



Cabinet Economic Growth and Infrastructure Committee

EGI-15-SUB-0110

Summary

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Making Tax Simpler: Towards a New Tax Administration Act: Release of Discussion Document

Portfolio **Revenue**

Purpose This paper seeks agreement to release the attached discussion document on *Making Tax Simpler: Towards a New Tax Administration Act* (the discussion document).

Previous Consideration On 18 March 2015, EGI agreed to the release of a government green paper and a discussion document relating to Better Digital Services [EGI Min (15) 5/2-3]. The feedback received on those two documents has informed the proposals for this paper.

Summary The Commissioner of Inland Revenue (Commissioner) has statutory independence to ensure Inland Revenue is able to collect tax and carry out its duties, but the Commissioner is also a State sector chief executive with responsibilities to work closely with other government agencies to deliver more efficient public services.

The discussion document examines how the Commissioner's "care and management" responsibility can best coexist with the newly enhanced chief executive responsibilities in the State Sector Act 1988.

In particular, the discussion document seeks feedback on the following proposals:

- to clarify the Commissioner's care and management responsibilities to provide for greater administrative flexibility in limited circumstances, and to ensure the responsibility applies to the Commissioner's non-tax functions (eg administering Working for Families tax credits, student loan repayments, child support, KiwiSaver and paid parental leave);
- to clarify Inland Revenue's powers to access bulk third-party information and remotely stored information (eg by aligning the rules in the Search and Surveillance Act 2012 to clarify how Inland Revenue can use the remote access regime, recognising that many Inland Revenue searches are carried out without a requirement for a warrant);

- to narrow the secrecy rule from referring to “all information” to information that identifies, or could identify, a taxpayer (eg to allow for greater cross-government information sharing);
- how Inland Revenue could support improved information flows between government agencies, and whether a taxpayer should be able to consent to the release of their information;
- to impose an obligation on taxpayers who receive a pre-populated tax return to respond to that return within a prescribed period, and to treat that response as the taxpayer’s self-assessment for tax administration purposes.

The discussion document notes that further consideration will be given to the advice and disputes regime, the time bar, record keeping and the future compliance and penalties approaches.

**Regulatory
Impact Analysis**

A Regulatory Impact Statement will be submitted when final policy approval is sought.

**Baseline
Implications**

Any fiscal implications will be included in the final policy proposals.

**Legislative
Implications**

None from this paper. The Minister of Revenue intends to seek approval to include two tax bills on the 2016 Legislation Programme. The proposals in this paper will be included in the second of these bills, for introduction in late -2016.

Timing Issues

The release of the discussion document will be announced at a Trans-Tasman Business Circle briefing on 11 November 2015.

Announcement

The relevant documents will be posted on Inland Revenue’s *Making Tax Simpler* website.

**Proactive
Release**

None.

Consultation

Paper prepared by Inland Revenue. ACC, Crown Law, Customs, MBIE, Education, Treasury, DIA, Justice, Police, MSD and SSC were consulted. CAANZ and the NZ Law Society were also consulted.

The Minister of Revenue indicates that the Minister of Finance, the Minister for Economic Development and the Minister for Tertiary Education, Skills and Employment were consulted, and that discussion is not required with the government caucus, or with other parties represented in Parliament.

The Minister of Revenue recommends that the Committee:

- 1 note the contents of the government discussion document, *Making Tax Simpler: Towards a New Tax Administration Act* (the discussion document), attached to the submission under EGI-15-SUB-0110, which will consult on proposals to:
 - 1.1 clarify the Commissioner of Inland Revenue's care and management responsibilities;
 - 1.2 clarify Inland Revenue's powers to access bulk third-party information and remotely stored information;
 - 1.3 narrow the secrecy rule;
 - 1.4 impose an obligation to respond to a pre-populated return within a prescribed period for taxpayers receiving a pre-populated tax return, and to treat the response as the self-assessment;
- 2 agree to the release of the discussion document, and to the launch of accompanying online consultation on its contents;
- 3 authorise the Minister of Revenue to approve any editorial, presentational and other minor changes to the discussion document before its release;
- 4 invite the Minister of Revenue to report back to the Cabinet Economic Growth and Infrastructure Committee on the outcome of consultation and with final policy recommendations.

Janine Harvey
Committee Secretary

Hard copy distribution:

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Chief Executive, TPK

Chair
Cabinet Economic Growth and Infrastructure Committee

RELEASE OF DISCUSSION DOCUMENT – MAKING TAX SIMPLER: TOWARDS A NEW TAX ADMINISTRATION ACT

Proposal

1. This paper seeks the agreement of the Cabinet Economic Growth and Infrastructure Committee to the release of the Government discussion document, *Making Tax Simpler: Towards a new Tax Administration Act*, and the launch of accompanying online consultation, discussing the review of the framework for the Tax Administration Act 1994.

Out of scope



3. Copies of the discussion documents are available, electronically or in print, from my office.

Executive summary

4. In short, the discussion document *Making Tax Simpler: Towards a new Tax Administration Act (Towards a new Tax Administration Act)*:

- concludes that the role of the Commissioner of Inland Revenue, as prescribed by legislation, is reasonably clear and adequately expressed, notwithstanding the fact that the recent State Sector Act changes affect the Commissioner's relationships with other organisations;
- proposes to clarify the Commissioner's care and management responsibilities to provide for greater administrative flexibility in limited circumstances and to ensure the responsibility applies to the non-tax functions;
- proposes to clarify Inland Revenue's powers to access bulk third-party information and remotely stored information;
- proposes to narrow the secrecy rule from referring to "all information" to information that identifies, or could identify, a taxpayer;
- consults on whether a taxpayer should be able to consent to the release of their information, in certain circumstances;

- consults on how Inland Revenue could support improved information flows between government agencies;
- proposes, for taxpayers receiving a pre-populated tax return, to impose an obligation to respond to the prepopulated return within a prescribed period;
- proposes to treat the taxpayers confirmation of the prepopulated return as their self-assessment for tax administration purposes; and
- notes that further consideration will be given to the advice and disputes regimes, the time bar, record keeping and the future compliance and penalties approaches, in the light of the modernised tax administration once features have been decided and implemented as Inland Revenue's business transformation programme progresses.

5. Submissions on this discussion document will close on 12 February 2016. Following consultation I will report back to the Cabinet Economic Growth and Infrastructure Committee on the outcome of consultation and final policy recommendations.

Background

6. *Towards a new Tax Administration Act* is one in a series of consultation documents setting out the Government's proposals for the transformation of tax administration. The components of the business transformation consultation timeline are set out below:



7. This discussion document builds on the concepts set out in the *Making Tax Simpler: A Government Green Paper on tax administration* (the *Green Paper*) which outlined the likely scope of the review of the Tax Administration Act. Most but not all of the issues raised in the *Green Paper* are addressed in this discussion document, some are still under consideration and others will be included in subsequent Making Tax Simpler documents.

8. Submissions received on the *Green Paper* and the *Making Tax Simpler: Better Digital Services* discussion document have informed the discussion and proposals in *Towards a new Tax Administration Act*.

9. Further background is included in the companion Cabinet paper, *Making Tax Simpler – Release of discussion documents and feedback on completed consultations*.

Comment

10. Tax administration refers to the rules and processes for collecting and disbursing the revenue and payments administered by Inland Revenue. The efficiency and effectiveness of these rules and processes is just as important for maintaining fairness in the tax system as the rules defining how much tax is due. In *Towards a new Tax Administration Act* the proposed framework for tax administration is discussed with an emphasis on the key roles of the Commissioner, taxpayers and tax agents as the three primary actors, as well as the rules around information collection and tax secrecy which underpin their interactions.

Role of the Commissioner

11. Tax can only be levied according to laws enacted by Parliament. Inland Revenue's role is to administer the Inland Revenue Acts and to collect tax to the best of its ability. In doing so, the integrity of the tax system and the confidentiality of people's tax affairs must be maintained. The Commissioner has statutory independence to ensure Inland Revenue is able to collect tax and carry out its duties. The *Towards a new Tax Administration Act* discussion document examines the Commissioner's role in three areas.

12. The first area examined is how the Commissioner's "care and management" responsibility can best coexist with the newly enhanced chief executive responsibilities in the State Sector Act. As well as accountability for Inland Revenue, the Commissioner has a role in ensuring Inland Revenue works more closely with other government agencies to deliver more efficient public services. Requiring the Commissioner, as a state sector chief executive, to be responsive to the collective interests of government needs to be considered alongside the Commissioner's statutory independence. The discussion document sets out how, in the transformed administration, the Commissioner's role will continue to be complementary to her chief executive functions.

13. Secondly, the discussion document proposes a clarification to the care and management provision, so that in some limited cases the Commissioner can apply the legislation in a way that does not tie up Commissioner and taxpayer resources in outcomes that are inconsistent with the practice and policy intent. The proposal is that the Commissioner would be able to:

- Apply a policy-based approach to small gaps in the tax legislation;
- Deal pragmatically with legislative anomalies that are minor or transitory;
- Address cases of hardship (inequity) at the margins; or
- Deal with cases in which a statutory rule is difficult to formulate (meaning that the relevant legislation has failed to adequately deal with the particular situation).

14. Thirdly, the document also considers whether the Commissioner's "care and management" responsibility in the non-tax functions is adequately expressed in legislation. The non-tax functions include administering Working for Families tax credits, student loan repayment, child support, KiwiSaver and paid parental leave. These functions have been added over time to Inland Revenue's functions for collecting tax. Clarification that the "care and management" responsibility applies broadly, reflecting the objectives of these functions, would better support the Commissioner's ability to use resources as effectively as possible to deliver more efficient services.

Information collection

15. Information flows are critical to Inland Revenue's interaction with taxpayers and third parties. Inland Revenue deals with large numbers of documents, forms, letters and returns that contain information about taxpayers' income or assets. Outside of the tax return process, Inland Revenue can require a person to provide any information considered "necessary or relevant" to Inland Revenue's functions. It is important to emphasise the "necessary or relevant" standard, or something similar, in the transformed administration. Retaining such a standard will provide people with continued confidence that Inland Revenue will not use its information-gathering powers to obtain information that is not needed.

16. The availability and usability of large datasets has greatly improved with the aid of technology. To efficiently administer the tax system, Inland Revenue needs to continue to be able to collect one-off taxpayer-specific and bulk data, and obtain some third-party information on a repeating basis. Therefore, more robust rules for repeating access to large third-party datasets are recommended.

17. More taxpayers are storing information in the cloud and utilising cloud-based software. While Inland Revenue is able to use its search powers to access information remotely in some situations, these powers will require review to ensure access to such information in all relevant circumstances.

18. In order to ensure Inland Revenue's ability to obtain necessary or relevant information, no matter how it is stored, it is proposed to clarify the rules for remote-access searches for Inland Revenue. The rules in the Search and Surveillance Act 2012 are currently crafted in relation to remote access searches authorised under search warrants. The preferred approach is to align the rules in the Search and Surveillance Act 2012 with a clarification of how Inland Revenue uses the remote access regime. This is intended to ensure Inland Revenue can use the remote access regime while recognising that many Inland Revenue searches are carried out without requirement for a warrant.

Tax secrecy

19. Tax secrecy, or taxpayer confidentiality laws, exist in most jurisdictions. Traditionally, tax secrecy is viewed as a means of improving compliance by reassuring taxpayers that it is safe to provide their information to Inland Revenue. The reasons for taxpayer confidentiality are:

- to increase voluntary compliance by assuring taxpayers their information will go no further;
- as a balance for the broad information-collection powers granted to Inland Revenue; and
- to protect the privacy of taxpayers.

20. There is increasing movement towards sharing information, in particular to participate in more cross-government initiatives, including the Data Futures work and the Government ICT strategy. Therefore, it is an appropriate time to consider whether Inland Revenue's current secrecy rules remain fit for purpose in a transformed tax administration. It is necessary to consider how a general framework of confidentiality with clear exceptions can be maintained, while at the same time modernising and allowing for greater cross-government information-sharing.

21. I propose in the first instance to narrow the coverage of the secrecy rule to information that identifies, or could identify, a taxpayer or taxpayers. The confidentiality of an individual's or business's affairs would, as a starting point, remain protected. This would not mean that taxpayer-specific information would never be disclosed; rather, as is the case now, a specific legislative exception to the general rule of confidentiality would be required. Rules would also remain to ensure that sensitive information about Inland Revenue processes continues to be protected.

22. Inland Revenue has an ability to enter into cross-agency information-sharing agreements in certain circumstances set out in the Tax Administration Act. Consideration could be given to greater use of this provision, or to amending the criteria to better enable its use in a wider range of circumstances.

Feedback is also sought on whether taxpayers might be permitted to consent to the release of their information in certain circumstances, especially within the cross-agency contest where other sharing options are not available.

The role of taxpayers and tax agents

23. The transformed tax administration envisages providing improved delivery of digital services, greater use of withholding payments, enhanced prepopulated income tax returns and better use of business's existing systems to automate interactions with Inland Revenue. These features have implications for the obligations and responsibilities of taxpayers and tax agents. The discussion document sets out the steps that would be involved in prepopulating returns and also the obligations of taxpayers that would underpin these steps. Self-assessment as a concept would be retained, as it recognises that taxpayers are in the best position to determine their final tax liability.

24. Including more information on prepopulated returns should reduce compliance costs by offering a more personalised tax return process. Tax returns should also be more accurate, as the opportunity for taxpayer error will be minimised. This reduces the resources required to correct return errors, for both taxpayers and Inland Revenue. To enable effective prepopulated returns, the discussion document considers:

- the obligations of a taxpayer with a prepopulated return in the context of self-assessment;
- what responses will be required from a taxpayer receiving a prepopulated return, and the consequence of failure to respond to a prepopulated return; and
- the ability for the taxpayer to amend the information contained in the prepopulated return.

25. Better use of technology and information will enable Inland Revenue to add more than just PAYE information or taxes withheld at source to a prepopulated return. However, the specific nature of the information that could be prepopulated is likely to be considered in a discussion document on improving the tax system for individuals that is due for release in 2016.

The role of tax agents

26. About 5,300 tax agents are registered with Inland Revenue, and they manage the tax affairs of nearly two million clients. The advice and assistance tax agents give their clients contributes to the smooth running of the tax system. The discussion document recognises that features of the modernised tax administration will change the nature of the support agents provide; however, tax agents will continue to significantly influence compliance.

Future issues

27. Finally the discussion document considers the advice and disputes regimes, the time bar and record-keeping requirements. Feedback is sought on the effectiveness of the current options for taxpayers to seek Inland Revenue's view on specific issues. A more individualised approach to the time bar is also discussed, as this would be compatible with Inland Revenue's future direction.

28. Modernising the tax system provides an opportunity to recognise that taxpayer behaviour is about more than attitude. A combination of capability, opportunity and motivation make up compliance behaviour. The new approach to compliance could mean a different approach to penalties. The *Better tax for small businesses* discussion document considers possible changes to late filing and late payment penalties for businesses.

29. These areas will require further analysis once key features of the modernised tax administration have been decided on and implemented.

Consultation

30. Officials have consulted with the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, the Ministry of Education, the Accident Compensation Corporation, the State Services Commission, Statistics New Zealand, the New Zealand Customs Service, the Ministry of Social Development, the Crown Law Office, the Ministry of Justice, the Office of the Privacy Commissioner, The Treasury, and New Zealand Police. The Department of the Prime Minister and Cabinet were informed of the proposals in the discussion document.

Financial implications

31. Approving the release of the Government discussion document will not have any fiscal implications. Any fiscal implications resulting from the proposals will be included in final policy advice to Cabinet following consultation.

Administrative implications

32. The administrative impacts of the proposed changes are being assessed in the context of the updated Business Transformation Business Case which is timetabled for submission before the end of 2015. The impacts will be reported on in the final policy advice to Cabinet.

Human rights

33. I consider that the proposals contained in the discussion document are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

34. The release of the discussion document will not give rise to any immediate legislative implications. However, legislative changes will be necessary if Cabinet subsequently decides to implement the proposals. Therefore, I intend to propose a bill be included on next year's Cabinet Legislation Programme for introduction in late-2016.

Regulatory impact analysis

35. The regulatory impact analysis requirements apply to some of the proposals in the discussion document. The substantive regulatory impact analysis elements have been included in the discussion document at a level that is appropriate given the stage of policy development. Regulatory Impact Statements will be prepared as part of reporting back on final policy proposals.

Publicity

36. I intend to announce the release of the discussion document at a Trans-Tasman Business Circle briefing on 11 November 2015. I will announce, at the same time, the release of two other discussion documents in the *Making Tax Simpler* series, one on better administration of PAYE and GST, and the other on better tax for small business.

37. The release of the discussion documents will be accompanied by the launch of online public consultation. This will contain a summary of the proposals and seek views on questions raised in the discussion documents. The online consultation will be on the same website that was used for the consultation on the previous documents in the *Making Tax Simpler* series.

Recommendations

38. I recommend that the Cabinet Economic Growth and Infrastructure:

1. Note the contents of the Government discussion document *Making Tax Simpler: Towards a new Tax Administration Act*, which will consult on:
 - 1.1 the proposal to clarify the Commissioner's care and management responsibilities;
 - 1.2 the proposal to clarify Inland Revenue's powers to access bulk third-party information and remotely stored information;
 - 1.3 the proposal to narrow the secrecy rule;
 - 1.4 the proposal to impose an obligation to respond to a prepopulated return within a prescribed period for taxpayers receiving a pre-populated tax return and to treat the response as the self-assessment.
2. Agree to the release of the Government discussion document *Making Tax Simpler: Towards a new Tax Administration Act* and the launch of accompanying online consultation on its contents.
3. Authorise the Minister of Revenue to approve editorial, presentational and other minor changes to the discussion document before its release.

4. Invite the Minister of Revenue to report back to the Cabinet Economic Growth and Infrastructure Committee on the outcome of consultation and final policy recommendations.

Hon Todd McClay
Minister of Revenue

_____/_____/_____
Date

Consultation on Cabinet and Cabinet Committee Submissions

| | |
|---|------------------|
| Certification by Department: | |
| Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation | |
| Departments/agencies consulted: The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission: | |
| Departments/agencies informed: In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed: | |
| Others consulted: Other interested groups have been consulted as follows: | |
| Name, Title, Department: | |
| Date: / | Signature |

Released in part, information withheld under section 18(d) of the Official Information Act 1982 as it is already publically available.

- The Government discussion document *Making tax simpler – Towards a new Tax Administration Act* is available at <http://taxpolicy.ird.govt.nz/publications/2015-dd-mts-3-tax-administration/overview>
- An archive of the Making Tax Simpler consultation sites is available at <http://taxpolicy.ird.govt.nz/archived-websites>



Cabinet Economic Growth and Infrastructure Committee

Minute of Decision

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Making Tax Simpler: Towards a New Tax Administration Act: Release of Discussion Document

Portfolio **Revenue**

On 21 October 2015, the Cabinet Economic Growth and Infrastructure Committee (EGI):

- 1 **noted** the contents of the government discussion document, *Making Tax Simpler: Towards a New Tax Administration Act* (the discussion document), attached to the submission under EGI-15-SUB-0110, which will consult on proposals to:
 - 1.1 clarify the Commissioner of Inland Revenue's care and management responsibilities;
 - 1.2 clarify Inland Revenue's powers to access bulk third-party information and remotely stored information;
 - 1.3 narrow the secrecy rule;
 - 1.4 impose an obligation to respond to a pre-populated return within a prescribed period for taxpayers receiving a pre-populated tax return, and to treat the response as the self-assessment;
- 2 **agreed** to the release of the discussion document, and to the launch of accompanying online consultation on its contents;
- 3 **authorised** the Minister of Revenue to approve any editorial, presentational and other minor changes to the discussion document before its release;
- 4 **invited** the Minister of Revenue to report back to EGI on the outcome of consultation and with final policy recommendations.

Janine Harvey
Committee Secretary

Reference: EGI-15-SUB-0110

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IN CONFIDENCE

Present:

Rt Hon John Key
Hon Bill English (Chair)
Hon Gerry Brownlee
Hon Paula Bennett
Hon Anne Tolley
Hon Dr Nick Smith
Hon Todd McClay
Hon Craig Foss
Hon Nicky Wagner
Hon Louise Upston
Hon Paul Goldsmith
Hon Te Ururoa Flavell

Officials present from:

Office of the Prime Minister
Officials Committee for EGI
Inland Revenue

Distribution:

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Chief Executive, MSD
Minister for ACC
Chief Executive, ACC
Commissioner of Police
Comptroller of Customs
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Secretary for Internal Affairs
Chief Executive, TPK



Cabinet

CAB-15-MIN-0177

Minute of Decision

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Report of the Economic Growth and Infrastructure Committee: Period ended 23 October 2015

On 27 October 2015, Cabinet made the following decisions on the work of the Cabinet Economic Growth and Infrastructure Committee for the period ended 23 October 2015:

| | | |
|--------------|------------|------------|
| Out of scope | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

EGI-15-MIN-0108 **Making Tax Simpler: A Government Green Paper on Tax Administration and Better Digital Services: Feedback from Consultation** CONFIRMED
Portfolio: Revenue

Out of scope [REDACTED] [REDACTED]
[REDACTED]

EGI-15-MIN-0109 **Making Tax Simpler: Better Administration of PAYE and GST: Release of Discussion Document** CONFIRMED
Portfolio: Revenue

EGI-15-MIN-0110 **Making Tax Simpler: Towards a New Tax Administration Act: Release of Discussion Document** CONFIRMED
Portfolio: Revenue

Out of scope [REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Michael Webster
Secretary of the Cabinet

Reference: CAB-15-SUB-0177

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