

Sensitive

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

ORDER IN COUNCIL: TAX ADMINISTRATION (REPORTABLE JURISDICTIONS FOR APPLICATION OF CRS STANDARD) AMENDMENT REGULATIONS 2019

Proposal

1. This paper seeks approval to submit the attached draft Order in Council (the *Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2019*) to the Executive Council.

Executive Summary

2. The draft Order in Council attached to this Cabinet paper will add 30 jurisdictions to New Zealand's existing list of 60 reportable jurisdictions. The reportable jurisdictions list applies for the purposes of the G20/OECD *Automatic Exchange of Financial Account Information for Tax Purposes* (AEOI) initiative. Reportable jurisdictions are those that New Zealand can exchange AEOI information with (see Annex A for details of the jurisdictions concerned). Pursuant to section 226D of the Tax Administration Act 1994, additions to and deletions from the reportable jurisdictions list must be confirmed by Order in Council.
3. AEOI is an international initiative for cooperation between jurisdictions in the detection and prevention of tax evasion that occurs when a person hides their wealth in offshore accounts. The 'AEOI standard', developed by the OECD in 2014 for this purpose and which implementing jurisdictions must incorporate into their domestic law, requires financial institutions to (i) identify accounts held or controlled by non-residents and (ii) annually report information on those non-residents to their local tax authority. The reported information is then exchanged with the tax authorities of the relevant jurisdictions under applicable tax treaties, for use in verifying that tax residents have complied with their tax obligations.
4. The G20 and OECD had set a general deadline of 30 September 2018 for jurisdictions to implement the AEOI standard and complete their first exchanges. New Zealand met that deadline, exchanging in September last year with 60 other reportable jurisdictions that had also completed all required steps for implementation. Our reportable jurisdictions list now needs to be updated in preparation for the next round of exchanges, which will take place in September 2019.
5. Updating our list to include the additional 30 jurisdictions that we expect we will need to provide AEOI information to in September will enable New Zealand to continue to meet its treaty obligations and comply with G20/OECD requirements.
6. The Order in Council updating the list will come into force before 1 April 2019, which is the date on which financial institutions will begin reporting to Inland Revenue for the September exchanges. However, the additions to the list will have minimal

impact on financial institutions. The principal effects of the expanded list will fall on Inland Revenue. This is not expected to have staffing or systems implications.

Background

7. In September 2013, in response to growing concerns over the problem of offshore tax evasion, G20 Leaders tasked the OECD with managing the swift development and global implementation of a *Standard for Automatic Exchange of Financial Account Information for Tax Purposes* (the AEOI standard or AEOI¹). Offshore tax evasion occurs when a person intentionally evades tax obligations by hiding their wealth in offshore accounts.
8. The OECD developed and published the AEOI standard in 2014. Broadly, the standard requires financial institutions to:
 - 8.1 review the financial accounts they maintain (using specified due diligence procedures) to identify those held or, in certain circumstances, controlled by non-residents, and
 - 8.2 report identity and financial account information, in respect of those non-residents, to their local tax administration.
9. Tax administrations are required to exchange the reported information with the relevant jurisdictions of residence under applicable tax treaties. Those jurisdictions will then use the information to verify that their residents have fully complied with their tax obligations.
10. The cycle of reporting and exchange is to be repeated on an annual basis.
11. 99 jurisdictions were required by the G20 and OECD to implement the AEOI standard in time to complete first exchanges of information by 30 September 2018 at the latest. This includes all G20 and OECD member countries (therefore including New Zealand) and all other jurisdictions identified as having or operating as an international finance centre. The OECD's monitoring agency, the *Global Forum on Transparency and Exchange of Information for Tax Purposes* (the Global Forum), is conducting peer reviews and other monitoring to ensure compliance with these commitments. Withheld under section 6(a) of the Official Information Act 1982
[REDACTED]
12. Withheld under section 6(a) of the Official Information Act 1982
[REDACTED] To date, two such jurisdictions committed to complete first exchanges in 2018, three more have committed to 2019, four to 2020, and a further 45 have made commitments without any specific timeframe.
13. Withheld under section 6(a) of the Official Information Act 1982
[REDACTED] New Zealand completed its implementation (enacting legislation to incorporate the AEOI standard

¹ The AEOI standard comprises several elements. The elements that are relevant to financial institutions are often collectively referred to as the 'Common Reporting Standard', CRS, or CRS standard. A reference to the CRS standard appears in the title of the draft Order in Council that this paper refers to.

into the Tax Administration Act 1994, building Inland Revenue's administrative systems and processes, and arranging for financial institutions to comply with their new obligations and report information) and conducted its first exchanges before the imposed deadline. Withheld under section 6(a) of the Official Information Act 1982

14. The AEOI standard requires an implementing jurisdiction to establish and maintain a list of the jurisdictions that it will provide AEOI information to. These are known as reportable jurisdictions. Pursuant to section 226D of the Tax Administration Act 1994, additions to and deletions from New Zealand's reportable jurisdictions list must be confirmed by Order in Council. It was always envisaged that maintaining the list using this approach would require periodic amending Orders, particularly in the first few years of AEOI exchanges.
15. Importantly:
- 15.1 Because of the way the implementation legislation and various legal instruments for exchange are structured, New Zealand can only provide AEOI information to jurisdictions that are included on its reportable jurisdictions list.
- 15.2 Conversely, New Zealand has a *prima facie* treaty obligation to exchange AEOI information with every listed jurisdiction for which information on residents of the jurisdiction has been reported to us by our financial institutions.
- 15.3 However, built in safeguards in the legal instruments apply to effectively 'switch off' the treaty obligation to exchange in prescribed circumstances – for example if OECD monitoring detects that a jurisdiction has failed to fully implement the AEOI standard and is therefore not able to send us information on a reciprocal basis.
- 15.4 Moreover, as a final safeguard, our legislation provides the Commissioner of Inland Revenue with the ability to immediately suspend a jurisdiction from the reportable jurisdictions list if necessary. This power could be exercised, for example, if evidence of a privacy breach occurring in a particular jurisdiction came to light just prior to our annual exchange deadline (leaving insufficient time to remove the jurisdiction from the list by Order in Council).
- 15.5 Withheld under section 6(a) of the Official Information Act 1982

16. Withheld under section 6(a) of the Official Information Act 1982
17. The next round of exchanges is due to be completed by 30 September 2019. In preparation, we have now conducted a further review to determine which additional jurisdictions should be added. Withheld under section 6(a) of the Official Information Act 1982
18. This approach will involve adding 30 jurisdictions to the list of reportable jurisdictions, increasing the total number up from 60 to 90 (see Appendix A for details, and for a reconciliation of the numbers).
19. The additions to the list should be made and publicised prior to 1 April 2019, which is the date on which by financial institutions commence their AEOI reporting to Inland Revenue this year.

Implications of the change

20. The addition of 30 jurisdictions will primarily only have implications for Inland Revenue (It will increase the number of jurisdictions that Inland Revenue is able to provide information to in September this year). No change to Inland Revenue's systems or staffing levels is required to administer this increased number of outward exchanges.
21. Note that the reportable jurisdictions list is only relevant for the purposes of sending information to other jurisdictions. Withheld under section 6(a) of the Official Information Act 1982
22. For the majority of New Zealand financial institutions, the additions to the list will have no implications. This is because New Zealand financial institutions are currently collecting information in respect of *all non-resident* account holders and controlling persons, rather than focussing on identifying residents of reportable jurisdictions. Moreover, our rules provide financial institutions with a choice of reporting solely on residents of reportable jurisdictions or, as a compliance cost

reduction measure, of reporting all information that they have collected on non-residents. We understand that all banks and most other financial institutions are adopting this wider (all non-residents) reporting option.

23. For financial institutions, the changes to the list of reportable jurisdictions will therefore only have implications for those that choose to report information to Inland Revenue solely in respect of residents of reportable jurisdictions.
24. My officials have previously sought feedback from such financial institutions and other AEOI stakeholders as to whether the changes to the list of reportable jurisdictions would create difficulties or concerns. Only two responses were received, both of which stated that the additions would not create any issues.
25. Further changes to the reportable jurisdictions list will be required in the foreseeable future, as additional jurisdictions join the AEOI initiative or, if necessary, to remove recalcitrant jurisdictions. Such changes will necessitate at least one additional Order in Council per year for the next few years.

Timing and 28-day rule

26. As noted, the attached Order in Council needs to come into force before 1 April 2019. The additions to the list will then apply for the purposes of reporting to Inland Revenue from that date by those New Zealand financial institutions that choose to report information to Inland Revenue solely in respect of residents of reportable jurisdictions. It will also apply for the purposes of the exchanges to be undertaken by Inland Revenue in September 2019.
27. No waiver of the 28-day rule needs to be sought.

Compliance

28. The Order complies with:
 - 28.1 the principles of the Treaty of Waitangi;
 - 28.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 28.3 relevant international standards and obligations; and
 - 28.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
29. The Order generally complies with principles and guidelines set out in the Privacy Act 1993. However, all exchange of information under tax treaties inherently conflicts with some of the privacy principles set out in that Act (such as the limitation imposed, at section 6 of the Act, on the disclosure of personal information). For this reason, section BH 1 of the Income Tax Act 2007 has historically authorised the Privacy Act 1993 to be overridden for exchanges of information under tax treaties.

Regulations Review Committee

30. I am not aware of any grounds on which the Regulations Review Committee might draw the Orders to the attention of the House under Standing Order 318.

Certification by Parliamentary Counsel

31. The Parliamentary Counsel Office has certified that the Order is ready to be submitted to Cabinet.

Impact Analysis

32. A Regulatory Impact Assessment is not required. The Regulatory Impact Analysis requirements do not apply as this Order in Council will not involve creating, amending or repealing legislation and provides solely for the operation of existing legislative provisions.

Publicity

33. Notification of new Orders in Council is given in the New Zealand Gazette. In addition, section 226D requires the Commissioner of Inland Revenue to publicise changes to the New Zealand list of reportable jurisdictions. The Commissioner will update the list of reportable jurisdictions on the Inland Revenue website and notify by email financial institutions and other AEOI stakeholders who have registered.

Proactive Release

34. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in part within 30 working days of Cabinet making final decisions. Certain information will be withheld to protect New Zealand's international relationships.

Consultation

35. Consultation on the reportable jurisdictions list was undertaken during the development of the initial list of reportable jurisdictions in 2017. When the list was previously amended financial institutions and AEOI stakeholders were asked to provide feedback on whether adding additional reportable jurisdictions would create any difficulties or concerns. No issues were raised with us. The Treasury, Ministry of Foreign Affairs and Trade and, the Department of the Prime Minister and Cabinet have been informed of the proposed amendment.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** the New Zealand legislation incorporating the G20/OECD *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (the AEOI standard) requires that a list of reportable jurisdictions be maintained, and amended as needed by Order in Council;
2. **note** that, pursuant to section 226D of the Tax Administration Act 1994, additions to the reportable jurisdictions list must be made by Order in Council;
3. **note** that New Zealand's existing list of reportable jurisdictions comprises 60 jurisdictions;
4. **note** that 30 additional jurisdictions now need to be added, for the exchanges that New Zealand will need to make in September this year; and

5. **authorise** the submission to the Executive Council of the Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue

Annex A

New Zealand's existing list of reportable jurisdictions:

Andorra	Argentina	Australia	Austria	Belgium	Brazil
Bulgaria	Canada	Chile	China	Colombia	Croatia
Czech Republic	Denmark	Estonia	Faroe Islands	Finland	France
Germany	Gibraltar	Greece	Greenland	Guernsey	Hong Kong
Hungary	Iceland	India	Indonesia	Ireland	Isle of Man
Israel	Italy	Japan	Jersey	Korea	Latvia
Liechtenstein	Lithuania	Luxembourg	Malaysia	Malta	Mauritius
Mexico	Monaco	Netherlands	Norway	Poland	Portugal
Russian Federation	San Marino	Saudi Arabia	Seychelles	Singapore	Slovak Republic
Slovenia	South Africa	Spain	Sweden	United Kingdom	Uruguay

Proposed additions:

Antigua and Barbuda	Aruba	Azerbaijan	Barbados	Belize	Brunei Darussalam
Cook Islands	Costa Rica	Curacao	Cyprus	Dominica	Ghana
Grenada	Lebanon	Macao	Montserrat	Nigeria	Niue
Pakistan	Panama	Romania	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines
Samoa	Sint Maarten	Switzerland	Trinidad and Tobago	Turkey	Vanuatu

Reconciling the numbers:

- 99 jurisdictions were required to complete implementation and complete first exchanges by 30 September 2018.
- Two additional jurisdictions voluntarily joined the AEOI initiative and exchanged information in September 2018.
- For September 2018 exchanges, New Zealand therefore had 100 potential exchange partners (i.e. 99, plus 2, minus 1).

Withheld under section 6(a) of the Official Information Act 1982

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