

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

## **UPDATE ON THE OPERATION OF INLAND REVENUE'S NEW INFORMATION COLLECTION PROVISIONS**

### **Proposal**

1. The Taxation (Income Tax Rate and Other Amendments) Act 2020 introduced the new top personal tax rate of 39%. The Act also introduced new disclosure requirements for trusts and clarified that the Commissioner of Inland Revenue can collect information for tax policy purposes.
2. Cabinet invited me to report back on the operation of these information-collection provisions (CAB-20-MIN-0490 refers).

### **Relation to Government priorities**

3. The introduction of a new top personal tax rate of 39% formed part of the Labour Party's manifesto for the 2020 General Election. New disclosure requirements were introduced for trusts to help evaluate the effectiveness of the 39% rate and gain insight into the use of structures and entities by trustees in New Zealand.
4. The amendment to clarify that the Commissioner of Inland Revenue can collect information for tax policy development purposes supports the integrity of the tax system and recognises that such information is critical to the development of tax policy.
5. Together with other parts of the Government's Tax Policy Work Programme, these initiatives will contribute, in different ways, to greater transparency concerning the integrity and fairness of the tax system.

### **Executive Summary**

6. In November 2020, Cabinet invited me to report back on the operation of the new trust disclosure rules and the power to collect information for tax policy purposes (CAB-20-MIN-0490 refers).
7. The trust disclosure rules apply for the 2021–22 and later income years and require trustees to prepare financial statements and disclose details of settlements, settlors, distributions, beneficiaries and appointers. The rules were introduced to support the integrity of the 39% tax rate and to provide better information to understand and monitor the use of structures and entities by trustees.

8. An Order in Council was made in March 2022 to set minimum requirements for financial statements prepared by trustees subject to the new rules.<sup>1</sup> The Order provides increased certainty for trustees regarding their reporting obligations, supports compliance with the disclosure rules, and improves the quality of data collected.
9. The provision to collect information for tax policy purposes has been used twice to date, with a further use planned in June 2022. All of these uses of the provision are for Inland Revenue's current project to measure effective tax rates for a group of high net worth individuals (the High-Wealth Individuals Research Project). While Inland Revenue has been able to collect the information it has sought to date, some concerns have been raised by stakeholders regarding the extent to which information collected under this provision may be sufficiently separated from Inland Revenue's compliance and enforcement functions and its confidentiality protected.

## **Background**

10. In November 2020, Cabinet agreed to implement a new personal income tax rate of 39% for income over \$180,000 for the 2021–22 and later income years (CAB-20-MIN-0484 refers).
11. Cabinet also agreed to a legislative amendment to clarify that the Commissioner of Inland Revenue can collect information for tax policy development purposes. There was some uncertainty about whether the collection of such information was permitted under existing law. The amendment was introduced to remove this uncertainty, in recognition that such information is critical to the development of good tax policy.
12. Cabinet also agreed to introduce new disclosure requirements for trusts for the 2021–22 and later income years. Cabinet deferred the decision on whether to increase the trustee income tax rate to 39% to a later date pending information on whether there is a behavioural response to paying the new top personal income tax rate. The new disclosure requirements are expected to inform that decision by providing better information to understand and monitor the use of structures and entities by trustees.
13. The new 39% tax rate and the information collection amendments were introduced by the Taxation (Income Tax Rate and Other Amendments) Act 2020, which was enacted on 7 December 2020.
14. In November 2020, Cabinet invited the Minister of Revenue to report back to Cabinet on the operation of the new information collection provisions (CAB-20-MIN-0490).

## **Collecting information for tax policy purposes**

15. The Taxation (Income Tax Rate and Other Amendments) Act 2020 enacted section 17GB of the Tax Administration Act 1994. This section clarified that the Commissioner of Inland Revenue can collect information for tax policy development purposes.
16. This provision has been used twice to date, both times within Inland Revenue's current project to measure effective tax rates for a group of high net worth individuals (HWIs). Inland Revenue lacks important knowledge about economic gains that fall outside the

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<sup>1</sup> Tax Administration (Financial Statements—Domestic Trusts) Order 2022.

tax system and contribute to wealth accumulation, as noted by the 2019 Tax Working Group. This information gap limits Inland Revenue's ability to assess the progressivity and integrity of the tax system.

17. This project is an extensive exercise, intended to result in a report in 2023. It acknowledges concerns relating to privacy and compliance costs through decisions made on the design of the process.
18. The first use of section 17GB was in October/November 2021. This involved seeking information from each of the selected individuals in the project population on the identity of their domestic partner, if any, and any dependent children, so that appropriate family units could be established for measurement purposes. This proceeded successfully, with a response rate in excess of 85%.
19. The second use of the provision was in February 2022, when Inland Revenue sought details of entities, such as trusts and companies, to which each household is materially connected. At the date of this paper, over 75% of the households have responded.
20. The key, and final, survey of financial data relating to the high-wealth families, and their identified entities, is expected to begin in June 2022. The information obtained will be analysed along with existing data held by Inland Revenue, as well as information from other public data sources. The full report will then be prepared. It is expected that the section 17GB provision will be used again for this exercise.

#### *Stakeholder concerns*

21. In discussions with stakeholders, Inland Revenue has identified some concerns regarding section 17GB. Aside from expected issues with compliance costs, which Inland Revenue has sought to mitigate where possible, these concerns mainly relate to the extent to which collected information may be sufficiently separated from Inland Revenue's compliance and enforcement functions and its confidentiality protected.
22. To date, these concerns have been addressed by careful planning of the project processes and by the Commissioner using her care and management powers to specifically prohibit the re-use of the information collected under this provision for non-policy analytical or risk assessment use.
23. Inland Revenue officials consulted the Office of the Privacy Commissioner (OPC) during the development of section 17GB and throughout the HWI research project. A Privacy Impact Assessment has been completed and the OPC is comfortable with Inland Revenue's approach.
24. Inland Revenue officials will give further consideration over the next year to the concerns raised by stakeholders and will report back to me again on the operation of the provision once they have more experience with its use.

#### **Collecting information from trusts**

25. The Taxation (Income Tax Rate and Other Amendments) Act 2020 introduced new disclosure rules for trusts for the 2021–22 and later income years. The rules apply to trusts that derive assessable income. Trustees with tax agents (approximately 94%)

will have until 31 March 2023 to file their first return under the increased disclosure requirements. Trustees without tax agents must file by 7 July 2022.

26. The Privacy Commissioner was consulted during the development of the trust disclosure rules, and he considered that the proposed collection of personal information of beneficiaries of trusts posed a low privacy risk.
27. Since the rules were introduced in December 2020, minor amendments have been made to exempt certain categories of trusts from the disclosure rules and to carve out non-cash, minor distributions incidental to the operation of the trust from the disclosure requirements.
28. The disclosure rules include the requirement to prepare financial statements. An Order in Council was made on 7 March 2022 to set minimum standards for these financial statements (DEV-22-MIN-0016 refers).
29. Inland Revenue also published an Operational Statement on 6 April 2022, providing practical guidance on the trust disclosure requirements. Inland Revenue undertook a targeted marketing campaign in April 2022 to inform affected trustees of their reporting obligations.
30. Inland Revenue's START system allows for real-time monitoring of compliance with the new rules as returns are filed. A post-implementation review of the operation of the disclosure rules and the Order in Council will be undertaken after 31 March 2023, once all returns have been filed for the 2021–22 income year.

#### *Retrospective information collection*

31. The Taxation (Income Tax Rate and Other Amendments) Act 2020 also introduced a retrospective information collection provision. It allows the Commissioner to request a trustee of a trust to provide information that relates to the trust for a period beginning after the end of the 2013–14 income year (after 31 March 2014 for taxpayers with standard balance dates) and ending before the 2021–22 income year.
32. Inland Revenue officials have not yet made any decisions regarding the use and operation of this provision.

#### **Financial Implications**

33. This paper has no financial implications.

#### **Legislative Implications**

34. This paper has no legislative implications.

#### **Impact Analysis**

##### *Regulatory Impact Assessment*

35. This paper is not recommending any regulatory options or proposals.

### *Climate Implications of Policy Assessment*

36. This paper is not recommending any regulatory options or proposals.

### **Population Implications**

37. This paper has no population implications.

### **Human Rights**

38. This paper has no human rights implications.

### **Consultation**

39. The Department of the Prime Minister and Cabinet and the Treasury were consulted during the development of this paper.

### *HWI research project*

40. In preparing for the use of section 17GB for the HWI research project, Inland Revenue consulted the Crown Law Office, the New Zealand Law Society, Chartered Accountants Australia and New Zealand (CA ANZ), the Corporate Taxpayers Group, and a number of tax professionals.

### *Trust disclosure rules*

41. Inland Revenue undertook targeted and public consultation in 2021 on the setting of minimum standards for financial statements by domestic trusts. Officials also consulted on operational guidance for the disclosure rules to address practical matters for trustees.

42. In addition to consulting with members of the tax and accounting community, Inland Revenue consulted with the External Reporting Board, the Department of Internal Affairs, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Office of the Privacy Commissioner, Statistics NZ and the Treasury during the development of the minimum standards for financial statements prepared by domestic trusts.

### **Proactive Release**

43. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of Cabinet making final decisions.

### **Recommendations**

The Minister of Revenue recommends that the Committee:

1. **Note** that, on 23 November 2020, Cabinet agreed to:
  - 1.1 clarify the law to ensure that the Commissioner of Inland Revenue has the power to collect information for tax policy purposes; and

- 1.2 make amendments to require the collection of information from trustees to test compliance with the new 39% top personal income tax rate and provide better information to understand and monitor the use of structures and entities by trustees (CAB-20-MIN-0484 refers).
2. **Note** that, on 30 November 2020, Cabinet invited the Minister of Revenue to report back to Cabinet on the operation of the information-gathering provisions referred to in paragraphs 1.1 and 1.2 above (CAB-20-MIN-0490 refers).

*Collection of information for tax policy purposes*

3. **Note** that the provision to collect information for tax policy purposes has been used twice to date, with a further use planned in June 2022, within Inland Revenue's current project to measure effective tax rates for a group of high net worth individuals for the years 2016 to 2021.
4. **Note** that concerns have been raised by the private sector regarding the confidentiality of information obtained under this provision.
5. **Note** that the Commissioner of Inland Revenue has used her care and management powers to specifically prohibit the use of information obtained under this provision against third parties or for non-policy analytical or risk assessment use.

*Collection of information from trusts*

6. **Note** that Inland Revenue will undertake a post-implementation review of the disclosure rules in 2023, after all the returns for the 2021–22 year have been filed (31 March 2023).

Authorised for lodgement

Hon David Parker  
Minister of Revenue