using the PAYE system on any employment income employees receive under a share purchase agreement. *(All submitters)*

The submitter supports the requirement that employers disclose using the employer monthly schedule the value of the benefits employees receive under an employee share agreement. *(Covisory Partners)*

Recommendation

That the submissions be noted.

Issue: Alternative method of withholding should be considered

Submission
(KPMG)

The submitter supports the idea of withholding tax on employee share scheme benefits but considers a better approach is for tax to be withheld using the schedular withholding payments system.

Comment

Alternative methods of collecting tax, including a schedular withholding system, on employment income received in the form of an employee share benefit were considered during the policy development of the proposal in this Bill. Schedular withholding uses the same collection mechanics as the proposal in the Bill. The amount of tax collected is based on a flat rate, which can result in either under- or over-taxation. The proposal in the Bill ensures that the amount of tax withheld, if the employer chooses to do so, is at a rate that aligns with the employee's marginal tax rate.

Submissions received on the officials' issues paper *Simplifying the collection of tax on employee share schemes* were mostly of the view that the PAYE system should be used to withhold tax because any new withholding system would require new compliance systems. Other submitters on the issues paper did not see the case for duplicating compliance costs under a new withholding system when the PAYE system could be used.

Recommendation

That the submission be declined.

Issue: PAYE reporting and timeframes

Clauses 52 to 54 and 109

Submission
(Chartered Accountants Australia and New Zealand, EY, KPMG – verbal endorsement)

A longer time-period is needed for making the required disclosures than those allowed under the PAYE rules, especially for employers whose PAYE obligations exceed $500,000. *(EY)*

A longer time-period for making the required disclosures should be provided. In some circumstances it will be difficult for employers to meet the normal PAYE reporting dates because of delays in receiving the necessary information from overseas parent companies, share registry firms or former employees. *(Chartered Accountants Australia and New Zealand)*

Comment

Every month employers provide information to Inland Revenue in the employer monthly schedule about PAYE and related deductions made during the previous month. Large employers, that is, those with more than $500,000 a year of PAYE withholding (including employer superannuation contribution tax – ESCT) must provide the employer monthly schedule by the 5th of the month following that in which they withheld tax.

Large employers, in addition to the preparation of the employer monthly schedule by the 5th of the month, are also required to pay to Inland Revenue any tax withheld under the PAYE rules according to the following schedule:

- For pay-periods between the 1st and the 15th of the month, amounts withheld must be paid on the 20th of the month.
- For pay-periods between the 16th and the end of the month, amounts withheld must be paid by the 5th of the following month.

The payment information for the pay-periods in that month are reconciled in the employer monthly schedule filed with Inland Revenue on the 5th of the following month.

Employers with less than $500,000 in PAYE or ESCT must provide this information along with the payment of any withheld amounts by the 20th of the month following the month in which tax is withheld.

Submissions have noted that large employers are likely to find it very difficult to meet the statutory reporting timeframe of the 5th of the following month to provide Inland Revenue with an employer monthly schedule containing the necessary disclosures about any benefits an employee receives under an employee share scheme. Problems facing employers include:

- receiving the necessary share information from third-party share registries;
- obtaining the requisite information about the value of the share benefit vested in an employee;
- if the employee is a member of a global share purchase agreement, dealing with the non-resident parent company or trustee responsible for managing the employee share scheme;
- obtaining relevant information if the share benefit is received by a former employee that is still a party to the employee share scheme provided by the employer.

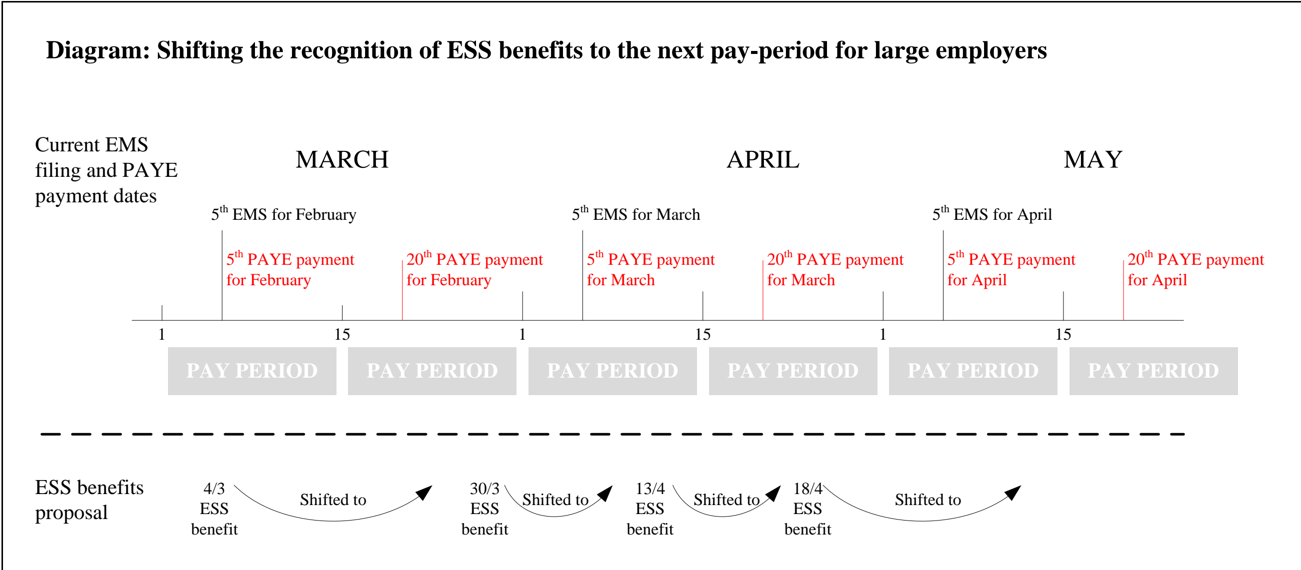
Submitters note these problems would be particularly acute for large employers if the share benefit accrues on the last few days of the preceding month when the employer monthly schedule is due on the 5th. A similar problem does not arise for other employers with PAYE obligations as the employer monthly schedule is required on a later date, being the 20th of the following month.

These filing dates are deeply embedded in Inland Revenue’s IT systems and drive a number of administrative processes and actions, including returns management, assessments, payment processing, penalties and filing reminders. Any change to the dates would therefore best be implemented following Inland Revenue’s transition to new technology and systems.

Currently, employment income arises in the income year when the employee purchases shares or exercises an option. This transaction would, in the absence of any change to the current

proposal in the Bill, be disclosed by the employer in the pay-period when the transaction occurred and, if the employer elects, PAYE would be withheld.

To provide large employers with additional time to compile the necessary information, given system constraints, officials recommend a new rule that shifts (for the purposes of the proposal in this Bill only) the point in time when employment income is recognised under an employee share scheme. The timing rule would apply to employees of a large employer only. Under the new rule, this income would be shifted to the next payment return period, as illustrated in the diagram below:



Explanation of ESS transactions in the diagram above:

- An employee share scheme benefit arising on 4 March would be attributed to the next pay-period. This means that if the employer chooses to withhold tax, it would be payable for the PAYE payment on 5 April and disclosed in the employer monthly schedule of the same date.
- An employee share scheme benefit arising on 30 March would be attributed to the next pay-period. If the employer choses to withhold tax, it would be payable for the PAYE payment on 20 April and disclosed in the employer monthly schedule on 5 May.
- An employee share scheme benefit arising on 13 April would be attributed to the next pay-period. If the employer chooses to withhold tax, it would payable for the PAYE payment on 5 May and disclosed in the employer monthly schedule of the same date.
- An employee share scheme benefit arising on 18 April would be attributed to the next pay-period. If the employer choses to withhold tax, it would be payable for the PAYE payment on 20 May and disclosed in the employer monthly schedule on 5 June.

The implications of this new rule are as follows:

- Income shifted from the first half of the month until the second half of the same month would be reported in the employer monthly schedule for that month.
- Income shifted from the second half of the month to the first half of the following month would be reported in the employer monthly schedule for that following month.
- In the year of introduction, a one-off and unquantifiable timing deferral may be created with some employee share benefits recognised in the next income year.

The trade-off with shifting the recognition of income covered by the proposal in this Bill is that in the year of application employee share benefits received between the 16th and 31 March 2017 would be assessed as income for the income year beginning 1 April 2017 and not the income year ending 31 March 2017. For some employees, this one-year income deferral could affect their child support or student loan obligations or Working for Families entitlements. Inland Revenue will investigate instances where employees seek to exploit for personal advantage the deferred recognition of income for share benefits provided between 16 and 31 March if those share benefits are provided out of pattern with previous years or the decision to acquire shares is out of step with market conditions.

Shifting the point when income is recognised would give large employers the benefit of additional time (minimum 20 days)[1] to compile the necessary information to be disclosed in the employer monthly schedule.

Recommendation

That the submissions be accepted, subject to officials' comments. Section CE 2 of the Income Tax Act should be modified to allow large employers to disclose the value of an employee share scheme benefit received by an employee in the payment return period immediately following the pay-period in which the benefit vests in the employee.

The practical implications of this recommendation for large employers will be explained in the *Tax Information Bulletin* following enactment.

Issue: Ability to correct returns

Submission
(EY)

The current PAYE rules do not provide any flexibility to correct any income variations in later employer monthly schedule/PAYE returns. If adjustments are necessary, the employer must amend their previously filed employer monthly schedule/PAYE return.

Comment

Inland Revenue's current technology platform cannot presently provide the flexibility recommended by the submitter. This issue is considered in policy proposals set out in *Better Administration of PAYE and GST: a Government discussion document*, which was released for public comment in November 2015.

Officials note, however, that the recommended change to shift the recognition of employee share scheme benefits to the next payment return period should go some way towards reducing the need to make adjustments to previously filed employer monthly schedules/PAYE returns.

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[1] Assumes a benefit vesting on the 15th of the month is not reported in the employer monthly schedule for the 5th of the following month and included in the payment return period of the same date. A longer period (up to 35 days) exists for benefits that vest on the last day of a month, which would not be reported in the employer monthly schedule of the 5th of the second following month. That benefit would, however, be included in the payment return period of the 20th of the following month.

Recommendation

That the submission be declined.

Issue: Scope of the proposals

Clauses 52 to 54 and 109

Submission
(Corporate Taxpayers Group, EY, Simpson Grierson)

A number of submitters have sought clarification about the scope of the proposal and in what situations the rules have application.

- The proposal should apply to situations when the employer is not a direct party to the arrangement, for example, in the case of multinational groups with New Zealand subsidiaries or branches. *(EY)*
- The proposal should apply to share option plans. *(Corporate Taxpayers Group)*
- The proposal should not apply to situations where the employer cannot be reasonably expected to have knowledge of the transaction – such as the employee selling their rights to another person. *(Simpson Grierson)*

Comment

As drafted, the proposal in the Bill has application to employment income that is treated as arising in the situations described in section CE 2 of the Income Tax Act. Section CE 2 treats employees as receiving employment income from an employee share scheme in the following four situations:

- when the employee acquires shares – section CE 2(2);
- when the employee disposes of rights to acquire shares to non-associates – section CE 2(3);
- when an associate of the employee acquires shares – section CE 2(4); and
- when an associate disposes of rights to acquire shares to non-associates – section CE 2(5).

Sections CE 2(3) to (5) act as specific anti-avoidance rules to support the main rule in section CE 2(2) and ensure that employment income is attributed to the employee in situations when the employee sells the option to acquire shares to another person.

Share acquisition under sections CE 2(2) and (4) are on the basis of a contractual understanding between the employer (or, as noted by EY, the employer's parent company or trust connected with the employer) and the employee. The rules also apply to schemes where the employee can exercise an option to acquire shares as noted by the Corporate Taxpayers Group. It is therefore reasonable to expect that the employer would have sufficient information to disclose the value of the share benefit and if the employer so chooses, to withhold tax on the benefit.

The submission from Simpson Grierson notes that employment income arises when an employee sells their rights to shares to a third party (section CE 2(3)) or an associate of the employee sells rights to a third party (section CE 2(5)). The employer would in all probability be unaware of the transaction and officials agree the appropriate outcome would be for the employee to remain liable to declare and pay tax on any income from the transaction.

Officials are also recommending in response to submissions other changes to clause 109 (new section 46(6B) of the Tax Administration Act) as previously discussed, which affect employers' obligations to disclose information about employment income an employee or former employee receives under an employee share scheme.

Recommendation

That the submissions be accepted, subject to officials' comments. The proposal in the Bill applies to employee share schemes where the employer is not a direct party to the arrangement and to share option plans. Section RD 6(1)(d) of the Income Tax Act and section 46(6) of the Tax Administration Act should also be amended to confirm that employment income arising from an employee disposing of their rights to shares under a share purchase agreement to a non-associated third party are outside the scope of the new rules. The employer remains obligated to disclose employee share benefits (and, if the employer chooses, withhold tax) received by the employee as a result of shares acquired by an associate (for example, in situations when section CE 2(4) applies).

Issue: Employees should be able to request their employer to withhold tax on any employment income

No clause

Submission
(Covisory Partners)

Employees should be able to request their employers to withhold tax on employment income received under an employee share scheme. This gives the employee and the employer the option of having PAYE deducted and provides good symmetry and fairness.

Comment

Submissions received on the officials' issues paper *Simplifying the collection of tax on employee share schemes* noted that applying the PAYE rules to withhold tax on employment income benefits received by employees under a share purchase agreement imposes additional costs on employers. More importantly, submissions on the issues paper from employers strongly argued that not all share purchase agreements could accommodate a requirement to collect tax without substantial changes to the terms and conditions of the employee share scheme offer. In response to these arguments the Government agreed that the proposed rules should apply at the employer's election.

Employees can request their employers withhold tax on employment income, but the employer should not be compelled to comply and should retain the final word as provided for under the Bill.

Recommendation

That the submission be declined.

Issue: Irrevocable election to withhold

Clause 54

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

The election should not be irrevocable. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)*

The election should be reflected in the amendments. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)*

An irrevocable election creates significant inflexibility for employers. *(KPMG)*

There need to be mechanisms in place to allow employers to "try out" new rules and apply the withholding rules to some employees and not others (such as former employees). *(KPMG)*

Comment

Officials expect that employers should only elect to withhold tax if, after proper consideration and appropriate tax advice, it makes sense for the employer to do so taking into account the features of the employee share scheme and the nature of the benefits provided. The irrevocable election is intended to provide certainty for employees and payroll intermediaries about the employer's decision to use the new rules. It is also intended to prevent employers from "cherry picking" between income years or pay-periods.

However, recognising that the disclosure requirement that complements the employer's choice about withholding tax under the PAYE rules and the comments in submissions about the impractical nature of making any choice irrevocable, officials agree the Bill should not specify that elections to withhold tax on employee share benefits be irrevocable.

Recommendation

That the submissions be accepted, subject to officials' comments. The election should not be irrevocable. New section RD 7B should apply on a per employee basis.

Issue: Objection to the requirement to disclose information when employer chooses not to withhold

Clause 109

Submission

(ANZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, EY)

Submitters recognise there is a trade-off for choosing not to withhold tax at source on employee share benefits. Providing the information required will be onerous for some employers. *(All submitters)*

The disclosure requirements should be deferred until Inland Revenue's technology systems are redesigned (under Inland Revenue's Business Transformation programme). *(All submitters)*

Submitters have also raised the following additional specific concerns with the disclosure requirement:

- The disclosure should not be made as part of the employer monthly schedule *(ANZ)* and the method of disclosure should be reconsidered. *(Chartered Accountants Australia and New Zealand)*
- Employers should not be required to disclose the value of any benefit received by an employee. *(Corporate Taxpayers Group)*
- The disclosure should be on an annual basis. *(ANZ, Corporate Taxpayers Group)*
- Internationally mobile employees should not be included in the disclosure. *(ANZ)*

Comment

The trade-off for allowing employers to choose whether to withhold tax on employment income employees receive under a share purchase plan is a requirement that employers that choose not to withhold declare the value of such benefits in their employer monthly schedule. Disclosing this information in this format allows Inland Revenue to capture information about employees' income and assists with prepopulating relevant employees' statement of earnings. The submission from Covisory Partners supported the disclosure requirement.

Information collected through the employer monthly schedule assists Inland Revenue with determining an employee's tax compliance and correct social policy obligations, such as child support and student loans, and Working for Families entitlements.

The disclosure is intended to improve Inland Revenue's knowledge about the amount of employment income derived from employee share schemes, and improve taxpayer compliance generally. The proposed means of obtaining this information, using existing data points in the employer monthly schedule, will provide Inland Revenue with the information needed to administer the collection of tax on employee share scheme benefits. The information can be captured in a timely and administratively effective manner without any impact on Inland Revenue's existing technology platform. Alternative methods of collecting information about employee share scheme benefits, such as annual returns or a letter from the employer setting out the names and tax file of employees receiving a share benefit do not provide the same efficiencies.

Currently, the responsibility for compliance is borne by the employee, and this can affect voluntary compliance.

Officials recognise that for the majority of employers, the allotment of benefits under an employee share scheme will sit outside the employer's payroll system. Such benefits are, however, either a feature of the employee's remuneration agreement or other benefit available to the employee through their employment. The employer should therefore have existing systems in place to ensure they meet any contractual obligations under the employee share scheme, including making adequate enquiries if associates are able to acquire shares under the employee share scheme. New tax compliance systems will need to be developed to capture any necessary information such as the employee's name, tax file number and the tax value of any share scheme benefit to ensure that it can be included when the employer's payroll is compiled.

The application date of 1 April 2017 for the proposed changes was set recognising that employers and payroll intermediaries would have to develop new compliance systems to meet the new disclosure requirements.

International employees have the same tax obligations as resident employees if their income is subject to New Zealand income tax.

Recommendation

That the submission be declined.

Issue: Employers should not be responsible for disclosing employee share benefits arising from Commissioner-approved share purchase schemes

Clause 109

Submission
(ANZ)

Benefits received under a share purchase scheme that is approved by the Commissioner of Inland Revenue should be excluded from the disclosure requirements.

Comment

The tax value of any share benefits an employee accrues under a share purchase scheme that is approved by the Commissioner of Inland Revenue is specified to be zero under section CE 2(7) of the Income Tax Act. This rule relates to schemes meeting the requirements of sections DC 13 and DC 14. As the benefit from these schemes under the Income Tax Act is zero, requiring employers to disclose the value of benefits received under a Commissioner of Inland Revenue-approved scheme is arguably of little benefit. The employer monthly schedule would not yield any meaningful information about the participants in these share purchase schemes.

Recommendation

That the submission be accepted subject to officials' comments. Employee share benefits received under a Commissioner of Inland Revenue-approved share purchase scheme meeting the requirements of sections DC 13 and DC 14 are not required to be reported in the employer's employer monthly schedule.

Issue: Employers should not be responsible for disclosing information about employee share benefits received by former employees

Clause 109

Submission
(ANZ)

Employers should not be obligated to disclose information about employee share benefits received by former employees.

Comments

Unless the employer chooses to withhold tax on any employee share benefit received by a former employee and has appropriate compliance systems in place, the obligation to disclose employee share benefits received by a former employee should not apply. Officials recognise that with former employees, employers would likely incur higher costs to access and maintain the necessary information needed to meet any disclosure requirement as the employment relationship has ended. It would also be practically more difficult for employers to make adequate enquiries about the acquisition of shares by an associate of the former employer under the employee share scheme.

If the employer chooses not to withhold tax, former employees would remain liable to declare and pay tax on any income from employment income from an employee share scheme.

Recommendation

That the submissions be accepted, subject to officials' comments. New section 46(6B) should not apply to employers in connection with employee share benefits received by former employees.

Issue: Interaction with the Accident Compensation Act

Clause 222

Submission
(Corporate Taxpayers Group, EY, Matters raised by officials)

The consequential change to the Accident Compensation Act 2001 does not appear to be effective in excluding employee share benefits from “earnings as an employee”.

Comment

Changing the method of collecting tax on employee share benefits using the PAYE rules is not intended to alter employees’ current obligations under the Accident Compensation Act. The amendment as contained in the Bill is not effective in achieving this outcome.

The amendment to the Accident Compensation Act is intended to preserve the status quo in that employee share benefits are not considered as PAYE income payments when determining an employee’s earner’s levy liability.

Following discussions with the Ministry of Business, Innovation and Employment and the Accident Compensation Corporation, officials recommend the consequential change in the Bill to the Accident Compensation Act be replaced by a new provision that ensures that any employee share benefit arising under the Income Tax Act is not counted as “earnings of any employee”.

A further change is also recommended by officials so that earnings of an employee-shareholder, as defined in the Accident Compensation Act, exclude amounts of benefits received under an employee share scheme that are subject to withholding under the PAYE rules.

Recommendation

That the submission be accepted. The Accident Compensation Act 2001 should be consequentially amended so that employment income arising under section CE 2 of the Income Tax Act and has tax withheld under section RD 7B is not included in “earnings of any employee” or “earnings as a shareholder employee”.

Issue: Interaction with the Holidays Act

Submission
(Corporate Taxpayers Group, KPMG)

It should be confirmed that employee share scheme benefits are excluded from holiday pay calculations under the Holidays Act 2003.

Comment

Shifting the tax collection point to the source of a benefit received under an employee share scheme does not directly impact on the employee entitlements under the Holidays Act. Entitlements under the Holidays Act are based on the employee's agreed remuneration package (in accordance with the Holidays Act), not the tax treatment of such benefits. The decision by employers to treat a benefit under an employee share scheme as an "extra pay" does not change whether this is gross earnings or ordinary earnings/average weekly earnings for the purposes of the Holidays Act.

Recommendation

That the submission be declined.

Issue: Drafting matters

Clauses 52 to 54 and 109

Submission
(EY, New Zealand Law Society, Russell McVeagh)

Given that the proposed amendments relate to the PAYE treatment of employee benefits, it is more appropriate to refer to the rules applying to "tax years" rather than "income years". *(EY)*

An amendment is required to make it clear that only an employee share scheme for which employers choose to withhold and pay tax on the employees' behalf is treated as an "extra pay" under the Income Tax Act. As drafted, the rules are circular in effect and this should be removed to give taxpayer certainty. *(All submitters)*

Comment

Officials consider the reference to "income year" is the better term as it covers a wider set of financial year circumstances. It also aligns with recognition and timing of income in section CE 2 of the Income Tax Act.

Officials will take into account submitters' useful comments and suggestions on the circular operation of the new rules, and where appropriate, they have been incorporated into the proposed amendments to the Bill arising from the changes recommended in this report.

Recommendations

That the submission on using the term "tax year" be declined.

That the submissions on circularity be accepted, subject to officials' comments.

Issue: Application date – validation of earlier tax positions

Clauses 2(3), 52 to 54, 109, 204 and 222

Submission
(Chartered Accountants Australia and New Zealand)

Cases where PAYE has been deducted by employers in earlier income years should be retrospectively validated, or alternatively, a "savings" clause should be included.

Comment

The genesis for the proposals in this Bill was an approach from some employers to use the PAYE system to return tax on their employees' behalf.

Recommendation

That the submission be accepted. Clause 54 should apply for earlier income years to employers that have taken a tax position on the assumption that tax on an employee's share benefit can be withheld under the PAYE system.

Issue: Amnesty for past non-compliance

Submission
(KPMG)

An amnesty is recommended to allow benefits from an employee share scheme in earlier income years to be returned as income in either the 2016 or 2017 income year's tax returns without incurring penalties or use-of-money interest.

Comment

Taxpayers have an obligation to comply with the tax rules for benefits received under an employee share scheme. The treatment of such benefits as employment income has been a longstanding feature of the tax system. Anecdotally, documentation associated with the scheme usually describes an employee's tax obligations in respect of the benefit provided. For these schemes, employees are aware of their tax obligations, although this may not directly transfer to tax compliance.

An amnesty would be unfair on those employees who have to date complied, and filed and paid tax on employment income received under an employee share scheme.

Officials note that penalties are generally reduced for voluntary disclosures.

Recommendation

That the submission be declined.

Issue: Consequential matters

Submission

(KPMG)

The submitter seeks clarity on the following matters:

- Existing share purchase agreements may not legally allow the employer to reduce the share benefit for the employee's tax liability. This would result in the employer needing to fund the tax through a "gross-up", effectively increasing the value of the benefit.
- The recipient of shares provided under an employee share scheme may be subject to a "blackout" period in which they are not able to dispose of the shares to cover the tax liability. The time when income is earned under the Income Tax Act should be deferred in these circumstances.

Comment

Officials agree with the submitter that taxation at source requires the employer to fund the tax liability arising on the employee share scheme benefit. The simplest way to do this is for the employer to sell a portion of the employee's shares to cover the tax. Alternatively, the employer may gross up the payment using cash to meet the employee's tax liability. This alternative would increase the cost on the employer for providing the employee share scheme benefit.

The submitter seeks an amendment that would treat the payment of tax as meeting the employer's obligations under the scheme.

The voluntary nature of the rules means that officials consider it is a matter that is best left for the employer and employee to agree as to the impact the collection of tax has on the quantum of employee share benefits. The submitter's comparison with compulsory employer superannuation contribution tax is not valid because the substantive taxation rules for employee share schemes are not being changed. Officials recognise that our view may limit the initial take up of the PAYE rules as a means of ensuring employees meet their tax obligations to new schemes or existing schemes that permit the employer to sell shares on the employee's behalf.

The second matter relating to "blackout" periods is an example of when taxation at source is problematic for non-cash employment income. Blackout periods would prevent the employer from selling shares to meet the employee's tax liability. Again, the voluntary nature of the rules would suggest that if blackout periods are likely to be a practical compliance problem for the employer, they should not elect to withhold tax on the employee's behalf.

Recommendation

That the submission be declined.

Issue: Does the sale of shares to meet tax obligations mean that all the shares vested in the employee are held on revenue account?

Submission
(KPMG)

Selling shares to meet tax obligations could be considered trading and the remaining shares could be treated as revenue account property. A specific legislative exclusion is needed to eliminate this outcome.

Comment

The sale of shares to meet employees' tax obligations under the PAYE rules should not create a different outcome from the situation if the employee was to sell the shares themselves to meet a tax obligation. If the shares vested in the employee were held on capital account, then officials agree, in principle, that any share disposal to meet tax obligations (independent of whether tax is withheld under PAYE) should not "taint" the remaining shares.

Given the possible matrix of facts that could apply to an employee and their intentions about the shares received under an employee share scheme, officials consider that a specific legislative exclusion is not appropriate. Instead, officials will provide guidance on this question as part of the *Tax Information Bulletin* item explaining these changes following enactment of the Bill.

Recommendation

That the submission be declined.

Information sharing

RELEASE OF GENERAL INFORMATION

Clause 117(3)

Submissions
(Office of the Privacy Commissioner, KPMG, Chartered Accountants Australia and New Zealand)

Three submitters expressed their general support for the proposals.

We support the Commissioner releasing general information without the approval of the Minister of Finance, as long as the information does not identify any taxpayer. *(KPMG, Chartered Accountants Australia and New Zealand)*

The use of de-identified and statistical information to increase the transparency of government processes is supported. The proposed amendment to enable decisions on the release of information in this context to be made by the Department, rather than requiring Ministerial approval, is a pragmatic approach to facilitate the release of information when it is desirable to do so. *(Office of the Privacy Commissioner)*

Comment

Officials note the general support for the proposed amendments.

Recommendation

That the submissions be noted.

ENFORCEMENT OF EMPLOYMENT STANDARDS

Clauses 117(2) and (6)

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand, KPMG, Office of the Privacy Commissioner)

Three submitters expressed general support for the proposals to share information with other agencies, such as the Ministry of Business, Innovation and Employment, and with WorkSafe for the enforcement of employment standards.

The Office of the Privacy Commissioner also commented that it considers the threshold introduced in clause 117(2) that requires the Commissioner to consider that "the disclosure is reasonably necessary" to support a legislative function, as proposed for the new section 81(4)(ec) of the Tax Administration Act, is a sufficient safeguard to ensure the exchange of personal information will be appropriately constrained to support the purpose intended. *(Office of the Privacy Commissioner)*

Comment

Officials note the general support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: Proposal should be reconsidered

Submission
(EY)

The proposal is not necessarily in the best interests of fostering voluntary compliance and disclosure, for tax purposes, by taxpayers. The proposal should be reconsidered.

Comment

Officials agree that voluntary compliance is an important consideration.

There are times when carrying out a function in relation to workplace legislation that wage and time records are absent, inaccurate or falsified. Using Inland Revenue records will support the goal of facilitating the enforcement of employment standards. Inland Revenue records should enable labour inspectors to identify and proceed against a breach.

Recommendation

That the submission be declined.

Issue: Further safeguards needed

Submission
(KPMG)

The proposal should be subject to the same safeguards over the storage and use of taxpayer-secret information, and sanctions for non-compliance, that apply to Inland Revenue, applying to the relevant agencies (and their officers).

Comment

There will be safeguards in place over the storage and use of the information shared. For example, information can only be shared for specific purposes and the information can only be used for that purpose, the information must be stored appropriately by the other agency and only accessible by relevant people in the other agency (not by all staff). In addition, shared information is part of a public record and therefore the Public Records Act 2005 applies. The receiving agency must comply by having appropriate storage and disposal procedures in place.

Recommendation

That the submission be declined.

SHARING BIOMETRIC INFORMATION

Clause 117(5)

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand, KPMG, Office of the Privacy Commissioner)

Three submitters support the amendment to section 81 of the Tax Administration Act 1994 to allow the sharing of biometric information with the Ministry of Social Development.

Comment

Officials note the submitters' support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: Should the proposed amendment be limited to the Ministry of Social Development?

Submission
(KPMG)

The proposal, as set out in the *Commentary* to the Bill, is limited to the sharing of voiceprint data with the Ministry of Social Development. However, draft section 81(4)(nb) of the Tax Administration Act 1994 appears to allow voiceprint sharing with any "public sector agency". It is unclear what is actually intended here.

Comment

Inland Revenue and the Ministry of Social Development are looking at a pilot to determine whether Inland Revenue's biometric information can be used to identify and verify callers to the Ministry.

The legislation is wider than required for the pilot to ensure that if the pilot is successful, the use of Inland Revenue's voiceprint data can be extended to other government agencies – that is, the intention is to future-proof the legislation.

Recommendation

That the submission be noted.

Issue: The giving of consent

Submission
(KPMG)

The draft legislation (proposed section 81(4)(nb)(iv)) requires the Commissioner to seek approval from a taxpayer to exchange biometric information with other Government agencies. It is not clear, practically, how Inland Revenue will attempt to seek consent. We also believe it may be useful for the legislation to allow the other agency (the Ministry of Social Development) to seek consent from the taxpayer, on Inland Revenue's behalf, if this is an easier option.

Comment

Officials agree with the submission and consider that the legislation should be clarified and consent obtained by the other agency (for the pilot this would be the Ministry of Social Development). Administratively, this would be a much simpler option.

Recommendation

That the submission be accepted.

Issue: Extending the types of biometric information

Submission
(KPMG)

Limiting the type of biometric information to be exchanged to the "voice of the person" seems short-sighted. Biometric information encompasses a range of potential identifiers. Consideration should be given to the reasons for limiting the type of biometric information that might be exchanged. This is particularly relevant as electronic communication increases and video as well as voice communication becomes more prevalent.

Comment

Section 81 of the Tax Administration Act 1994 creates an obligation of secrecy for officers of Inland Revenue. However, under section 81(4), there is a list of circumstances in which this obligation has been removed. This provision relates to the sharing of information that Inland Revenue holds, rather than receives. At this stage the only biometric information that Inland Revenue collects relates to voice. Officials consider that at this stage the proposed amendment should be limited to voice biometric information only.

Recommendation

That the submission be declined.

KiwiSaver membership

IMPACT OF SUBSEQUENT "CONSCIOUS CHOICE"

Clauses 205 to 211

Submission
(ANZ)

We support the amendment to allow minors who have been incorrectly enrolled to opt out should they wish to. We do however propose that the amendments specify that the opt out criteria for minors will not apply if the member has made a conscious decision about their choice of KiwiSaver provider or fund.

Comment

Minors who have been incorrectly enrolled by their employer but who have, either with the consent of their guardians (if still a minor) or independently (if over the age of 18), subsequently contracted directly with a provider should not be able to opt out under this proposal. This later action should serve to validate their earlier incorrect enrolment.

Recommendation

That the submission be accepted, subject to officials' comments.

LIMITING OPT OUTS TO EMPLOYMENT ENROLMENTS ONLY

Submission
(Chartered Accountants Australia and New Zealand)

We submit that "incorrectly enrolled" should be defined so it occurs only in an employment situation and would not include an enrolment of a minor by a parent or guardian prior to the minor's employment.

Comment

New section 59CB only applies to taxpayers who have been incorrectly enrolled due to an error in the application of the automatic enrolment rules, or who have incorrectly been allowed to "opt in" via their employer. It does not allow opt outs in relation to enrolments made on behalf of a minor by their parent or guardian.

Recommendation

That the submission be declined.

DRAFTING ERROR

Clause 205

Submission
(EY)

The automatic enrolment criteria proposed new section 10 are cumulative. An automatic enrolment will be treated as a "mistaken" enrolment if any one or more of those criteria is not met. As drafted, however, the proposed new section 59A(b)(i) would appear to treat an automatic enrolment as a mistaken enrolment only if there was a failure to meet all three criteria listed. We therefore suggest the wording be revised.

Comment

The drafting achieves the correct result. New section 59A(b)(i) says that a person who fails to meet the requirements of section 10(a), (b) and (c)(iii) may be treated as "mistakenly" enrolled. If a person failed any one of those three requirements, they would pass the test in section 59A(b)(i).

Officials accept, however, that the clause could be made clearer and will redraft to this effect.

Recommendation

That the submission be accepted.

KIWISAVER – MEMBER TAX CREDIT INFORMATION

Clause 213

Issue: Privacy protocols

Submission
(Chartered Accountants Australia and New Zealand)

Chartered Accountants Australia and New Zealand (CAANZ) support allowing the Commissioner and KiwiSaver fund providers to share information for account maintenance purposes only. Nevertheless, CAANZ has also suggested that:

- KiwiSaver providers should be asked to sign a protocol agreeing to use information only for account maintenance purposes before the information is released by Inland Revenue; and
- KiwiSaver members should be asked to tick a box if they are happy for their details to be shared with other KiwiSaver providers.

Comment

KiwiSaver fund providers have all entered into a Scheme Provider Agreement with the Commissioner prior to registering their KiwiSaver scheme with the Financial Markets Authority.

That agreement includes a contractual restriction on the use of member/taxpayer information. Accordingly, it does not appear that the addition of a new privacy protocol would add anything further to that restriction as fund providers already receive information about KiwiSaver members, which can only be used for KiwiSaver administration purposes.

We disagree with the suggestion that a tick box should be used by KiwiSaver members to provide consent for member tax credit information about them to be shared with other KiwiSaver providers. This is because there are already sufficient exceptions to the privacy requirements, including that an agency can share the information concerned to allow Inland Revenue to maintain the Inland Revenue Acts, and to protect the public revenue.

Recommendation

That the submission be declined.

Issue: Information sharing requirements

Submission

(ANZ)

ANZ has expressed general support for the proposal which enables the sharing of more information between the Commissioner and KiwiSaver providers. However, ANZ has also said that:

- The Bill will likely necessitate changes to its IT systems in order to meet the proposed information sharing requirements. ANZ therefore welcomes discussion with officials on what the additional information sharing requirements will look like from a technology perspective; and
- New section 220B(1)(c)(v) should be redrafted to specifically state what member tax credit information will be shared. A possible drafting solution is to use the same wording in section 56(3)(c)(vi) of the KiwiSaver Act to achieve this.

Comment

With regard to the point about ANZ's expected IT systems changes as a result of the proposal, officials consider that this is a question of administration, not of potential amendment to legislation. Accordingly, the KiwiSaver Act does not prescribe the mechanism for any information sharing, and there appears to be no reason for prescribing such a mechanism in this case by way of an amendment to the rules.

Officials consider that the second suggestion to specify what member tax credit information could be shared, would give rise to systems changes and therefore cost implications for KiwiSaver fund providers. If fund providers are able to participate in terms of being able to transfer certain member tax credit information from old providers to new providers they will be able to do so by virtue of new section 220B(1)(c)(v) as proposed under the Bill.

Nevertheless, officials are happy to work with KiwiSaver fund providers regarding the additional time they may need to implement system changes that are expected to arise out of the proposed information sharing requirements.

Recommendation

That the submission be declined. However, the submission should be noted to the extent that if any KiwiSaver fund provider requires additional time to implement system changes, officials will work with them in that regard.

Issue: Support for the proposal

Submission
(KPMG, Office of the Privacy Commissioner, ANZ, Chartered Accountants Australia and New Zealand)

Four submitters expressed their general support for the proposal which enables the sharing of more information between the Commissioner and KiwiSaver providers to support the administration of the KiwiSaver Scheme.

Comment

Officials note the general support for the proposed amendment.

Recommendation

That the submission be noted.

Other policy matters

FIF EXEMPTION SIMPLIFICATION FOR ASX

Clause 35

Issue: Support for the amendment

Submission
(Corporate Taxpayers Group, Chartered Accountants Australia and New Zealand, Covisory Partners, KPMG)

The submitters were supportive of the amendment, describing it as sensible. Making the exemption applicable to all entities listed on the ASX would greatly reduce compliance costs for taxpayers and provide greater clarity and certainty. This proposal will reduce compliance costs for taxpayers from having to determine whether an Australian investment is included on an approved index or not.

Comment

Officials welcome the submitters' support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: Not supportive of the amendment

Submission
(Deloitte)

The amendment should not be enacted. We believe that the change proposed does not have the effect intended by officials, and instead the amendment potentially has the opposite effect. Removing this requirement will increase the number of securities potentially eligible for the exemption from 500 to 600 to more than 2,100. As a result, the compliance time and cost would likely increase as there are a greater number of securities to consider, making it more difficult for taxpayers to self-assess their tax positions. Given that the status quo is acceptable from a policy perspective, we suggest that the current rules be maintained which will ensure that an increase in compliance costs and uncertainty is avoided.

Comment

The current requirement results in considerable uncertainty for investors and administrative cost for Inland Revenue as companies move on or off an approved index from period to period. For investors holding shares in companies on the fringe of the index (for example, the bottom 10 companies in the top 500 list which makes up the ASX All Ordinaries Index) the movement on and off the index as a result of periodic rebalancing results in different tax treatments from period to period. This not only increases their compliance costs as they switch between methods, but it also is not in line with the policy underlying the taxation of these investments,

given that nothing else changes for these taxpayers other than the size of the company relative to others on the list (in other words, the company is just as likely to distribute reasonable levels of dividends).

Although officials acknowledge that the pool of potential securities which may qualify for the exemption will increase as a result of this amendment, it is not correct to conclude that this will necessarily result in increased compliance costs for taxpayers. Officials expect that the majority of investors relying on this exemption are likely to hold shares in companies listed on the All Ordinaries Index. For these investors, the amendment would mean that they no longer have to track index movements from period to period, which is expected to reduce their compliance costs.

Recommendation

That the submission be declined.

Issue: Amending the remaining requirements of the FIF exemption

Submission
(Corporate Taxpayers Group, Deloitte, KPMG)

The remaining requirements of section EX 31 place a significant compliance cost burden on taxpayers. The Corporate Taxpayers Group strongly submits that officials should consider whether the remaining criteria can be further amended to reduce compliance costs for taxpayers and Inland Revenue. The remaining requirements for application of the exemption are equally, if not more, onerous. Advice from a specialist may be needed to establish the correct position for some shares. *(Corporate Taxpayers Group, Deloitte)*

If the aim is simplification, the FIF exemption should apply if the share is ASX listed, without also having to consider the other requirements. *(KPMG)*

Comment

Officials consider that the removal of the remainder of the requirements of the exemption would not be appropriate. Each of the requirements is necessary both to adequately target the exemption – to those stocks for which dividend-only taxation is appropriate – as well as to protect the FIF tax base from erosion by inappropriate reliance on the exemption (for example, restricting the application to shares only). The residence requirements reflect the fact that dividend-only taxation is appropriate for investments in Australian companies which, like New Zealand companies, are encouraged to distribute dividends as a result of the Australian franking system. Removal of these requirements would allow for ASX-listed stocks in non-Australian companies to be included in the exemption. This could include, for example, US companies which are not tax-incentivised to pay reasonable levels of dividends resulting in effective non-taxation of these investments. This result is contrary to intended policy.

Recommendation

That the submission be declined.

Issue: Inland Revenue's published exemption list

Submission

(Deloitte, KPMG)

Inland Revenue needs to continue to prepare a list of qualifying securities as guidance to taxpayers, to prevent taxpayers incorrectly treating securities. Investors are unlikely to be equipped with the knowledge or resources to complete analysis required by the exemption. If the remainder of the exemption is not simplified Inland Revenue should continue to publish the IR871 (Australian share exemption list) based on the ASX 500.

Comment

The proposed amendment will improve taxpayers' ability to self-assess the criteria that the shares are in a company listed on the ASX, as this information is publicly available from the ASX website. Previously the shares had to be included on an approved ASX index and, given that the indexes are not generally publicly available, Inland Revenue published the exemption list, based on the indexes, to assist taxpayer compliance. Submitters have noted, and officials recognise, that many taxpayers rely on Inland Revenue's published list to assist with their application of the exemption criteria. Post-enactment Inland Revenue will continue to provide guidance on the ASX exemption to assist taxpayer compliance.

Recommendation

That the submission be noted.

Issue: Retrospective application of the amendment

Submission

(Deloitte)

The proposed timing, application from 2016–17 and later income years, would mean that the amendment applies retrospectively for some taxpayers. For unit valuers, who are required to calculate FIF income on a periodic basis (typically daily) this retrospective application will result in compliance issues as tax calculations and payments have already been completed on the basis of the existing rules. The application date should be amended to apply to income years after the amendment is enacted.

Comment

Officials agree that for unit valuers, who may be calculating FIF income more regularly, the retrospective application is not appropriate. However, officials do not agree that the amendment should apply to all income years after the enactment of the amendment as this would result in a staggered application over two years (depending on balance date). Instead officials suggest that the application date should be amended to the 2017–18 and later income years to allow for enactment prior to application.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Exclusion for Australasian share sale proceeds of managed funds

Submission
(Corporate Taxpayers Group)

Section CX 55 of the Income Tax Act 2007 also refers to shares included in an approved index under the ASX Market Rules, and in the Group's view it appears to be an oversight that an amendment is not also proposed to this section. Making an amendment to section CX 55 would be consistent with the policy reasoning stated in the Bill *Commentary* for the amendment to the FIF ASX exemption, being to reduce the uncertainty that taxpayers face in determining whether a company is on or off an approved index from period to period. Section CX 55 should also be amended to mirror the changes to the FIF ASX exemption as proposed.

Comment

Officials agree that an amendment is required to bring section CX 55 in line with the proposed amendment to the ASX FIF exemption, but not for the reasons raised by the submitter. Section CX 55 generally treats the proceeds from the disposal of Australasian shares as excluded income for managed funds such as portfolio investment entity (PIE) funds. In the absence of this section proceeds from the disposal of these shares would probably be taxable in the hands of the PIE, for example, as the shares are likely to be held on revenue account. For taxpayers investing directly, who are more likely to hold the shares on capital account, the sale proceeds are not likely to be taxable. Section CX 55 therefore ensures that individuals investing though PIEs, for example, are not tax disadvantaged compared with individuals investing directly in the same stocks.

The proposed amendment to the ASX FIF exemption would result in more Australian-listed stocks qualifying for the FIF exemption. Unless the same amendment is also made to CX 55, to bring the two provisions in line, taxpayers investing through a fund (who would rely on section CX 55) would be tax disadvantaged compared with direct investors (relying on the FIF exemption) with respect to the taxation of sale proceeds. This is not the policy intent.

Recommendation

That the submission be accepted.

SUPPORTING CO-LOCATION

Clauses 117(1) and 122

Issue: Support for the proposal

Submission
(Office of the Privacy Commissioner)

The Office of the Privacy Commissioner supported the proposal to address issues concerning the realities of working in open plan, co-located offices while still maintaining obligations on Inland Revenue employees to maintain a reasonable standard of confidentiality in respect to taxpayer information. The submitter noted that it was logical to remove barriers to efficient open-plan office environments for government agencies. The Office of the Privacy Commissioner had no objections to the proposed amendments.

Comment

Officials note the support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: Whether co-located staff signing Inland Revenue certificates overcomes issue

Submission
(Chartered Accountants Australia and New Zealand)

The submitter supported the co-location of government departments as a measure to achieve efficiencies and cost savings in the public service. However, the submitter believed it would be a simpler process to require staff of co-located government agencies to sign the same secrecy agreements as Inland Revenue staff, rather than amending the law to specify that an employee does not breach the secrecy provisions if they unintentionally disclose tax-secret information in a co-location environment.

Comment

Officials do not consider that it is appropriate to have co-located staff from other agencies sign the same secrecy agreement that Inland Revenue employees sign. Further, even if the non-Inland Revenue co-located staff did sign the same secrecy agreement, that would not address the issue of Inland Revenue employees breaching section 81 by inadvertent communication to co-located staff.

Inland Revenue employees sign secrecy declarations under section 81 of the Tax Administration Act 1994 (TAA). The secrecy declarations under section 81 only relate to officers of Inland Revenue (as defined in section 81(8)) and not to employees of other co-located organisations.

Under section 81, Inland Revenue employees have an obligation to maintain the secrecy of all matters relating to the tax legislation. This ties in with their broader obligations under section 6 of the TAA to use their best endeavours to protect the integrity of the tax system (including keeping individual affairs of taxpayers confidential). These broad obligations are reflected in the Inland Revenue code of conduct.

In contrast, generally other people who have access to restricted information only have the obligation to protect the secrecy of the information that they receive (section 87 of the TAA). They do not have broader obligations to protect the integrity of the tax system and they are not subject to Inland Revenue's code of conduct. Officials consider that it is more appropriate, given co-located staff will only inadvertently receive restricted information, that their obligations only relate to the information that they receive.

In addition, there are various exemptions in the secrecy obligation that Inland Revenue employees sign that allow them to share information with other government agencies in certain limited situations. It is not intended that co-located staff that receive restricted information inadvertently will be able to share that information with other government agencies under the various exemptions. Instead, officials consider it is appropriate that co-located staff have an unqualified obligation to maintain the secrecy of any information they inadvertently receive.

Further, having co-located staff sign the same secrecy obligation that Inland Revenue employees sign may blur the information sharing between Inland Revenue employees and the co-located staff. The proposed amendment is not intended to allow a broader sharing of information between Inland Revenue staff and co-located staff than is currently the case. The proposed amendment is only intended to deal with information inadvertently communicated to the co-located staff that arises as a consequence of being co-located. Having co-located staff sign a different secrecy obligation will better reflect the distinction between the Inland Revenue employees and co-located staff to Inland Revenue employees, the co-located staff and to taxpayers.

In any event, even if co-located staff did sign the same secrecy agreement as Inland Revenue employees, that would not address the issue of Inland Revenue employees breaching section 81 by inadvertent communication to co-located staff. Inland Revenue employees are only allowed to communicate tax-secret information for the purpose of carrying into effect the Tax Acts or for executing or performing a duty of the Commissioner. An inadvertent communication of tax-secret information by an Inland Revenue employee to a co-located staff member would generally not fall within that category, even if that co-located staff member had signed the relevant secrecy agreement. Therefore, the amendment as proposed is needed to address that issue.

Recommendation

That the submission be declined.

Issue: Whether the exception for unintentional breaches is necessary

Submission
(New Zealand Law Society)

The submitter suggested that it was unclear whether the proposed exception for unintentional breaches was necessary, given that an offence was committed only if a person "knowingly" acts in contravention of section 81 (section 143C(1) of the TAA). The submission stated it would be an unusual situation when a person knowingly communicates secret taxpayer information to another person in a way that breaches section 81(1) but the communication to that person was unintentional. The examples given in the Bill *Commentary* would be unlikely to mean that the Inland Revenue staff member has “knowingly” acted in contravention of section 81(1) and therefore committed an offence.

Comment

Officials consider that the amendment is necessary despite the criminal penalty provision only applying when the employee knowingly acts in contravention of section 81.

Officials consider that an employee could be held to have knowingly acted in contravention of section 81 in a situation where there is a real risk that a co-located staff member will overhear a communication, but this risk is inherent in the accommodation arrangements and the premises. This may be the case when the employee is required to carry out their employment duties in co-located premises. In that situation, an employee may be aware that a co-located staff member could overhear a conversation, but not always be able to avoid that possibility. Officials consider it would be unfair to expose the Inland Revenue employee to the risk of a criminal penalty for doing their job in the premises required by their employer.

In addition, even if there was not a risk of a criminal penalty, the Inland Revenue employee would still be placed in a position where there was a risk that they were breaching the law. This raises issues for the employee’s broader obligations to ensure the integrity of the tax system and Inland Revenue’s code of conduct.

Recommendation

That the submission be declined.

Issue: Whether a higher secrecy standard should apply

Submission
(New Zealand Law Society, Russell McVeagh)

The proposed amendment will mean an Inland Revenue employee will not breach the secrecy provision (section 81) if they do not intend the co-located staff member to overhear the conversation. The submitters stated that a higher standard should be prescribed than “does not intend”. To excuse all unintentional disclosures of secret taxpayer information that would otherwise breach section 81 would mean that negligent or even reckless practices would escape sanction. The taxpayer secrecy obligation is important to the integrity of the tax system and the

language of any statutory exceptions should reflect that. Accordingly, at a minimum, the amendment should require the Inland Revenue officer to have taken reasonable steps to have avoided the communication being received by the recipient.

Comment

Officials consider that the amendment is not intended to, and does not, sanction negligent or reckless practices on the part of Inland Revenue staff. The "does not intend" wording seeks to make it clear that the relevant communication is inadvertent. In addition, officials consider that any obligations on ensuring that reasonable steps have been taken to take into account, and mitigate such risks in the context of the premises, should fall on the Commissioner and not the individual employee.

Officials consider the amendment will not allow negligent or reckless practices because of the various other obligations on Inland Revenue employees. Specifically, Inland Revenue employees are required under section 6 to use their best endeavours to protect the integrity of the tax system (including keeping individual affairs confidential). Inland Revenue employees are also subject to a code of conduct which requires staff to ensure secrecy is maintained. Employees risk dismissal if they breach the code of conduct. Inland Revenue also has a strong culture of protecting secret information, and internal practices and training to support that culture.

Officials consider the Commissioner's obligations under section 6 will require her to take secrecy into account in deciding where co-location will occur and what physical safeguards will be put in place. Officials do not consider that it is appropriate to put such an obligation on individual employees if they are required to work in a co-located environment.

Recommendation

That the submission be declined.

Issue: Whether the proposal should be limited to Inland Revenue employees and co-located government employees

Submission

(New Zealand Law Society, Russell McVeagh)

The submitters noted that the *Commentary* to the Bill states that the amendment will remove a barrier to co-location arrangements between Inland Revenue and other government departments. However, the exception as currently drafted is not limited to unintentional disclosure to government employees (as section 87 can also apply to persons who are not government employees).

The submitters recommend that the amendment should be limited to Inland Revenue employees and co-located government employees.

Comment

Officials consider that the law should also apply to contractors who have signed section 87 certificates, as well as Inland Revenue and co-located employees.

Consistent with modern work practices, Inland Revenue and other government agencies often engage contractors who can in a practical sense be indistinguishable from employees. This means that Inland Revenue employees may not be able to distinguish contractors from Inland Revenue and co-located employees. Officials consider that it would be unreasonable for Inland Revenue employees to be subject to criminal penalties in such circumstances. Officials consider, therefore, the amendment should apply to inadvertent communications to all staff who sign secrecy certificates.

Recommendation

That the submission be declined.

Issue: Whether the proposal should be limited to co-located premises

Submission
(New Zealand Law Society, Russell McVeagh)

The submitters noted that the *Commentary* to the Bill stated that the proposed amendment was intended to align the approach to co-located staff working in open-plan areas, with the current approach to Inland Revenue staff working in open-plan areas.

The submitters note, however, that the exception as currently drafted is not limited to a place where co-location occurs. The submitters noted further that there did not appear to be an exception under current law for Inland Revenue officers that inadvertently disclose taxpayer information to other Inland Revenue officers. Accordingly, contrary to what the *Commentary* to the Bill suggests, the proposal appears to create an exception for breaches of section 81(1) for Inland Revenue officers that disclose taxpayer information to both Inland Revenue officers and to staff of other government agencies.

Comment

Officials consider the proposed amendment will clarify the application of the law to Inland Revenue open-plan offices, and extend that application to locations, and in conditions relating to the secrecy of information, where an Inland Revenue employee is expected to work.

Officials agree the clarifying aspect of the proposed amendment could have been more clearly set out in the *Commentary*, and recommend the issue be covered in the *Tax Information Bulletin* that follows the enactment of the Bill.

Officials consider the current law does not prevent Inland Revenue from operating in open-plan workspaces. However, in such an environment, there is an inevitable risk that an Inland Revenue employee may inadvertently overhear a conversation between two other Inland Revenue employees or inadvertently overhear an Inland Revenue officer discussing a matter with a taxpayer on a phone call. It would be impossible in a practical sense to completely

eliminate such a risk in an open-plan environment. As a result, as there is not an explicit exception for Inland Revenue employees under the current law, officials consider it is possible that a court could hold an employee liable for criminal sanctions when a conversation was inadvertently overheard in an open-plan Inland Revenue office as well. Officials consider, therefore, the proposed amendment should clarify that Inland Revenue employees do not breach the secrecy provision when they are carrying into effect the tax legislation in an open-plan environment and another Inland Revenue employee inadvertently overhears a conversation. An Inland Revenue employee will still be liable for criminal sanctions if they intentionally communicate tax-secret information to another Inland Revenue employee, other than for carrying into effect the Tax Acts or carrying on a duty of the Commissioner.

Officials acknowledge that the exception could be made to apply only to Inland Revenue offices and co-located sites, and the definition could be amended accordingly.

However, officials' preference is that the proposed amendment extends this approach to a location, and in conditions relating to the secrecy of information, where an Inland Revenue employee is expected to work. Officials consider the breadth of the provision will enable Inland Revenue to be flexible about the different work environments that it expects employees to work in.

Officials would point out that the breadth of the provision must be read in light of the various requirements and restrictions that will apply to the exception. Specifically:

- the Commissioner will need to comply with her general obligation to use her best endeavours to protect the integrity of the tax system in determining where she expects employees to work and what secrecy conditions will apply in that environment;
- the exception will only apply when the communication is not intentional;
- the exception will also only apply when the inadvertent communication is heard by a staff member who has signed a secrecy agreement, and so is subject to severe criminal penalties for knowingly communicating any restricted information; and
- all Inland Revenue employees will still be obligated to use their best endeavours to keep a taxpayer's individual affairs confidential, and there will be sanctions for negligent or reckless behaviour.

Recommendation

That the submission be noted.

SPECIAL TAX CODES FOR THOSE RECEIVING NZ SUPERANNUATION OR VETERAN'S PENSION

Clauses 71(5) to (7), 83, 84, 85, 86, 87, 101 and 102

Issue: Support for amendments

Submissions
(Chartered Accountants Australia and New Zealand, KPMG)

The submitters support the amendments to allow the Commissioner to provide special tax code certificates directly to the Ministry of Social Development. These amendments will reduce compliance costs for superannuitants and veteran pensioners by reducing the extent of over- or under-deduction of tax.

Recommendation
That the submissions be noted.

Issue: Drafting error with section 24B(3)

Submission
(EY)

The submitter proposes that the wording of clause 83, although appropriate, does not read well with regard to how it fits with the section it amends and that the opportunity should be taken to improve the flow and logic of the provisions.

Comment
Clause 83 amends section 24B(3) of the Tax Administration Act. This section requires the employee to notify their employer of one of the tax codes listed in that section.

A "no notification" tax code applies when the employee does not provide their employer with a tax code. However section 24B(3) incorrectly includes the "no notification tax code in a list of codes that the employee advises the employer of. This error has existed for some time and officials agree with the submitter that the opportunity should be taken to correct this legislative error.

Recommendation

That the submission be accepted.

Issue: Allowing special tax codes to apply to more than one employer

Submission
(EY)

The submitter suggests that the draft legislation is too restrictive and that the special tax code can only apply in respect of a single employer, which is not what the current legislation provides.

Comment

An employee can apply for a special tax code to apply to their New Zealand superannuation or veteran's pension income or their other employment income from one or more employers.

The Bill proposes changes to enable the Commissioner to provide the special tax code certificate directly to the Ministry of Social Development instead of having to give the certificate to the superannuitant who has to provide it to the Ministry of Social Development.

Officials agree with the submitter. In drafting these amendments, a legislative oversight has resulted in the Bill incorrectly limiting the application of the special tax code to the income of one employer instead of to income from more than one employer.

Recommendation

That the submission be accepted.

FACILITATING ADDITIONAL DEDUCTIONS FROM WAGES OR SALARY

Clauses 169, 185, 217, 219 and 221

Issue: Defaulting taxpayers should not be able to prevent deduction notices having effect by failing to notify a change of address

Submission
(Chartered Accountants Australia and New Zealand)

Currently, when a person has defaulted on tax, child support, gaming duty or student loan payment obligations, additional deductions from their wages or salary to recover the shortfall are prevented if the defaulter has failed to notify Inland Revenue of a change of address.

Defaulting taxpayers should not be able to prevent deduction notices having effect by failing to notify a change of address.

Comment

The submission confirms the problem the proposed amendments are intended to address.

Some taxpayers choose to ignore their tax obligations and other payment obligations by failing to maintain a valid address that Inland Revenue can use to contact them.

When the defaulter's employer is known, requiring deductions from the defaulter's wages or salary is an efficient means of recovering the outstanding payments, but that action is prevented if the defaulter has not kept Inland Revenue informed of their correct address. Under the proposed amendments, the deduction notice will be issued to the employer without a copy to the employee, but the defaulter's rights to challenge an assessment or make alternative arrangements for payment will be protected through earlier correspondence.

Recommendation

That the submission be noted.

Issue: A copy of the deduction notice should be sent to the employee at the employer's address

Submissions
(Chartered Accountants Australia and New Zealand, EY, KPMG, New Zealand Law Society)

When a defaulting taxpayer's address is unknown, or they have not notified a change of address, the notice should be sent to the employee at the employer's address prior to the deduction from wages or salaries. The submitter does not understand why a copy of the deduction notice cannot be sent to the employee at the employer's address, as this would not impose a significant compliance burden on employers, who will be the first point of call for queries from employees. *(Chartered Accountants Australia and New Zealand)*

The Commissioner should retain an obligation to issue appropriate notices to taxpayer debtors, although it should not be necessary to prove that the notice had been received. We suggest that the Commissioner should be required to provide notices to the employers or other relevant debtors, which they can issue to the taxpayer debtors. *(EY)*

The Commissioner should be able to issue a deduction notice to a defaulting taxpayer at the employer's address if the taxpayer's address cannot be found. *(KPMG)*

Comment

Issuing a copy of the deduction notice to the defaulter's employer to pass on to the employee was one of the options considered by Inland Revenue.

The option was discarded because it would require the following manual actions to be taken by Inland Revenue staff:

- change the taxpayer's address on the FIRST system to the employer's address;
- generate the issue of the deduction notice with a copy for the employee; and
- change the taxpayer's address back to "invalid" so other correspondence with the taxpayer is not issued to the employer.

It is not clear at this stage of Inland Revenue's new tax administration system development whether a less manually intensive solution would be available in the new system.

Secondly, allowing the employer to pass on the deduction notice would not create any incentive for the defaulting employee to contact Inland Revenue to update their address details.

Finally, being required to pass on copies of deduction notices to employees would impose a compliance burden on employers, particularly those with a widely dispersed workforce.

Information for employers to support the proposed change would encourage them to direct any employee enquiries to Inland Revenue so that address details can be updated and give the person an opportunity to discuss alternative payment arrangements.

It should be noted that the proposed changes are to apply only to copies of notices for deduction from salary or wages. They will not apply to deductions that can be made from payments made to defaulters by other third parties.

Recommendation

That the submissions be declined.

Issue: The Commissioner should reconsider processes

Submission
(KPMG)

The waiver of the employee copy of a deduction notice is a step too far, denying the defaulting taxpayer any opportunity to respond to or challenge the Commissioner's assessment. This right is fundamental to the integrity of the tax system.

Comment

Before there is an attempt to issue an automatic deduction notice to an employer there will have been earlier communications with the defaulting employee.

First, there will have been an assessment, which may have been a self-assessment by the taxpayer. If, however, Inland Revenue has generated the assessment, a notice of assessment will have been issued, giving the taxpayer the opportunity to object and follow through the dispute process.

Secondly, a statement of account, which may be issued prior to the due date in response to some transactions, is generally issued once the due date for payment has passed and Inland Revenue records show no or insufficient payment was made. The statement shows any penalties or interest added to the account.

In addition, for some taxpayers there will have been e-alerts through their myIR account or payment reminders by text to their mobile phone.

Thirdly, if payment has not been made in full within 20 to 50 days (the date varies depending whether the taxpayer is represented by an agent) after the due date for payment, a debt notice is issued. This gives the taxpayer a final opportunity to contact Inland Revenue and discuss the default and possible alternative payment arrangements before a deduction notice is issued to the taxpayer's employer.

It is only when the final form of correspondence with the taxpayer is returned and the address coded as "invalid" that we propose that an automatic deduction notice be issued to the employer without a copy to the employee.

At earlier points in the process, if the taxpayer's address becomes invalid it would be only when the case is identified for manual action that following enquiries, including to the employer about the employee's address, a deduction notice would be generated.

Recommendation

That the submission be declined.

Issue: The proposed amendments address administrative issues

Submission

(Office of the Privacy Commissioner)

Clause 169 removes the obligation on Inland Revenue to advise both a tax-due defaulter and their employer when it plans to initiate deductions from a defaulting taxpayer's salary or wages if the defaulter has not kept their personal address details up to date with Inland Revenue. This addresses administrative issues arising when taxpayers do not comply with their existing obligations to keep Inland Revenue informed of changes in their contact details.

Comment

The proposed amendments will create administrative efficiencies for Inland Revenue and faster recovery of unpaid taxes and other payments when the defaulter is in paid employment.

Recommendation

That the submission be noted.

CHANGES TO PERSONAL TAX SUMMARY THRESHOLDS

Clauses 59 and 116

Issue: Support for the proposals

Submissions
(KPMG, Chartered Accountants Australia and New Zealand)

Two submitters expressed their general support for the proposals.

We see these changes as an interim step until the broader issues with personal tax summaries and individual tax returns are dealt with as part of the Business Transformation process. *(Chartered Accountants Australia and New Zealand)*

Comment

Officials note the general support for the proposed amendments.

Recommendation

That the submissions be noted.

Issue: Clarification of interaction with section 80F(2)

Submission
(EY)

Clause 116 proposes amending section 80H(3) with the aim of reducing the time for automatically releasing refunds on unconfirmed personal tax summaries. The assessment could be treated as made on the 15th day after issue of an income statement, rather than on the 30th day under the present section 80H(3)(c), unless one of the other specified dates occurs first. We suggest clarification would be desirable as to how the section 80H(3) provision is intended to fit with the section 80F(2) period (the taxpayer's terminal tax date or two months after issue of income statement, whichever is the later) for notifying Inland Revenue of errors.

Comment

The interaction of sections 80H(3) and 80F(2) remain unchanged. Section 80H(3) allows low-value refunds to be issued automatically without requiring an interaction between the taxpayer and Inland Revenue. Section 80F(2) requires any taxpayer receiving an incorrect personal tax summary to contact Inland Revenue and provide the necessary information before their terminal tax due date or the date two months after the personal tax summary was issued, whichever is the later.

Recommendation

That the submission be declined.

Issue: Use of the term "confirms"

Submission
(EY)

It is also proposed to change the section 80H(3)(d) reference to the date on which a person requests a refund to the date on which a person "confirms that the income statement is correct". The term "confirms" is not one of the new communications terms listed and described in proposed sections 14 to 14G. We suggest the existing wording be retained or one of the specific new communications terms should be used instead of a further, different term, or the term "confirms" should be expressly included within one of the proposed section 14 communication categories.

Comment

The current section 80H(3)(d) refers to the date "on which the person requests a refund of tax under section RM 5 of the Income Tax Act 2007". This request can only be made by the person confirming their personal tax summary.

The term "confirms" is also used in section RM 5 and is undefined as it retains its normal meaning.

Recommendation

That the submission be declined.

CHANGES TO RULINGS REGIME

Clauses 130, 137, 138, 145 and 152

Issue: Support for the proposal

Submissions
(Chartered Accountants Australia and New Zealand, KPMG, Corporate Taxpayers Group)

The submitters supported the proposed amendments to the binding rulings regime. The submitters noted that the amendments will remove certain restrictions on Inland Revenue when providing binding rulings in certain circumstance and reduce administrative costs, particularly to clarify that Inland Revenue can rule on issues under dispute by other taxpayers.

Comment

Officials note the support for the proposed amendments.

Recommendation

That the submissions be noted.

Issue: Publication requirements

Submissions
(EY)

The submitter noted the proposed amendment to allow the Commissioner to notify extensions of public and status rulings in a publication chosen by the Commissioner, rather than in the *New Zealand Gazette*. The submitter recommended that it be clarified whether such "publication" includes a website and, if so, that the Commissioner should be required to record, on the face of such website publications, details of the dates of their issue and the dates they become accessible to the public. The submitter also recommended that the Commissioner should also be required to publish similar date details in relation to any subsequent changes or additions affecting such publications.

Comment

Officials consider the amendment is intended to allow the Commissioner to notify extensions of public and status rulings on Inland Revenue's website. The use of the term "publication" is intended to be broad enough to cover a wide variety of digital channels.

Inland Revenue is currently reviewing the way it publishes items, including on its website. Officials consider the submissions on the details that should be included when publishing should be passed on to the relevant Inland Revenue team to consider as part of their review.

Recommendation

That the submissions be noted.

Issue: Materiality requirements

Submissions
(Corporate Taxpayers Group)

The Group supports the move to amend section 91EB of the Tax Administration Act 1994 to clarify that an assumption needs to be "materially incorrect" rather than merely "incorrect" for the private ruling to cease to apply. The Group submits that Inland Revenue should release some further guidance as to when the Commissioner believes that the breach of an assumption in a binding ruling is "material". This will assist taxpayers in determining whether a binding ruling continues to apply, as it will not always be obvious whether a breach of an assumption is "material" in nature.

On a related point, the Group notes that the concept of materiality features quite prominently throughout the rulings regime and the continued application of a ruling will often hinge on whether there is a "material" change to the arrangement to which the ruling relates. There is no New Zealand commentary or case law that considers this point, and whether there has been a material change to an arrangement is often an area of uncertainty for taxpayers, noting that rulings are often applied for before transactions or arrangements have been put in place. In the Group's view, guidance on the concept of materiality as it relates to the rulings regime is required and Inland Revenue should issue an item on this matter.

Alternatively, consideration should be given to extending the scope of the "factual review" product offered by Inland Revenue to allow a taxpayer to request a factual review during the period of the ruling. At present Inland Revenue's guidance states that "[a] Factual Review may be requested in writing at any time prior to or immediately following the issue of the ruling".

Comment

Officials consider that whether an assumption is material will turn on the particular facts and circumstances. Officials note that Inland Revenue is currently considering whether to provide further guidance on the materiality requirement. We consider, however, that providing further guidance on the issue is beyond the scope of the current Bill.

Recommendation

That the submissions be noted.

STUDENT LOANS – STUDENT LOAN INTEREST

No clause

Submission
(Kim Parker)

The submitter proposes the imposition of interest on student loans.

Comment

Under current law, New Zealand-based student loan borrowers pay no interest on their loan as long as they comply with any assessed repayment obligations. However, interest is imposed on the consolidated loan balance of overseas-based borrowers.

There is no provision in the Bill relating to student loan interest and the Government is committed to retaining interest-free student loans for borrowers in New Zealand.

Recommendation

That the submission be declined.

TAX SECRECY AND SOFTWARE INTERMEDIARIES

Submission
(Matter raised by officials)

Section 81 of the Tax Administration Act 1994 should be amended to clarify that the transmission of customer-specific information via business software that is provided and maintained by a software provider (the software intermediary) does not breach the section 81 secrecy provision.

Comment

Tax secrecy requires Inland Revenue officers to maintain secrecy in all matters relating to Inland Revenue's functions. Tax-secret information cannot be disclosed unless it is for tax purposes, or is covered by a specific exception contained in the legislation.

An integral aspect of Inland Revenue's Business Transformation programme is that customers will be able to manage most tax transactions, complete their tax affairs and file their tax information directly from their business software. Inland Revenue in turn will be able to send information, confirmation and messages directly to a customer's business software. However, by transmitting customer information directly to business software, Inland Revenue could be disclosing customer-specific tax information to a third party (the software intermediary that is providing and maintaining the business software) and potentially breach the tax secrecy obligations contained in section 81 of the Tax Administration Act.

Officials therefore recommend that section 81 of the Tax Administration Act 1994 be amended to clarify that the transmission of customer-specific information via business software provided and maintained by a software intermediary does not breach the secrecy provision. Software intermediaries who wish to offer this new service will be required to enter into an agreement with the Commissioner, which will specify obligations and expectations about access and use of taxpayer information.

Officials recommend this amendment apply generally from the date of enactment of the amending legislation, but that it applies retrospectively to any software intermediary agreements that have been entered into with the Commissioner before that date.

Recommendation

That the submission be accepted.