

## REGULATORY IMPACT STATEMENT

### Cross government sharing of tax information

#### Agency disclosure statement

This regulatory impact statement has been prepared by Inland Revenue. It provides an analysis of the options to address the difference in scope between the tax secrecy exception in section 81A of the Tax Administration Act 1994, which enables the sharing of personal information only, and what can be shared under an Approved Information Sharing Agreement (AISA) under the Privacy Act 1993, being both personal and non-personal information.

To support the benefits intended under the AISA framework, the Minister of Revenue has asked officials to report on extending the current tax secrecy provision to enable sharing of non-personal information under an AISA. The Minister of Revenue has asked that this amendment be included in the next tax omnibus bill to be introduced in mid-April 2016. The options in the attached statement, and the time to consider these options, have been constrained as a result.

Officials have consulted with the Office of the Privacy Commissioner, the Treasury, New Zealand Police and the Ministry of Justice. There were no concerns raised in the feedback and all four agencies support the proposed amendment.

None of the policy options restrict market competition, impair property rights, reduce incentives for small businesses to operate, or override fundamental common law principles.



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## STATUS QUO AND PROBLEM DEFINITION

1. Inland Revenue's tax secrecy laws cover all matters relating to legislation administered by Inland Revenue. Communication of these matters is not normally permitted other than for the purpose of carrying into effect that legislation. Tax secrecy is a longstanding and important concept. It is consistent with international norms (and with the basic premise of the Privacy Act), has a perceived positive impact on compliance and has a clear role as a balance to Inland Revenue's broad information-collection powers.
2. However, the operation of Government requires that the tax secrecy requirements be balanced against wider objectives and the need to share information with other agencies. Over time a number of exceptions to the strict tax secrecy rule have been introduced, the majority of which involve cross-government information sharing. These exceptions reflect the balancing of the principles of tax secrecy against the need to support economic efficiency and growth, and wider government outcomes.
3. Section 81A of the Tax Administration Act 1994 allows the sharing of personal information under an Approved Information Sharing Agreement (AISA). An AISA is a legal mechanism, provided for by the Privacy Act 1993, which authorises the sharing of information between or within agencies (or between a government agency and a non-government agency) for the purpose of delivering public services. AISAs can be used to share personal information, or both personal and non-personal information such as company or partnership information. AISAs cannot be used to share solely non-personal information. If there is a need to share solely non-personal information then this would need to be addressed through some other legislative mechanism.
4. AISAs are not the only legislative avenue available for cross-Government sharing of tax secret information. Subsection 81(4) of the Tax Administration Act also allows for sharing in certain specified cases, and the list currently includes a number of specific provisions for sharing with other agencies. However, the AISA process is preferable because it facilitates the meeting of privacy expectations and is capable of providing increased certainty, transparency and accountability for agencies and the public.
5. A further advantage of pursuing options under an AISA is that, while the AISA framework is stable and well understood, the wider tax secrecy provisions including the section 81(4) exceptions are presently subject to a policy review of the Tax Administration Act. Public consultation was conducted over 2015 and, where possible, it would be appropriate to avoid pre-empting the outcome of this review with further amendments to the wider secrecy provisions.
6. The tax secrecy exception under section 81A of the Tax Administration Act provides only for the sharing of personal information under an AISA, precluding the sharing of both personal and non-personal information. The difference in scope between the exception to tax secrecy legislation and what AISAs can share unduly limits the ability of Inland Revenue to use AISAs. If the status quo remained it would limit the future ability of Inland Revenue to fully contribute to the Government's Better Public Services reforms of a more collaborative, cross-agency approach to supporting citizens and gaining efficiencies.
7. An example of this is the AISA between Inland Revenue and the New Zealand Police for the sharing of information to help fight serious crime. Although the New Zealand Police

can request personal information under the current agreement, non-personal information about companies or other entities that are used in committing serious crimes cannot be shared. Information held by Inland Revenue, which would be useful to Police, is often a mixture of personal and non-personal information and it is difficult to separate the information out without affecting its usefulness. New Zealand Police would like to access both personal and non-personal information under the current serious crime AISA.

8. This regulatory impact statement outlines options to address the limit on cross-Government sharing of tax secret information relating to personal and non-personal information.

## OBJECTIVES

9. The objectives against which the options have been assessed are:

- *Fairness and equity*: to support fairness in the public sector, options should, to the extent possible, seek to treat similar taxpayers in similar circumstances in a similar way.
- *Efficiency of compliance and administration*: the impacts on taxpayers of compliance with the rules and the administrative impacts on the government should be minimised as far as possible.
- *Sustainability of the public sector*: Rules for cross-government sharing of tax information should promote the integrity of and compliance with the law.

10. These objectives are weighted equally.

## Constraints

11. To contribute to the Government's Better Public Services reforms of a more collaborative, cross-agency approach to supporting citizens and gaining efficiencies, there is a move to remove the barriers to sharing information among government agencies. The current cross-agency initiatives have pressing timelines. The Minister of Revenue has directed officials to prepare changes to tax secrecy legislation that enable sharing of both personal and non-personal information under an AISA. The direction was for these changes to be included for inclusion in the next omnibus tax bill, which is scheduled for introduction in April 2016. The next opportunity would be to include the changes in the next tax omnibus bill which is scheduled to be introduced in November 2016. This would further delay the application date of the changes, which would be undesirable because the legislative issue identified represents a major restriction on progress. This timeframe has limited the options officials could consider and the analysis of those options.

## REGULATORY IMPACT ANALYSIS

12. The three options considered for addressing the problem are:

- Option 1: Retain the status quo of sharing only personal information under an AISA.
- Option 2: Amend the secrecy exception under section 81A of the Tax Administration Act to enable the sharing of information relating to both individuals and non-individuals under an AISA; and
- Option 3: Amend the secrecy exception under section 81(4), which allows disclosure of tax secret information in certain cases, to include cross-Government sharing of information relating to non-individuals for certain purposes.

13. The table below summarises our assessment of the options against the objectives of fairness and equity, efficiency of compliance and administration, and the sustainability of the public sector.

Options	Fairness and equity	Efficiency of compliance and administration	Sustainability of the public sector
1. Retain the status quo of sharing only personal information under an AISA	<p><b>Not met</b></p> <p>The Tax Administration Act does not enable full use to be made of the AISA regime to share information as it only applies to personal information.</p> <p>Government departments administer the laws under their control based on the information available to them. When information is not able to be shared between departments there is a chance that people or entities can take advantage of departments not having a common understanding.</p>	<p><b>Not met</b></p> <p>Compliance by an individual may be adversely affected if they perceive that others are able to avoid complying with their public obligations, due to a lack of information sharing.</p>	<p><b>Not met</b></p> <p>Can undermine the integrity of the public sector if those not entitled to receive an entitlement or those not complying go unpunished.</p>

Options	Fairness and equity	Efficiency of compliance and administration	Sustainability of the public sector
<p>2. Amend the tax secrecy exception for sharing under an AISA to enable the sharing of non-personal information. <i>(Preferred option)</i></p>	<p><b>Met</b></p> <p>This option is fairer and more equitable than the status quo. Individuals and non-individuals are treated equally as information about both can be shared.</p> <p>Enables greater access to information regarding non individuals and will enable enforcement of obligations to be better targeted.</p>	<p><b>Met</b></p> <p>There is potential for both a small increase in Inland Revenue administration costs (in providing additional information to other agencies) and benefits to Inland Revenue as a result of receiving more information from other agencies.</p> <p>There will also be reduced compliance costs for the entity through not providing the same information twice.</p> <p>Compliance impacts could be mixed for this option. Those who perceive non-compliance by others being punished could increase their own compliance. However, those who see tax information being shared with others may not provide tax information to Inland Revenue, thereby undermining tax compliance.</p>	<p><b>Met</b></p> <p>Overall, supports the integrity of the public sector, including enforcement of the law. However, entities may be more hesitant to provide Inland Revenue information. But on the other hand, more sharing could improve the general public's perception of government being joined-up.</p>
<p>3. Amend the secrecy exception for disclosure of tax secret information in certain cases, to include cross-Government sharing of information relating to non-individuals.</p>	<p><b>Met</b></p> <p>This option would allow sharing to avoid people or entities taking advantage of departments lacking a common understanding, However, the AISA framework provides greater transparency, certainty and accountability both for agencies using the process and for the public.</p>	<p><b>Partially met</b></p> <p>Same as option 2. However, this option would involve an extra administrative cost of developing a new exception to tax secrecy laws, despite the prior existence of the AISA framework.</p>	<p><b>Partially met</b></p> <p>Same as option 2. However, this option would lack the advantages attached to the AISA framework in terms of consistency and certainty across agencies.</p>

12. There are no revenue, economic, social, environmental or cultural impacts from the two options.

## **CONCLUSION**

13. Officials recommend option 2, to amend section 81A of the Tax Administration Act to enable the sharing of information about non-individuals under an AISA. Under this option, greater access to information will enable a fairer and more equitable enforcement of obligations and support the integrity of the public sector.

## **CONSULTATION**

14. Officials have consulted with the Office of the Privacy Commissioner, the Treasury, and New Zealand Police on this issue. The consultation took the form of discussions with agency representatives on the proposals and each agency has been provided with the Cabinet paper for comment. There were no concerns raised in feedback. All three agencies support option 2.

15. The Office of the Privacy Commissioner is satisfied that option 2 is consistent with the scope of the AISA framework for government information sharing, as provided in the Privacy Act, and that option 2 would properly align the tax secrecy provisions with the AISA mechanism.

## **IMPLEMENTATION**

16. The recommended option will require an amendment to the Tax Administration Act 1994. It is proposed that option 2 be included in a bill to be introduced into Parliament in mid-April this year. Inland Revenue will include an explanation of this change in the commentary on the bill. There will be an opportunity for public comment on the proposed amendment during the select committee stage of the bill. If enacted, a publicly available Tax Information Bulletin will include an explanation of the amendment. Following enactment, AISA agreements can be entered into or amended by way of an Order in Council to provide for the sharing of personal and non-personal information.

17. Inland Revenue and the relevant other agency will administer the AISA agreements.

## **MONITORING EVALUATION AND REVIEW**

18. Inland Revenue will monitor the outcomes of the change pursuant to the Generic Tax Policy Process (GTTP) to confirm that they match the policy objectives. The GTTP is a multi-stage policy process that has been used to design tax policy in New Zealand since 1995.

19. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation, and the identification of remedial issues. Post-implementation review is expected to occur around 12-months after implementation. Opportunities for external consultation are built into this stage. Any necessary changes identified as a result of the review would be recommended for addition to the Government's tax policy work programme.