Tax Working Group Public Submissions Information Release

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Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;

[2] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage.

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

TAX POOLING
Intermediary Association

25 October 2018

To Members of the Tax Working Group

We understand that you are looking for ideas that can be used to deliver benefit to business taxpayers when you recommend to Government a package(s) for tax reform.

The Tax Pooling Intermediary Association (TPIA) will shortly submit to Inland Revenue the attached document, suggesting ways that pooling can be used more innovatively. Among other things, this will address taxpayers' cashflow requirements, and we expect will assist Inland Revenue to manage its debt book more effectively, and prevent small and medium sized taxpayers getting into sizeable tax debt positions.

The purpose of sharing this with the Tax Working Group is to illustrate how Inland Revenue could create a better business environment for taxpayers through a more relaxed application of an existing regime. This will be of particular benefit to small and medium taxpayers.

We have seen how Inland Revenue's launch of the AIM regime, which was meant to be a benefit to taxpayers, has not resonated with tax agents or SMEs as it is seen as being overly complex. AIM is a regime built around intermediaries (the approved software providers). IR is now looking at ways that it can relax the constraints it has built around AIM. In the same way, we think that relaxing the very tight constraints they have built around the pooling regime will enable more taxpayers to access the regime, with a benefit to all.

Our recommendation is that, in assessing ways to improve the tax compliance framework for business, the Tax Working Group suggests that IR actively look for ways in which it can remove unnecessary constraints around intermediary-based regimes, and give the private sector the opportunity to deliver compliance services more effectively.

Best regards,
[1]

Josh Taylor, Chair
[1]

The Tax Pooling Intermediary Association represents
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Improving taxpayer engagement for Inland Revenue through tax pooling

PROPOSAL FOR INLAND REVENUE • OCT 2018

TAX POOLING
Intermediary Association

Building on a strong foundation

Tax pooling is a progressive framework established by Inland Revenue (IR) in 2001, to help taxpayers meet their provisional tax obligations[1]. There has been a strong uptake from the business sector in subsequent years, and significant benefits delivered to IR and the economy. Tax pooling is now an established and respected part of the New Zealand tax system.

The Tax Pooling Intermediary Association (TPIA) – representing PwC Tax Pooling Solutions, Tax Traders and Tax Management New Zealand– is committed to working collaboratively with IR to build on this solid foundation, maximising benefits for IR and taxpayers.

We believe there is a considerable opportunity for IR to advance its Business Transformation objectives through a stronger partnership with tax pooling intermediaries, to strengthen taxpayer engagement and compliance.

TPIA supports Inland Revenue's goal to progress toward a more flexible, customer-centric approach. There are core aspects of the tax pooling model that directly promote this:

- We act as intermediaries (similar to payroll intermediaries), providing a useful buffer between taxpayers and IR.
- IR receives the right amount of tax at the right time, however the delay in determining which taxpayers this tax is ultimately allocated to provides a high-value benefit to taxpayers – in terms of timing, reduced cost and reduced uncertainty.
- The system is generally very efficient and well-resourced, thus providing timely outcomes for taxpayers.

1 See Appendices: 'How Tax Pooling Works' and 'The History of Tax Pooling'

Strengthening taxpayer engagement for Inland Revenue

Tax pool intermediaries facilitate the collection of tax for IR, ensuring tax is paid in full and on time. In the process, taxpayer experience is positively enhanced with direct benefits for Inland Revenue.

Tax pooling increases public goodwill toward IR

Tax pooling makes compliance easier for some taxpayers. In addition, taxpayers perceive they are getting a slight discount when paying through a tax pool.

AS A RESULT: Taxpayers feel better about paying their tax because they perceive IR as more customer-centric and easy to deal with, including faster response times. This increases taxpayer engagement and willingness to comply in the future.

Taxpayers feel understood and supported by IR

Tax pool intermediaries provide a 'soft face' in the collections process. The significance of this is hard to overstate. Whilst the vast majority of taxpayers want to comply and pay their fair share, unfortunately positive cashflow doesn't always align with IR's timeframes.

When this occurs, taxpayers don't want to feel unduly penalised, and compulsion can lead to resentment. As a counter, the provision of payment timing accommodation through tax pool intermediaries offers an excellent solution. For these taxpayers it is a valued option that still provides IR full payment on time.

AS A RESULT: Taxpayers feel genuinely supported by IR and are more likely to be in a position to contribute productively to the economy in the years ahead. This also does not put the business/taxpayer under unnecessary financial stress as they can then pay their provisional tax when their cashflow allows.

Ancillary benefits of tax pooling for IR

As intermediaries, we deliver these benefits to IR at no charge – actively supporting IR's objectives to reduce costs and increase collection efficiencies, including:

1. Saving IR staff time, resource and manpower

- Less IR staff time spent on complex cases and answering taxpayer questions
- Valuable taxpayer feedback is gathered for IR and new IR policy implemented
- Improved management of payments is achieved within agreed timeframes, without the need for IR to chase or follow up taxpayers. This also removes the need for taxpayers to contact IR seeking payment arrangements.

2. Increasing revenue generation

- Flexible options for taxpayers increases IR revenue receipts by providing further compliance avenues
- In dollar terms, the vast majority of provisional and terminal taxpayers choose to pay IR via tax pool intermediaries. (More than $10 billion is currently held in tax pools.)
- Less than 1% of taxpayers who tax pool default on payments.

3. Helping to fuel the economy

- Money saved through tax pooling is reinvested by the taxpayer into their businesses to increase profit, invested in housing and commodities. This promotes economic growth and increases the government's future Income Tax and GST revenue.

Supporting IR business transformation

Building on this strong foundation we can optimise benefits for IR, supporting your goal to become more taxpayer-centric, flexible and current in your approach. We understand this goal is ongoing and comes with inevitable challenges for large organisations like IR, due to the sheer scale of your customer connections. We encourage IR to consider the substantial value of creating a platform on which tax pooling intermediaries can continually innovate, to help achieve your objectives.

Ways to derive further utility for IR

At the point taxpayers engage with a tax pool intermediary, they want to comply – albeit, some may have been in a state of non-compliance. If tax pooling can be a vehicle to get tax payers back to a compliant state, this offers a fundamental benefit for IR and the Government.

We regularly see taxpayers wanting to comply that don't fit current strict tax pooling criteria. Listed below (together with further detail in Appendix C) are meritorious cases for your consideration that would be of significant benefit to helping small and medium sized businesses.

We have highlighted the issues and benefits briefly here but would welcome the opportunity to discuss these with you more fully following our upcoming meeting. We would also be interested in any other IR objectives to consider whether tax pooling can be used to provide a solution to meeting those objectives:

- **Tagging tax pool users in IR system** so agents and IR can see they have a tax pool relationship. The benefit here is that it should stop the automatic transfer of refunds to offset income tax and stop provisional payment follow up letters and debt follow up letters that don't acknowledge arrangements already made through tax pooling. Avoiding these situations will save considerable rework for all parties and reduce taxpayer uncertainty.

  We understand that this function or feature is already planned to be implemented in IR's April 2019 income tax release to the START system.

- **Acknowledgements on payment reminders** and debt letters that they can be disregarded if arrangements have been made through a tax pool. This again would reduce uncertainty and compliance costs because many taxpayers currently spend time and cost confirming the validity of their tax pool payments when they receive reminders that don't acknowledge tax pooling.

- **Softening the hard deadlines for tax pool use**
  (Filing requirements and time requirements). Historically the concern has been that allowing tax pooling for a wider range of cases would open the floodgates to non-compliance. IR has in recent years significantly reduced the incidence of late payment penalties without seeing a jump in non-compliance. The further savings to taxpayers from allowing tax pooling to further assist only provides at most an incidental inducement to further non-compliance when viewed against the removal of late payment penalties that has already taken place.

- **Authentication to act of behalf of taxpayers.** At present tax pools have no standing to receive taxpayer specific information. While we understand the reasons for IR being sensitive with data we believe there is scope for a limited level of disclosure to enable timely resolution of tax pooling transactions and that would be consistent with data security given the implied consent of taxpayers to assist in finalising their tax positions.

  We understand that this function or feature should be available in IR's April 2019 release 3 to the START system by enabling more than one intermediary to interact with IR in relation to a taxpayer.

- **IR being more proactive in acknowledging and recommending tax pooling as a compliance tool**.
  Given that IR established tax pooling to promote compliance and given its acceptance by taxpayers, we believe it can only aid future compliance for IR to be more proactive in acknowledging and recommending tax pooling as a payment option. It results in the full amount of tax being paid and paid on time with minimal engagement required from IR.

Appendix A: How tax pooling works

Tax pooling is the framework Inland Revenue established in 2001 to help taxpayers meet their provisional tax obligations.

The tax pooling system is based on taxpayers who pay provisional tax into a 'pool' at Inland Revenue. Once taxpayers know exactly what they need to pay in provisional tax, they transfer this out of the pool to their Inland Revenue account and sell any surplus to someone else (typically for a fee greater than the Inland Revenue credit interest rate they would otherwise receive). At all times the tax has been with Inland Revenue on the due dates, but tax pooling allows for a delay in the final attribution of those payments to specific tax payers.

A taxpayer faced with an underpayment can then acquire those surpluses for a fee less than the Inland Revenue debit interest rate. When these surpluses are transferred from the pool to the taxpayer's Inland Revenue account it is like a transfer from a related party, so Inland Revenue considers it a payment made on time and therefore there is nothing further to pay. Any interest or late payment penalty charges on the taxpayer's account are usually eliminated at the same time.

Surpluses can be acquired from the pool whether you put tax into the pool or not. Surpluses can only be sold if they've been deposited into the pool initially.

Acquisition of additional tax can be done in advance (finance) or after the provisional date (buy), and surplus tax can either be sold over time (sell) or refunded within a matter of days.

Appendix B: The history of tax pooling

The challenge

When Inland Revenue introduced the provisional tax regime, there were no penalties or interest costs if you paid late. So that's what most people did. This prompted Inland Revenue in 1987 to impose an interest rate regime that would encourage compliance. People were charged high interest rates (currently 8.22%) when they underpaid or late paid, but only received low interest rates (currently 1.02%) when they overpaid. The big criticism of this framework through the 1990s was that it made no distinction between the relative business risks of whether a taxpayer would actually pay, and the taxpayer's compliance history.

New system (2003)

The challenge was that Inland Revenue was not well placed to manage different interest rates for different taxpayers. They recognised that it was the private sector that was better able to provide and maintain this degree of flexibility, and so in response to this Inland Revenue introduced tax pooling, a public/private solution to a shared problem. Inland Revenue wanted to retain the incentive structure of its interest regime but provide accommodation to compliant taxpayers. Meanwhile taxpayers wanted a less costly and more flexible means of complying with their obligations, and tax pooling intermediaries could provide that.

Tax pooling

Inland Revenue put the framework in place and there are now three large scale intermediaries operating across the country to facilitate settlements between taxpayers. Indeed, the majority of provisional tax obligations with IR are now settled through tax pools. Taxpayers end up better off because they can obtain more interest on overpaid tax and have outstanding tax obligations satisfied at a lower cost than they otherwise could. Meanwhile Inland Revenue is happy because outstanding tax debts are satisfied. Rather than refund old payments and receive new ones, they simply allow an existing payment to be applied elsewhere.

Appendix C: Further detail on meritorious cases

With the exception of Point 6 below, the meritorious cases in this table primarily concern SME taxpayers. These cases highlight areas where tax pooling could (but is not currently) providing an efficient and easily accessible route back to becoming tax compliant.

If some of these changes were restricted to SME taxpayers (which could be done by making them available to taxpayers under a turnover threshold) this would mitigate the risk to the tax base as any individual incidence of non-payment would be relatively small. As a further measure, IR could retain the ability to compel settlement through a tax pool within a certain time frame upon becoming aware of the debt, eg within 120 days of filing, for example. The turnover threshold and time frames and could be set by Order in Council so that it provides flexibility to IR to adjust them as it sees fit. This would also assist in ensuring that any changes remain firmly focused on increasing compliance.

	Suggested Change	Expected Outcomes
1	**Allow tax pooling to be used for voluntary disclosures even if an original return has not been filed / original assessment issued, with appropriate safeguards.** These may include: a. Requiring any voluntary disclosure to be a "pre or post-audit notification voluntary disclosure" to be able to use tax pooling (i.e. cannot use if an assessment from an audit and no voluntary disclosure). b. Guidelines on how long is acceptable before a voluntary disclosure should be made after becoming aware of the issue. c. Requiring the taxpayer and/or their accountant/tax agent to sign a statutory declaration stating the date on which the error/unpaid tax became known to the taxpayer/tax agent (possibly requiring evidence to be provided – e.g. correspondence); possibly include as part of the voluntary disclosure requirements. d. Impose shortfall penalties where there has been an unacceptable delay (based on the guidelines) in making a voluntary disclosure after becoming aware of the issue.	‣ Encourage compliance and voluntary disclosures of tax not paid where no original return/assessment has been filed/issued, mainly where taxpayer did not realise they had a tax obligation ‣ Increased tax revenue collection, particularly tax liabilities not known by IR ‣ Appropriate publicity push could result in significant tax revenue early on ‣ Tax deposits already in tax pools will permanently transfer to IR

2	**Alter the restrictions and timing deadlines on when tax pooling can be used, with appropriate safeguards.**	‣ Allow instalment payment arrangements beyond current time restrictions so taxpayers remain 'good taxpayers' but have cash-flow issues. ‣ Increased tax revenue collection. ‣ Keep taxpayers in habit of meeting their tax obligations that is aligned with their business needs. ‣ Improved public image of IR of working with taxpayers to help them meet their tax obligations.
3	**Allow taxpayers with tax debt to enter into payment plans using tax pooling intermediaries.**	‣ Assist taxpayers with increasing and sometimes overwhelming tax debt to become good taxpayers and establish pattern of compliance. ‣ Use private sector resources to collect more recent tax debt, so IR can use its collection powers and resources to focus on older more difficult debt.
4	**Amend the AIM method to give taxpayers the option to:** a. Use the existing AIM method process – this works for businesses that have steady regular income that matches cash-flow eg property rental businesses. b. Allow taxpayers to elect to use tax pooling when using AIM with amended rules. *Taxpayers:* a. Will continue to file regular taxable income statements. b. Will not pay tax direct to IR and are not eligible for any refunds from IR during the tax year. c. Must have made a tax finance arrangement (which would show up in IR records).	‣ Better perception of IR by taxpayer customers that IR understands business and their issues ‣ Increased compliance by taxpayers in paying their provisional tax – because they feel better paying tax when they are able, and not causing stress when they can't afford to pay ‣ Better real time information of regularly submitted taxable income statements ‣ Less likely to result in small businesses (or other cash-flow constrained businesses) from falling over by trying to meet tax liabilities at times when they have no cash – particularly seasonal businesses.

5	**Lessen the strictness of the 60 day and 75 day deadlines and facilitate the ability to finance reassessment tax** Currently, taxpayers are required to transfer purchased tax from their tax pooling account to the taxpayer's IRD account within 75 days after terminal tax date. This default date should remain as there has to be a line in the sand where the Government knows what its income from tax for the year is. A similar issue arises for reassessments where taxpayers have to transfer their tax to the IRD within 60 days after the issue of a reassessment. Some taxpayers cannot find sources of cash to pay the full reassessment amount within 60 days and do not want to be classified as a 'bad taxpayer'. Consideration should be given to: a. Providing IR the discretion (mainly for the terminal tax date plus 75 days deadline) to approve an extension to these deadlines in certain circumstances (based on criteria/ guidelines) to ensure that some taxpayers that cannot meet that deadline continue to remain "good taxpayers" and they feel they are not getting over-burdened by interest and penalties. b. Allowing tax payable from a reassessment to be paid through a pool under an instalment arrangement extending beyond the 60 day limit currently imposed. *This would achieve a similar outcome to a payment arrangement with IR, but managed by the tax pooling industry as an extension of IR and reducing the need for IR to dedicate resource to this.* c. IR discretion should only be provided upon some kind of application/approval; and/or agreeing to a regular payment plan using the tax pool similar to an instalment plan. d. These arrangements will be clearly visible when the tax pooling intermediaries provide their data feed to IR showing the maturity dates for each financed tax portion and know what to expect on settlement date. IR, if they so choose, can follow up immediately if a settlement payment is not received. e. This could also be used by IR as a debt collection "over-load" option. In other words, where IR is engaging with a taxpayer for collection of tax debt, IR could have the option referring the taxpayer to a tax pool to 'sort out an instalment plan' so IR can move on to the next taxpayer and efficiently use its limited resources. IR collections has previously worked with a tax pool to achieve this on a limited basis, but within the current time limits.	- Taxpayers with a willingness to pay are able to clear debt faster.

	f. To alleviate IR's concerns about financing tax resulting delayed payment and reducing the ability for IR to actively recover the tax some time later due to the delay, a possible solution is: • If the Tax Pool could be required to make that finance arrangement a secured debt /arrangement before IR agrees to it with possible subrogation rights (ie security interest able to be transferred to IR) if the taxpayer fails to make an instalment payment. • This will mean that IR would become a secured creditor and rank in priority above general creditors.	
6	**Apply the transfer rules in s173M to tax pooling** a. Rather than restrict the transfer rules of 'own funds' to between companies in a group, it should be consistent and apply the rules in s173M of the Tax Administration Act.	‣ This will allow groups of taxpayers (typically privately owned businesses that have individual, trust and/or 50% company shareholders) to transfer provisional tax between them on the correct dates within the tax pool before transferring the tax amounts to IR and then requesting IR to transfer tax payments between taxpayers, which are sometimes rejected. ‣ It may also help alleviate some of the confusion around the impact on a company's ICA when 'own funds' become 'purchased tax'.

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