

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

Regular dataset collection from payment service providers

Proposal

- 1 This paper seeks the Cabinet Economic Development Committee's agreement to the final policy recommendations in relation to the Order in Council for the Regular dataset collection from payment service providers.

Relation to Government Priorities

- 2 This proposal is part of the information collection and use workstream on the Government's current tax policy work programme. The efficient and effective collection and use of information helps to support voluntary compliance with tax obligations and ensures that compliance and administration costs are minimised. The proposal also supports wider Government priorities of minimising opportunities for avoidance and evasion.

Executive Summary

- 3 In this Cabinet paper, I am seeking agreement on the final policy recommendations in relation to the Order in Council for the Regular dataset collection from payment service providers (PSPs). Changes to the draft Order in Council will ensure the scheme works as intended and reduces the compliance costs to PSPs where appropriate.
- 4 The final policy recommendations are based on the feedback that was provided to Inland Revenue on the discussion document and the draft Order in Council that was released for consultation between 6 July 2021 and 20 August 2021 and the recommendations of officials.
- 5 If Cabinet agrees to these final policy recommendations, the appropriate amendments will be made to the draft Order in Council that was released for consultation. The final draft Order in Council will then be taken to the Cabinet Legislation Committee later in 2022.

Background

- 6 New legislation was enacted in 2019 to address the need for the regular dataset collection of large datasets. On 10 March 2021, Cabinet authorised the drafting of the Order in Council for the Regular dataset collection from payment service providers by Parliamentary Counsel Office and agreed to the release of a discussion document and the draft Order in Council for consultation (refer DEV-21-MIN-0020).
- 7 Consultation took place between 6 July 2021 and 20 August 2021 and officials have considered the feedback that was submitted. This paper outlines the final policy decisions that are recommended by officials to be made to the draft Order in Council that was prepared by Parliamentary Counsel Office for the consultation on the proposal.
- 8 It is expected that the Order in Council will come into force December 2022, but the first reporting period is set to commence on 1 April 2023.

Next steps

- 9 If Cabinet agrees with the recommendations in this paper, I will instruct the Parliamentary Counsel Office to make the appropriate amendments to the draft Order in Council for the Regular dataset collection from payment service providers.
- 10 A Cabinet paper will then be presented at the Cabinet Legislation Committee with the amended Order in Council which will then be sent to Cabinet for final approval.

Feedback from consultation and final policy recommendations

Income threshold of merchants

- 11 To reduce compliance costs for PSPs, it was initially proposed that reporting would only be required from PSPs on merchants whose income was below \$30 million. The \$30 million threshold falls in line with international requirements set by International Financial Reporting Standards (IFRS).
- 12 Feedback from consultation was that this threshold would increase the compliance costs of PSPs, with many of the submitters suggesting the threshold be removed. I recommend that the \$30 million threshold be removed as it will have the opposite impact on the compliance costs of PSPs than what was intended.

Format of the datasets reported to Inland Revenue

- 13 The datasets that PSPs are to provide to Inland Revenue can be in either a raw (for example, each transaction), or an aggregated (for example, total electronic sales), format. This was not specified in the draft Order in Council. The feedback from stakeholders was mixed regarding which format would reduce compliance costs of PSPs.

- 14 I recommend that PSPs must provide the outlined datasets in an aggregated format to Inland Revenue. Officials consider that the best way for Inland Revenue to receive the data is in an aggregate format as it reduces the costs involved to process and store the data.

Frequency of reporting the data to Inland Revenue

- 15 It was initially proposed that PSPs would be required to supply merchants' data every quarter, with the datasets being due to be reported to Inland Revenue 20 working days after the final day of the reporting period.
- 16 The general consensus from submitters was that supplying the data quarterly was too frequent and the due date of reporting the data to Inland Revenue 20 working days after the end of the reporting period was not enough time.
- 17 One benefit from the introduction of the regular dataset collection is early intervention such as education and identifying non-compliance earlier. To secure these, the datasets need to be provided soon enough for Inland Revenue to act on any potential non-compliance.
- 18 Australia has annual reporting requirements for PSPs, but officials consider that this will be too infrequent for Inland Revenue to effectively capture and act on any potential non-compliance. I recommend that the reporting period be six months and that the datasets are to be provided to Inland Revenue one month and seven days after the end of the reporting period.
- 19 I recommend that the six-monthly reporting periods align with the end of the financial year. The reporting periods should be 1 April to 30 September and 1 October to 31 March. The subsequent dates the datasets would be required to be reported to Inland Revenue is proposed to be 7 November and 7 May.

Application date of the Order in Council

- 20 I recommend that the application date of the Order in Council is 1 April 2023 with the first of the six-month datasets due to Inland Revenue on 7 November 2023. This should give PSPs enough time to amend their systems to collect and report the required datasets.
- 21 I recommend that the PSPs who require more time to amend their systems to collect and provide the datasets to Inland Revenue should be able to apply to the Commissioner for an extension to the first required reporting date of 7 November 2023. The PSP will need to provide adequate reasoning to why they require the extension.
- 22 Although an extension is available to the PSPs that absolutely need it, I recommend that all PSPs must comply with the 7 May 2024 reporting date as this should provide sufficient time for all PSPs to implement any necessary systems changes.

The supply of merchant identifying data by PSPs

- 23 It was proposed that PSPs would be required to report merchants' IRD numbers because this information is the best way for Inland Revenue to correctly identify merchants. Some of the submitters stated that the identification information of merchants is infrequently captured, and when it is captured, it may be incorrect.
- 24 I recommend that the IRD numbers and NZBN of merchants are to be reported by PSPs if they hold the information. However, there will be no sanctions imposed if the PSP does not hold this information or supplies incorrect information that has been provided to them by a merchant without their knowledge.

Definitions included in the Order in Council

- 25 The draft Order in Council currently includes definitions for merchant, payment, and payment service provider.
- 26 The proposed definition of a PSP was wide to allow for future changes in the market and the state of payment system technology. Submitters were concerned that the definition was too broad and ambiguous, which could lead to Inland Revenue receiving duplicate information when there is more than one PSP involved in the same transaction.
- 27 I recommend that the definition of a PSP should remain broad to account for future changes in the market and the state of payment system technology. To support PSPs, on the introduction of these rules, Inland Revenue will advise each PSP on whether they are required to report or not.
- 28 In response to feedback, it is suggested that inserting new and amending existing definitions in the draft Order will increase clarity and to ensure the scheme will work as intended. I recommend that amendments are made to the definitions of "merchant" and "payment" and that a definition of "acquirer" is added to the Order in Council.

Exemption of PSPs

- 29 The initial proposal allowed an exemption to be granted to a PSP who had subcontracted another PSP to undertake payments processing where the required information is held by the contracted provider. Submitters were concerned that the exemption provision was too ambiguous as it could refer to an exemption applying to a specific merchant rather than to a PSP or part of the PSPs business.
- 30 I recommend the exemption provision be amended to clearly reflect that it applies to all of or some of a PSP's business only and does not apply to specific merchants. I also recommend that the exemption should be applied for through a prescribed form and that the Commissioner may revoke and exemption at any time if there are changes in the payment system or the PSP's business.

Penalties that apply to non-compliance

- 31 It was initially proposed that criminal sanctions, ranging from fines to imprisonment, for failure to provide information would apply to PSPs compliance with the obligations in the Order in Council.
- 32 The feedback from submitters was that criminal penalties for non-compliance with reporting obligations was unduly harsh.
- 33 I recommend that the steps that Inland Revenue will take before criminal penalties are imposed on PSPs be clearly outlined in the Order in Council so PSPs have certainty of the process that will be taken before criminal penalties are considered or imposed.
- 34 These steps include:
- 34.1 notify the payment service provider of the due date for the provision or the information; and
 - 34.2 communicate with the payment service provider to find out why the information has not been provided, and in particular if there are impediments delaying or preventing its provision; and
 - 34.3 advise the payment service provider of the consequences of not providing the information to the Commissioner.
- 35 I recommend that criminal sanctions should apply for the failure to provide information. However, on the enactment of the Order in Council, Inland Revenue will advise all existing PSPs whether they are required to report. New PSPs that enter the market will be able to ask Inland Revenue to confirm whether they are required to report, which should provide certainty to the PSPs.
- 36 Any substantial change to the penalties regime would require changes to primary legislation.

The publication of PSP's names

- 37 Originally, it was proposed that the names of the PSPs that were required to report were to be publicised. Submitters were concerned that the publication of names could potentially create unfair market competition, especially with international providers that are not captured by these reporting rules.
- 38 I recommend that the names of PSPs that will be captured under the reporting rules not be publicised.

Future information requests

- 39 Inland Revenue can request information under the proposed Order in Council and under existing production order powers under the *Tax Administration Act 1994* (TAA).

- 40 Submitters raised concerns that they may be required to provide the same information repeatedly to Inland Revenue, once as part of this PSP initiative, and as part of a production order issued by the Commissioner. The submitters sought assurance that production orders would not be used in the future for the same PSP information.
- 41 I recommend that Inland Revenue may continue to request information from PSPs using a production order as allowed under the TAA for any further information that is not captured under the Order in Council. To provide assurance to PSPs, Inland Revenue will provide an operational understanding that the information already collected under this Order in Council will not subsequently be requested under a production order under the TAA.

Who is required to report

- 42 If the PSP meets Inland Revenue's definition of being a third-party business who facilitates payment for goods and services between customers and merchants, they may be required to report. Inland Revenue wants to ensure that there is no double-up reporting of data, but also need to ensure that all merchant data is reported by a PSP.
- 43 I recommend that a PSP may apply to the Commissioner for an exemption from reporting the datasets required under the Order in Council. The PSP would need to provide evidence supporting their application that another PSP captures the same data and would be more suitable to report the required datasets. The Commissioner will determine whether the PSP will be captured under the Order in Council.
- 44 I recommend that if a PSP is the sole facilitator and data holder, they will be required to report the datasets holding the merchant's transactions to Inland Revenue.

Fiscal Implications

- 45 It is expected that the financial impacts of the implementation of this Order in Council to be fiscally neutral. This is because the implementation will simply change the legislative mechanism through which this information is collected.
- 46 The Order in Council is allowing for the regular collection of the datasets Inland Revenue currently collect on an ad hoc basis from some of the largest PSPs. This means the Order in Council is not collecting new datasets or facilitating the detection and collection of new revenue from the hidden economy.
- 47 From a previous production order request, as allowed under the TAA, Inland Revenue were able to collect datasets from some of the large PSPs. The information gathered from former measurement systems on the benefits from using PSP data showed better targeting of Inland Revenue resources, an increased strike rate (identifying non-compliant taxpayers), increased tax revenue for the Government of \$37.5M, a 20% reduction in staff hours being spent on each case, and an 11% increase on return on investment.

Legislative Implications

- 48 An Order in Council will be necessary to give effect to the regular collection of payment service provider data.

Impact Analysis

Regulatory Impact Assessment

- 49 The Quality Assurance panel at Inland Revenue has reviewed the *Regular dataset collection from payment service providers* Regulatory Impact Assessment prepared by Inland Revenue and considers that the information and analysis summarised in the Regulatory Impact Assessment **meets** the quality assurance criteria.

Climate Implications of Policy Assessment

- 50 The Ministry for the Environment has been consulted and confirms that the Climate Implications of Policy Assessment (CIPA) requirements do not apply to this proposal, as the threshold for significance is not met.

Population Implications

- 51 This proposal has no population implications.

Human Rights

- 52 I consider that the proposals contained in the discussion document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 53 The Treasury and the Department of the Prime Minister and Cabinet have been consulted and agree with the contents of this paper.
- 54 The Parliamentary Counsel Office, the Office of the Privacy Commissioner and the Ministry of Business, Innovation and Employment were consulted on these issues.
- 55 A public discussion document was released for consultation alongside the draft Order in Council. Inland Revenue received responses from 12 stakeholders.

Communications

- 56 I will make an announcement on the enactment of the Order in Council advising that information can now be collected from payment service providers. Also, Inland Revenue will be releasing information on their website and will be engaging with affected payment service providers.

Proactive Release

- 57 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Recommendations

I recommend that the Cabinet Economic Development Committee:

- 1 invite the Minister of Revenue to instruct the Parliamentary Counsel Office to make the appropriate amendments to the draft Order in Council.
- 2 agree that the reporting threshold of \$30 million be removed and that PSPs are required to report on the transactions of all merchants.
- 3 agree that PSPs must report the datasets on each merchant in an aggregated format to Inland Revenue.
- 4 agree that the reporting frequency is to be set at six-monthly periods of 1 April to 30 September and 1 October to 31 March.
- 5 agree that the due date for reporting the datasets to Inland Revenue be one month and seven days after the end of the reporting period being 7 November and 7 May.
- 6 agree that the application date of the Order in Council will be 1 April 2023 with the first datasets to be reported by PSPs to Inland Revenue by 7 November 2023.
- 7 agree that a PSP can apply for an extension to the Commissioner with sufficient reasoning to the first reporting date but must comply with the 7 May 2024 reporting date.
- 8 agree that if the PSP holds the specified merchant data, such as the IRD number, it must be provided to Inland Revenue.
- 9 note that sanctions will not be imposed if the PSP does not hold the merchant identifying information or supplies incorrect merchant identifying information that was provided to them by a merchant without their knowledge.
- 10 agree that the definition of PSP should remain broad.

- 11 agree that definitions in the Order in Council are amended or added to ensure the scheme works as intended.
- 12 agree that PSPs are required to apply for an exemption that applies to some of, or all of, the PSPs business using a form prescribed by the Commissioner.
- 13 agree that the Commissioner may revoke an exemption at any time.
- 14 note that criminal sanctions will be used as a last resort and will continue to apply to PSPs.
- 15 agree that the steps that will be taken by Inland Revenue before criminal sanctions are considered be clearly outlined in the Order in Council.
- 16 agree that Inland Revenue will advise all existing PSPs on whether they are required to report.
- 17 agree that the names of PSPs are not to be published.
- 18 note that Inland Revenue can use production orders under the TAA for any further information that is required from PSPs that is not captured under the repeat dataset collection.
- 19 agree that if the PSP is the sole facilitator and data holder, they will be required to report the datasets holding the merchant's transactions to Inland Revenue.
- 20 agree that a PSP can apply through a prescribed form for an exemption from the reporting requirements by providing sufficient evidence that another PSP is more suitable to provide the required datasets to the Commissioner.

Authorised for lodgement

Hon David Parker

Minister of Revenue