

In Confidence

Office of the Minister of Revenue  
Chair, Cabinet Legislation Committee

## **REGULAR DATASET COLLECTION FROM PAYMENT SERVICE PROVIDERS (LEGISLATIVE APPROVAL)**

### **Proposal**

- 1 This paper seeks the Cabinet Legislation Committee's agreement to submit the Tax Administration (Regular Collection of Bulk Data) Regulations 2022 to the Executive Council.
- 2 The Order in Council will allow for the regular collection of datasets from payment service providers.

### **Policy**

- 3 Inland Revenue has been periodically collecting large datasets on merchant sales data from a few major payment service providers operating in New Zealand for risk analysis and to facilitate taxpayer compliance. There were concerns that the legislation granting the power for this dataset collection was not intended to allow repeat collection of datasets.
- 4 In 2019, new legislation was enacted to address the need for the regular 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 (DEV-21-MIN-0020 refers).
- 5 The Order will enable Inland Revenue to collect datasets from payment service providers on a regular basis. The datasets consist of aggregated data of merchants' sales and are used to detect non-compliance including hidden economy activity. The datasets are used for risk analysis and to ensure compliance through education, marketing and targeted campaigns including investigation of high-risk cases. Macro-analysis of this information is also used in research and to inform policy.
- 6 Consultation took place between 6 July 2021 and 20 August 2021 with feedback received from 12 stakeholders (including the Privacy Commissioner). Final policy recommendations were made by officials based on this feedback with attempts to reduce the compliance costs for payment service providers where appropriate.

- 7 On 28 September 2022, the Cabinet Economic Development Committee (DEV-22-MIN-0229 refers):
  - 7.1 invited the Minister of Revenue to instruct the Parliamentary Counsel Office to make the appropriate amendments to the draft Order in Council; and
  - 7.2 agreed to all recommended final policy changes to be made to the draft Order in Council.
- 8 The Parliamentary Counsel Office have amended the draft Order in Council that was released for consultation with the final policy changes.
- 9 This paper seeks authorisation to submit the Order in Council to Cabinet and the Executive Council.

### **Financial Implications**

- 10 It is expected that the financial impacts of the implementation of this Order in Council will be fiscally neutral. This is because the implementation only changes the legislative mechanism through which this information is collected.

### **Timing and 28-Day Rule**

- 11 I propose that the Tax Administration (Regular Collection of Bulk Data) Regulations 2022 applies 28 days after the gazetting date. The Order would then be made in accordance with the rule that a regulation must not come into force, until at least 28 days after the public have been notified in the New Zealand Gazette.

### **Compliance**

- 12 The Order complies with:
  - 12.1 the principles of the Treaty of Waitangi;
  - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 12.3 the principles and guidelines set out in the Privacy Act 2020;
  - 12.4 relevant international standards and obligations; and
  - 12.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.
- 13 Section 17L of the *Tax Administration Act 1994* (TAA) provides the ability to make regulations that authorise the Commissioner to collect bulk information in the form of datasets, if the collection of the information is considered necessary or relevant for a purpose relating to the administration or enforcement of a matter.

- 14 I consider that the proposed Order in Council meets the requirements of section 17L of the TAA because the efficient and effective collection and use of information helps to support voluntary compliance with tax obligations. The regulations also ensure that compliance and administration costs are minimised. The proposal will also minimise the opportunities for avoidance and evasion.
- 15 The quantity of information that will be collected under this Order is no more than necessary for the administration of the Inland Revenue Acts. The information that will be collected will not impinge on the privacy of individuals as no individual transaction data will be collected, only aggregated data of all merchant sales within a monthly timeframe.
- 16 Consultation has taken place in accordance with the *Tax Administration Act 1994* including consultation with the Office of the Privacy Commissioner.

### **Regulations Review Committee**

- 17 There are no anticipated grounds for the Regulations Review Committee to draw the Order to the attention of the House.

### **Certification by Parliamentary Counsel**

- 18 The Parliamentary Counsel Office has certified that the Order in Council is in order for submission to Cabinet.

### **Impact Analysis**

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

### **Communications**

- 20 I will make an announcement on the enactment of the Order in Council advising that information can now be collected from payment service providers.
- 21 Inland Revenue will update their website to outline the details of the Order in Council and its application. The update will outline how a PSP can apply for an exemption from the reporting requirements that are outlined in the Order.
- 22 Inland Revenue will also publish an article about these changes in its *Tax Information Bulletin* following enactment and will be engaging with affected payment service providers.

### **Proactive Release**

- 23 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.

## Consultation

- 24 The Treasury, the Parliamentary Counsel Office, and the Department of the Prime Minister and Cabinet have been informed of the contents of this paper.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 28 September 2022 the Cabinet Economic Development Committee (DEV-22-MIN-0229 refers):
  - 1.1 **agreed** to the final policy changes to be made to the draft Order in Council;
  - 1.2 **invited** the Minister of Revenue to instruct the Parliamentary Counsel Office to amend the draft Order in Council to align with the final policy decisions that had been agreed to by the Committee.
- 2 **note** that the requirements for making the regulation in the Tax Administration Act 1994 have been met.
- 3 **authorise** the submission to the Executive Council of the Tax Administration (Regular Collection of Bulk Data) Regulations 2022.
- 4 **note** that this Order in Council will come into force 28 days after the Order in notified in the Gazette.

Authorised for lodgement

Hon David Parker

Minister of Revenue