

Taxation (Transformation: First Phase Simplification and Other Measures) Bill

Commentary on the Bill

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CONTENTS

Overview	1
Summary of proposals	3
Electronic communications	5
Communications framework	7
Accepting electronic signatures	12
Employee share schemes	15
Simplifying the collection of tax on employee share schemes	17
Information sharing	21
Release of general information	23
Enforcement of employment standards	24
Sharing biometric information	25
KiwiSaver membership	27
Fund transfers and contact details of members	29
Minors opting out	31
Other policy matters	33
FIF exemption simplification for ASX	35
Supporting co-location	37
Special tax codes	39
Notices of deductions from salary or wages	41
Exemption from requirement to apply for child support	44
Changes to personal tax summary refund thresholds	47
Changes to rulings regime	48
Repeal of special home ownership account provisions	50

Overview

SUMMARY OF PROPOSALS

The taxation amendments proposed in this bill are generally aimed at simplifying aspects of the tax system. The main policy measures in this bill have been developed from a consideration of the reforms necessary to progress the Government's transformation of tax administration in New Zealand. The objective of this bill is to make necessary changes to tax legislation which will enable future bigger changes.

Simplification of the tax system can be achieved by simplifying rules around processes, administration and taxation. This overview provides a brief discussion of some of the proposed changes in those categories:

- facilitating easier communication with Inland Revenue;
- simplifying tax rules; and
- sharing information.

Improving communication

Communications between taxpayers and the Commissioner are primarily governed by tax legislation which predates the widespread use of digital services. As a result, many of the provisions are restrictive in their description of communication and methods of communication delivery, stipulating for example that communication be provided "in writing" or delivered "by post". The current rules are also unclear as to what electronic communications are permissible for tax matters.

The proposed amendments clarify the communication options available and also provide general rules governing methods of communication delivery. These proposed general rules provide greater certainty for both taxpayers and Inland Revenue.

Employee share purchase agreements

Benefits an employee receives from a share purchase agreement are treated as employment income under the Income Tax Act 2007. These benefits are not subject to tax at source under the PAYE or FBT rules. Instead, the employee is required to file an individual tax return and include the benefit as income and pay an appropriate amount of tax on the benefit. For some employees who are not used to filing tax returns, the current method for collecting tax on employee share benefits may not be well understood and create taxpayer uncertainty. This uncertainty can also deter employees from accepting shares offered under a share purchase agreement. This bill contains a proposal to allow employers to withhold tax on these benefits and pay it on their employees' behalf. The proposals were the result of public consultation in April 2015 – *Simplifying the collection of tax on employee share schemes*.

Information sharing

Tax information is governed by strict secrecy but in certain situations, sharing specific information within defined criteria can be beneficial. This bill proposes:

- to allow information to be shared where it could assist in identifying breaches of workplace legislation;
- to establish a pilot project to investigate whether voice recordings used currently to verify identity could be matched between Inland Revenue and the Ministry for Social Development as a means for increased efficiency; and
- that secrecy provisions applying to Inland Revenue staff are amended to allow for IRD staff working in shared office space with another government agency.

Electronic communications

COMMUNICATIONS FRAMEWORK

(Clauses 5 to 34, 36 to 46, 48 to 51, 55 to 58, 60 to 66, 68 to 69, 71, 74 to 82, 88 to 100, 103 to 104, 106 to 108, 110, 112 to 121, 123 to 129, 132 to 135, 137, 139 to 144, 146 to 152, 154 to 176, 178 to 202, 212, 220)

Summary of proposed amendments

These amendments remove references throughout the Income Tax Act 2007, the Goods and Services Act 1985 and the Tax Administration Act 1994 which restrict interaction with the tax system to paper-based transactions. In addition, where legislation requires the Commissioner, a taxpayer or a third party to *ask, request, inform, apply or notify*, these verbs have been defined to allow a freer interpretation of how those actions are to be undertaken when communicating on tax matters.

The amendments govern how all information must generally be communicated. They also provide general rules applicable to various methods of communication delivery. The delivery rules consolidate current practices and legal requirements and extend these to electronic communications putting emails, for example, on the same footing as paper letters delivered by post.

The purpose of these proposals is to remove any legislative barriers to receiving and sending electronic communications, as the necessary first step towards accommodating the better use of digital services. This is achieved by both removing the outdated references and also specifically providing for electronic communications within the new framework.

This framework will facilitate greater use of electronic and other new communication channels in step with the planned transformation of Inland Revenue's systems and processes over the coming years. Inland Revenue's simplification programme aims to provide greater use of digital channels for increased convenience and reduction in compliance costs. These proposals would provide the legislative backing for that change. The proposed amendments would preclude the need to amend the tax legislation to specifically cover the new channels, thus future-proofing the legislation.

Application date

This amendment takes effect from the date of enactment.

Key features

Clause 74 establishes the new communications framework, contained in new sections 14 to 14G, for facilitating the information flows between the Commissioner and a person, and between two persons where the tax legislation governs that interaction.

The framework picks up and expands on the rules governing notice requirements in the current section 14 to 14C in the Tax Administration Act 1994.

It establishes the general rules and standards for communications on tax matters in the Income Tax Act 2007, the Goods and Services Act 1985 and the Tax Administration Act 1994. This includes a range of communications such as a taxpayer making a phone call or submitting a GST registration application, or the Department issuing a notice or income statement to the taxpayer. It can also cover communications between third parties on tax matters such as the requirement for a bank to provide an investor with an RWT certificate for example.

However, because the framework is intended to apply broadly, in order to ensure that the amendments do not unnecessarily disturb established practices or specific legislative requirements new section 14E allows for some general overrides.

The framework provides for varying levels of communication formality, ranging from telephone conversations to formal notification requiring personal delivery. This allows the framework to accommodate a variety of options for communications which may range from low risk or importance to more restricted formal procedures for significant communications.

The amendments allow for the Commissioner to permit new modes of communication, thereby allowing the framework to be expanded and adapted as systems are upgraded or new technologies emerge, without the need to extensively amend the legislation each time.

Broadly new section 14F preserves the various elements of the current sections 14 to 14C with respect to paper based communications, and extends them to electronic modes of communication.

With regard to electronic notices, the rules in the current section 14 to 14C are maintained and extended to all electronic communications. This includes the consent override for electronic notices, currently as per section 14(7). Therefore under these amendments the same rule would apply in circumstances where the Commissioner seeks to electronically 'inform' a person for example.

The majority of the remaining amendments simply replace existing terminology referring to specific modes of communication, for example the requirement for certain communications to be "in writing", with terminology corresponding to an appropriate tier in the communications framework as established by clause 74.

There are also a number of amendments where a more significant redraft was required to fit the requirements of the provision into the new framework. With regard to these amendments there is no broad intended change in the meaning of the provisions, other than with regard to any changes to the form or format of the communication or its delivery consistent with the new framework.

Background

The Electronic Transactions Act 2002 overrides other legislation and allows for the use of electronic forms of communication when written communication is otherwise required by legislation, where the recipient of the communication consents.

However communication under the tax legislation is primarily reliant on paper-based communications. Partly this reliance stems from an uncertainty as to the validity of electronic communications. This uncertainty arises from the fact that communications between taxpayers and the Commissioner are primarily governed by tax legislation which predates the widespread use of digital services.

As a result, many of the provisions refer to now outdated modes of communication and methods of communication delivery, including for example requirements for communication to be provided “in writing” or delivered “by post”.

These amendments seek to clarify any uncertainty arising from the interaction between the application of the ETA and the outdated requirements of the tax legislation.

Detailed analysis

The proposed new communications framework intentionally applies broadly. It covers all communications between the Commissioner or Inland Revenue officers and other persons; as well as communications between two or more other persons not involving the Commissioner where those interactions are governed by provisions of the tax legislation. An example may be the requirement for the company to provide a dividend statement to its shareholders.

These proposed rules preserve the precedence of prescribed forms and formats and any specific requirements covered within particular sections. For example it is not intended that the general nature of the framework would allow a taxpayer to file a tax return by sending the required information in an email, in circumstances where no email return forms have been prescribed by the Commissioner.

Practically this means that where paper forms have been prescribed, but no electronic equivalents have been made available, taxpayers will be required to continue to file paper returns on prescribed forms until electronic equivalents are made available.

Equally with regard to employer monthly schedules, for example, the specific requirements for these to be completed electronically are not intended to be relaxed as a result of the broad framework amendments in this bill.

New section 14E also preserves the overriding effect of double tax agreements and other inter-governmental treaties, by applying the new communication rules only to the extent to which they are not inconsistent with the application of the particular agreement.

New sections 14B to 14D create three distinct tiers to accommodate various modes of communication ranging from the informal (including oral communication) to electronic (whether by electronic filing through Inland Revenue’s website, email or other electronic means) to more formal methods requiring paper or original documents. The tiers are signalled by the use of the following verbs – ask, request, or inform, apply or notify, and formally notify.

Each tier sets out the options available for a person providing information or communicating something in response to one of the abovementioned verbs. For example a section requiring a person to inform the Commissioner of something can be satisfied by a telephone call, whereas a requirement to notify the Commissioner of something would require a document either electronic or printed.

Each tier also allows for the Commissioner to permit new modes. This allows for the framework to be expanded over time. Once a new channel becomes available for use, it would be sufficient to publish a notice that this new option is available to those who wish to use it, without the need for a separate legislative amendment.

New section 14F and 14G establish delivery rules which ensure that communications, in particular electronic communications, are delivered only to appropriate contact addresses. This is important in order to protect both Inland Revenue and taxpayers from the risk of misdirected communications and to guard against an inadvertent breach of the tax secrecy provisions.

For example this amendment ensures that if the Commissioner sends a notice to a corporate taxpayer via email that it is sent to a person who is acting for the corporate taxpayer in relation to that matter. This ensures that the notice is not treated as 'delivered' if it is simply sent to a generic email box at that corporation.

In addition, the current rules allow for the Commissioner to post a notice to the recipient's current or last known address. The proposed new rules extend this to allow the Commissioner to send a notice via email to the recipient's current or last known email address.

These amendments preserve the Commissioner's ability to send an electronic notice to the recipient without first obtaining the recipient's consent, as required by the ETA. For Inland Revenue which processes large volumes of communication this is important in order to ensure the electronic communication is workable as an alternative to paper-based communications.

Inland Revenue will aim to always preserve integrity and confidentiality in its communications.

Where possible and practical Inland Revenue staff seek, from each individual recipient, their consent for electronic communication. This may not always be feasible, particularly for large groups of recipients receiving a generic batch email notice, or in circumstances where the email address is the only contact address available for the recipient as they are overseas based for example.

In the interests of maintaining confidentiality and integrity, the proposed amendment preserves the condition that the Commissioner may not send the electronic notice where there are reasonable grounds to suppose that the notice will not be received. This requirement is maintained and extended to all forms of electronic communications by the Commissioner.

The intended result of these amendments is to ensure that electronic communications are not unnecessarily restricted when compared with paper equivalents sent by post.

Finally, as discussed above, these amendments are not intended to allow for filing tax returns by email, unless that service is made available by the Commissioner either by direct agreement with the taxpayer or generally consented to by a notice on the Inland Revenue website for example.

This restriction on the receipt of electronic communication by Inland Revenue is necessary in order to protect taxpayers from misdirected communications falling outside of the net, for example tax returns being sent via email and never being picked up for processing.

However, where the Commissioner has made a specific Inland Revenue email contact address for a particular purpose available on the website for example, this proposed amendment does not affect the ability to use this address to send emails to Inland Revenue with regard to that specific purpose.

ACCEPTING ELECTRONIC SIGNATURES

(Clauses 72, 73, 105)

Summary of proposed amendment

This amendment inserts a new section into the Tax Administration Act 1994 to allow for documents to be “signed” with a digital or electronic signature. It applies to all information provided to the Commissioner including, for example, electronically submitted tax returns or application forms.

Once operational this amendment will eliminate the need for handwritten signatures where an acceptable and valid electronic signature is used instead. This has a number of positive impacts for the use of digital services including improving customer interactions and lower compliance costs.

This amendment does not mandate the use of electronic signatures, and valid handwritten signatures will continue to be acceptable.

Application date

This amendment is intended to take effect from the date of enactment.

Key features

The Electronic Transactions Act 2002 allows for an electronic signature to satisfy a legal requirement for a document to be signed, where the recipient of the document consents to the use of the electronic signature.

This amendment provides the necessary consent for the use of valid electronic signatures on information provided to the Commissioner. It also brings the Tax Administration Act 1994 into line with the Electronic Transactions Act 2002.

Because of the legal significance of a signature, it is important that the use of electronic signatures is both secure and reliable for both taxpayers and Inland Revenue.

The amendment allows for the Commissioner to set criteria and technical requirements for the use of electronic signatures.

In order to be able to use electronic signatures in place of hand written signatures, users will need to first comply with the Commissioner’s published requirements and technical criteria.

There are also likely to be approval criteria for users of this technology to further minimise the risk of signature forgery or misuse. The criteria will be set by the Commissioner following consultation with interested parties.

Once the criteria have been set, the Commissioner will publish guidelines to provide advice and support to interested users.

Finally the amendment allows for the Commissioner to place reasonable reliance on the user of the electronic signature. This means that when a person provides an electronically signed document, unless there are reasonable grounds to suppose otherwise, the document will be treated as signed by that person.

Background

The Tax Administration Act 1994 requires handwritten signatures on paper forms. From the legal viewpoint a person's signature is the visual representation of an intention to be legally bound by the information contained in the signed document. So for example a taxpayer's signature on a tax return both identifies them as the person signing the return but also evidences that taxpayer's certification that the contents of the return are true and correct.

From a technological perspective an electronic signature can inextricably link a particular version of a document to the sender or a point in time and can be used to indicate any subsequent alterations to the document, or give information about the identity of the sender.

As part of Inland Revenue's focus on simplifying processes by improving digital services, this amendment would allow tax agents and taxpayers to submit electronically signed documents to Inland Revenue. The proposed amendment would also reduce compliance costs associated with current processes. For example tax agents filing their client's returns electronically will no longer have to first mail out a paper copy of the return for the client to hand sign, instead the entire process could become paperless.

Employee share schemes

SIMPLIFYING THE COLLECTION OF TAX ON EMPLOYEE SHARE SCHEMES

(Clauses 2(3), 52 to 54, 109, 204 and 222)

Summary of proposed amendments

Changes are proposed to the general PAYE collection rules in the Income Tax Act 2007 to improve the collection of tax on benefits received as employment income under a share purchase agreement. Share purchase agreements in this context are often referred to as “employee share schemes”.

The proposed changes:

- allow the employer to choose to withhold tax on any employment income an employee receives under a share purchase agreement using the PAYE system; and
- require employers to disclose the value of any benefits an employee receives under a share purchase agreement via the employer monthly schedule (EMS).

Application date

The changes apply on and after 1 April 2017 to employment income received after that date.

Key features

Amendments are proposed to the rules governing the collection of tax on employment income for employees who receive a benefit under a share purchase agreement. The new rules will give employers the choice to pay and return tax on employees’ behalf on employment income arising from a share purchase agreement.

The amendments set out:

- how the employer exercises their choice to withhold tax on such benefits; and
- when benefits an employee receives from a share purchase agreement under section CE 2 are to be disclosed by the employer to Inland Revenue.

The definition of “extra pay” in section RD 7 will be amended by adding to the list of payments in that section a benefit an employee receives as employment income under a share purchase agreement to the extent that new section RD 7B applies to the amount of the benefit.

New section RD 7B sets out the conditions when employers exercise the choice as to whether to withhold and pay an amount of tax on a benefit under a share purchase agreement that is treated as an “extra pay” under section RD 7. The employer’s choice applies to all members of the share purchase agreement. The choice is irrevocable for that agreement.

Employees of an employer who has not chosen to withhold tax on employment income received under a share purchase agreement continue to be treated as filing taxpayers and include such income in their individual tax return.

The timing and disclosure of amounts an employee receives as employment income is set out in section RD 6 and requires employers to disclose such amounts to Inland Revenue at the end of the pay period in which the employment income is treated as received by the employee.

Changes are also being made to section 46 of the Tax Administration Act 1994 for when an employer chooses not to withhold tax on benefits an employee receives from a share purchase scheme. It is proposed that the employer must disclose details of the amount of the benefit received along with other pertinent details relating to the employee. The definition of “employee” in section 46 is amended to include former employees who receive a benefit under section CE 2 to which section RD 7B does not apply.

Consequential changes are also made to the Accident Compensation Act 2001 and the KiwiSaver Act 2006.

Background

Benefits provided to an employee under a share purchase agreement are “employment income”.

Unlike most employment income or benefits (such as salary and wages or a use of a company car), such benefits are not currently subject to tax at source under either the PAYE or FBT rules. This means that employee recipients of a benefit under a share purchase agreement must currently file an individual tax return including the benefit as income and pay the tax on those benefits themselves.

For employees unused to filing returns and paying tax directly to Inland Revenue, the current collection mechanism may not be well understood and impose unnecessary compliance costs. These compliance costs can affect voluntary compliance and perceptions about the integrity of the tax system.

From Inland Revenue’s perspective, the current rules impose a number of administrative costs. If an individual employee does not return the income from an employee share scheme, the Commissioner has to expend resources to collect a potentially small amount of tax from an individual.

In April 2015, officials released an issues paper *Simplifying the collection of tax on employee share schemes* which discussed the problems with the current collection of tax on benefits received under an employee share scheme. The issues paper discussed changing the collection of tax on employment income received under a share purchase agreement using the PAYE system, the FBT rules or a separate withholding tax. Changing the method of tax collection would shift the tax compliance obligation to file and pay from employees to employers.

Submitters were broadly supportive of the idea of shifting the point of taxation to source, provided the employer could choose whether to withhold tax. The PAYE system was the generally preferred method of tax collection.

Submitters argued that an elective approach would allow employers to balance the cost of compliance they would incur relative to the benefits their employees would receive when making a decision whether or not to collect and pay tax on their employees' behalf.

Submitters also generally recognised that any elective use of the rules would need to be accompanied by suitable disclosure requirement to allow Inland Revenue to know which employees had received a benefit under an employee share scheme.

Inland Revenue does not hold comprehensive information about employee entitlements under share purchase schemes. The issues paper *Simplifying the collection of tax on employee share schemes* noted that if collection of tax on employment income under a share purchase agreement was elective, Inland Revenue would need information about the names and tax file numbers of participating employees and the value of benefits received under the agreement. As set out in the Regulatory Impact Statement to this bill, Inland Revenue considered a number of ways this information could be collected and concluded that the employer monthly schedule (EMS) was the best option as the necessary information is provided in a timely and administratively efficient manner.

The proposed changes in this bill take into account submitters' views.

The objective of changing the tax collection rules on employment income received under a share purchase agreement is to improve the efficiency of the tax system from the perspective of encouraging taxpayer compliance and improving the integrity of the tax system.

The change should also, where appropriate, reduce compliance costs on employees.

Further analysis of the reasons for the proposed changes to the collection of tax on employee share schemes may be found in the regulatory impact statement to this bill, published on Inland Revenue's tax policy website, www.taxpolicy.govt.nz.

Detailed analysis

Shifting the tax collection point on employment income under a share purchase agreement to its source – the employer

If the employer so elects, benefits received from a share purchase agreement under section CE 2 of the Income Tax Act will be treated as an "extra pay" for the purposes of section RD 7 of the PAYE rules. Such benefits will consequently be treated as a "PAYE income payment" under section RD 3. This ensures that the obligation to pay tax is transferred from the employee to the employer under the PAYE rules. The applicable rate of tax on the benefit will be determined by section RD 10 and schedule 2. It also ensures, for the purposes of section 33A of the Tax Administration Act, the employee is treated as a non-filing taxpayer because the employer returns and pays tax on the employee's behalf.

Employers have the choice under section RD 7B whether to withhold tax on the extra pay. The choice is exercised for a share purchase agreement. The choice, once made for that agreement as it applies to a class of employees, is irrevocable.

The timing for when disclosure is required (new section RD 6(1)(d)) is the pay period when the employee is treated as receiving the benefit under section CE 2 and should be provided in an employer monthly schedule for that pay period (sections RD 22 and RD 4 refer).

Consequences if employer does not withhold tax on employment income under a share purchase agreement

If the employer chooses not to withhold tax on employment income an employee receives under a share purchase agreement, the obligation to file and pay tax remains with the employee. The employer, however, will have an obligation under the Tax Administration Act to provide Inland Revenue with details about the employer and the amount of any benefits an employee (including a former employee) receives under a share purchase agreement.

Proposed amendments to section 46 of the Tax Administration Act define the term “emoluments” as including a benefit an employee receives under section CE 2 in situations when the employer does not make an election under new section RD 7B to withhold an amount of income tax. Section 46 is further amended by changing the definition of “employee” to include former employees who are party to a share purchase agreement to which section CE 2 applies.

Including the value of these benefits in the EMS does not automatically create an obligation to withhold tax because if the employer chooses not to withhold and pay tax, the benefits received by an employee under a share purchase agreement are not treated as “PAYE income payments”.

For the immediate future, disclosures made using the electronic EMS may generate reconciliation errors on the schedule. It is expected that such reconciliation errors would be eliminated in the future as part of the redesign of Inland Revenue technology platforms under Inland Revenue’s Business Transformation programme. Inland Revenue is preparing appropriate materials for employers to explain the changes and implications for completing electronic EMS.

Interaction with social policy programmes administered by Inland Revenue

The officials’ issues paper noted that changing the method of collecting tax on share purchase agreement benefits should not impact employees’ current entitlements or obligations for any of the social policy programmes by Inland Revenue. To this end, employment income received under a share purchase agreement will continue to count for the purposes of child support, student loans and entitlements to Working for Families tax credits. It is expected that the requirement for the employer to disclose this income via the EMS will improve the overall integrity of these programmes.

Also consistent with this objective, consequential changes are necessary to the Accident Compensation Act 2001 and the KiwiSaver Act 2006 to ensure that any amounts disclosed to Inland Revenue via the EMS as a result of the recommended proposal are not taken into account.

Changes are being made to the definition of “salary and wages” in section 4 of the KiwiSaver Act 2006 to exclude benefits an employee receives from a share purchase scheme under section CE 2 of the Income Tax Act.

A similar change is made to section 11(1) of the Accident Compensation Act 2001 to ensure that benefits under a share purchase agreement, proposed to be part of the PAYE rules, will not be counted for the purposes of assessing the ACC levy on employee earnings.

Information sharing

RELEASE OF GENERAL INFORMATION

(Clause 117)

Summary of proposed amendment

The amendment will allow the Commissioner of Inland Revenue to release general information such as statistical data without needing to seek approval from the Minister of Finance. The current tests required to safeguard the privacy of taxpayers when releasing general information will remain but will be transferred from the Minister of Finance to the Commissioner. The proposed change is an administrative efficiency measure.

Application date

The amendment will come into force on the date of enactment.

Key features

- New section 81(4)(j)(i) requires that the release must be in the public interest; and
- New section 81(4)(j)(ii) ensures that the information being released does not identify any taxpayer;
- New section 81(4)(j)(iii) refers back to the considerations in 81(1B)(b) which inform whether the release is reasonable.

Background

Under section 81(4)(j) of the Tax Administration Act 1994 the Commissioner may release general information which does not identify any taxpayer if the release is approved by the Minister of Finance.

The Minister must first be satisfied that the release is in the public interest, and that the information is readily available and can be communicated easily.

Under the proposed changes in the bill, the three tests currently contained in section 81(4)(j) will be maintained but will be transferred from the Minister to the Commissioner. The test for whether the information is readily available and can be communicated easily is replaced with a reference to five considerations already legislated in 81(1B)(b). These considerations look at the effects on integrity, compliance, the impact on individuals or businesses, the resources available and whether the information is already publicly available.

The reference to an “authorised person” will be removed as this will no longer be needed when the Commissioner is making the release.

ENFORCEMENT OF EMPLOYMENT STANDARDS

(Clause 117)

Summary of proposed amendment

A consequential amendment is being made to section 81 of the Tax Administration Act 1994 to allow Inland Revenue to share information with the Ministry of Business, Innovation and Employment, and with WorkSafe. The amendment will allow information to be shared for the enforcement of employment standards. This amendment is a consequence of the changes to workplace legislation due to be introduced this year.

Application date

The amendment will apply from the date of enactment.

Key features

Following the amendment Inland Revenue will share information with the Ministry of Business, Innovation and Employment, and WorkSafe to facilitate and place greater emphasis on the enforcement of employment standards. Inland Revenue records should enable inspectors to identify and proceed against a breach.

In respect of health and safety breaches Inland Revenue records will assist WorkSafe in identifying relevant entities and employer/employee relationships to assist it with enforcement.

Background

Wage and time records are a key tool which enables labour inspectors to investigate possible breaches of employment standards assisting with targeting non-compliance and investigating cases. Sometimes wage and time records are absent, inaccurate or falsified.

Following the amendment Inland Revenue records will support the goal of the Ministry of Business, Innovation and Employment, in the Employment Standards Bill, to facilitate the enforcement of employment standards. Inland Revenue records should enable labour inspectors to identify and proceed against a breach. The Employment Standards Bill is due to be introduced this year.

Where health and safety breaches are concerned, the aim is narrower. Inland Revenue records will assist WorkSafe in identifying relevant entities and employer/employee relationships to assist it with enforcement.

Under section 81(1), Inland Revenue officers must maintain secrecy. Currently there is no specific exception in section 81(4) to allow the sharing of entity information for the purposes of enforcing employment standards.

SHARING BIOMETRIC INFORMATION

(Clause 117)

Summary of proposed amendment

An amendment to section 81 of the Tax Administration Act 1994 is proposed to allow Inland Revenue to share biometric information with the Ministry of Social Development. This will allow research to be undertaken to determine whether Inland Revenue's biometric information can be used to identify and verify callers to the Ministry.

Application date

The amendment will apply from the date of enactment.

Key features

An amendment is proposed to section 81(4), to allow for the sharing of information with the Ministry of Social Development which would allow for the verification and identification of callers to the Ministry.

Background

Approximately 1.3 million taxpayers have registered to use their voiceprint to validate their identity when they contact Inland Revenue. The technology is voice biometrics. Inland Revenue and the Ministry of Social Development are looking at a pilot where the Ministry will also use this service and access Inland Revenue's bank of voiceprints.

When a caller rings the Ministry of Social Development, if they are registered for biometric validation and agree, the Ministry's systems will sample their voice, send it to Inland Revenue, and Inland Revenue will return a "confidence level" based on how well the voice matches. This is an information matching exercise. The Ministry of Social Development, taking that confidence level into consideration, will then decide whether further checks are needed before they continue with the call.

Under section 81(1), Inland Revenue officers must maintain secrecy. In order to undertake the match, an amendment to section 81 is necessary to enable Inland Revenue to share the voiceprint information as the existing exemptions do not cover this use.

KiwiSaver membership

FUND TRANSFERS AND CONTACT DETAILS OF MEMBERS

(Clause 213)

Summary of proposed amendments

The amendments seek to simplify the administration of the KiwiSaver scheme rules under the KiwiSaver Act 2006 by allowing Inland Revenue and KiwiSaver fund providers to share certain information about KiwiSaver members for account maintenance purposes. This information would include:

- the names of members who have transferred out of a scheme and the name of the member's new provider; and
- member contact details that would not only encompass their email and address but also telephone numbers and any future mode of communication related to the member that emerges as technologies develop.

The first amendment is intended to improve the service provided to KiwiSaver members when transferring from one scheme to another.

The second proposal is intended to help scheme providers engage with, and communicate more efficiently with their members, and reduce the volume of returned correspondence to scheme providers because member contact details are not up-to-date.

Application date

The amendments will come into force on the date of enactment.

Key features

Sharing information on KiwiSaver fund transfers

The proposed amendment to the KiwiSaver Act 2006 extends section 220B of that Act to allow Inland Revenue and fund providers to share certain information about members who have transferred out of one scheme and into another, including:

- the name of the member;
- their contact details;
- the name of the member's new provider; and
- the member's tax credit information.

The amendment is intended to help improve service to KiwiSaver members.

Sharing KiwiSaver member contact details

The proposed amendment expands the current information sharing provision under section 220B of the KiwiSaver Act 2006 to allow a broader range of contact details to be shared between Inland Revenue and KiwiSaver fund providers. The new definition would encompass not just the member's email and address, as the provision currently does, but also a telephone number and any future mode of communication related to the member that emerges as technologies develop.

Background

Under section 220B of the KiwiSaver Act 2006, information sharing between Inland Revenue and KiwiSaver fund providers for KiwiSaver account maintenance purposes is limited to sharing email and address contact details with scheme providers for account maintenance purposes. An extension to these current rules would allow Inland Revenue to also share a KiwiSaver member's telephone number with a fund provider, allowing the provider to communicate more effectively with its members.

In addition, Inland Revenue would be able to supply a scheme provider with certain information, including the names of scheme members who have transferred out of their scheme and the name of the member's new provider and vice versa. This is not possible under the current rules.

Inland Revenue is in the unique position of knowing a member's contact details and transfer history and also has an on-going relationship with all scheme providers. Where there are differences in account information held by the parties, Inland Revenue can help facilitate reconciliation and resolution of administration issues.

MINORS OPTING OUT

(Clauses 205 to 211)

Summary of proposed amendment

The bill proposes a new provision that would allow minors who have been incorrectly enrolled into KiwiSaver to opt out before their 19th birthday. This would provide some protection to minors who may not know that they have been enrolled and want to exit the scheme.

Members who opt out of KiwiSaver under this new provision would have the contributions they had made returned to them, their Government contributions returned to the Crown and their compulsory employer contributions returned to their employers.

Application date

The amendment will come into force on the date of enactment.

Key features

- New section 50CD allows members who have incorrectly been enrolled in KiwiSaver when they were minors to opt-out of KiwiSaver up until their 19th birthday if:
 - they are aged under 16 and they have the consent of one of their guardians; or
 - under their own authority if they are 17–19 years old.
- New section 59D applies the current rules which extend invalid membership for non-residents and over-65s to incorrectly enrolled minors.

Background

KiwiSaver is a workplace savings scheme that is open to all New Zealand residents under the age of 65. People can join KiwiSaver by contracting directly with a KiwiSaver provider, electing to join through their employer, or through automatic enrolment when they start a new job.

Minors (children under the age of 18) can only join KiwiSaver if they have the consent of all of their legal guardians (if under 16) or co-sign with a guardian (if 16 – 17). These restrictions recognise that joining KiwiSaver, which locks in funds until the member is 65, is a serious undertaking and minors should be protected while they are vulnerable and supported as they get older.

For this reason, minors are only able to join KiwiSaver by directly contracting with a KiwiSaver provider. These providers are best equipped to receive and review the necessary parental consent. Minors are not able to elect to join KiwiSaver through their employer and they are not subject to the auto-enrolment rules.

To date Inland Revenue has not received any complaints from minors who have been incorrectly enrolled into KiwiSaver through their employers. However, should a member challenge their enrolment there is no remedy available under the KiwiSaver Act that will allow the member to exit the scheme.

Unlike a person over 65 or a non-resident, a minor is entitled to join KiwiSaver, albeit only by contracting directly with a provider. The current provisions available to reverse an invalid enrolment are only applicable to members who never should have been enrolled at all, not members who were enrolled through the wrong mechanism.

Other policy matters

FIF EXEMPTION SIMPLIFICATION FOR ASX

(Clause 35)

Summary of proposed amendment

The bill amends the exemption contained in section EX 31 which operates to exclude certain share investments listed on the Australian Stock Exchange (ASX) from attribution under the foreign investment fund (FIF) rules.

Currently the ASX exemption broadly applies to shares in certain Australian-resident companies that are listed on an approved index under the ASX Operating Rules.

The requirement that the shares must be listed on an approved index creates considerable uncertainty for investors and administrative cost for Inland Revenue as companies move on or off an approved index from period to period.

To relieve the uncertainty, as well as reduce the administration cost for Inland Revenue, the bill amends the exemption to apply to shares in companies listed on the ASX irrespective of whether they are also listed on an ASX approved index.

Application date

This proposal takes effect from the beginning of the 2016–17 income year.

Key features

The bill amends section EX 31(2)(c) to remove the requirement that shares must be listed on an approved index under the ASX Operating Rules, and replace this with a requirement that the shares are in a company listed on the ASX.

As a result of this amendment all shares in companies listed on the ASX which meet the remaining criteria contained in section EX 31 – including the requirement that the company is Australian tax resident and maintains a franking account for example – will qualify for the exemption whether or not these companies are also listed on an approved ASX index.

Background

Investments that qualify for the ASX exemption are not taxed under the FIF rules but are treated in the same way as New Zealand investments (i.e. they are taxable on dividends if the investment is held on capital account or on dividends and realised gains if held on revenue account).

Dividend-only taxation, as compared to an attribution method under the FIF rules, is a reasonable approach for Australian-resident listed companies because the Australian tax system encourages dividend distributions, as the New Zealand tax system does.

The drafting of the current section EX 31(2)(c) restricts the application of the ASX exemption to shares included in an index that is an approved index under the ASX Operating Rules.

The broadest equity index on the ASX for ordinary and preferred equity stocks is the Standard & Poor's All Ordinaries index which consists of the top 500 securities measured by market capitalization. This index is re-balanced regularly so that it includes what is, at the re-balance date, the top 500 listed companies based on capitalisation (i.e. share price multiplied by number of shares). As a result companies can drop off or appear on the index from time to time.

The periodic re-balancing of indexes, such as the All Ordinaries index, creates uncertainty for taxpayers as the tax treatment of the same investment changes with the re-balancing of the index from one period to the next.

The amended ASX exemption, which applies to shares in all companies listed on the ASX irrespective of whether they are also listed on an ASX approved index, relieves the uncertainty and reduces the administration cost for Inland Revenue.

It also better supports the policy that the ASX exemption is intended to capture the majority of New Zealanders' FIF investments in Australia.

This amendment makes it easier for taxpayers to self-assess their compliance with the ASX exemption, as it is much simpler to check whether share investments are listed on the ASX (this information is publicly available) as compared to listed on an approved index (information generally only available from specialist market information providers such as Bloomberg).

Further the amendment allows for more accurate and timely information access for taxpayers, as the ASX listings are updated more regularly than the indexes which are typically balanced quarterly.

Improved certainty and information accuracy is likely to reduce compliance time and costs for affected taxpayers.

SUPPORTING CO-LOCATION

(Clause 117 and 122)

Summary of proposed amendment

To increase efficiency in the delivery of government services and to achieve cost reductions across the public service, government agencies are increasingly co-locating. In this situation, Inland Revenue employees are exposed to the risk of inadvertently disclosing taxpayer information to other government agencies at the co-located sites in the normal course of duties. Such disclosures would be a breach by the relevant employee of the current secrecy provisions in the Tax Administration Act 1994, and they could face severe penalties. This acts as a barrier to co-locating with other government agencies. The proposed amendment supports co-location by providing that an employee does not breach the secrecy provisions when they unintentionally disclose tax secret information in a co-location environment.

Application date

The amendments apply from the date of enactment.

Background

The current secrecy provisions in the Tax information Act 1994 do not allow Inland Revenue employees to pass taxpayer information on to other government agencies except in limited, defined circumstances. There are severe penalties for any Inland Revenue employee who knowingly breaches secrecy provisions. Further, under section 6 of the Tax Administration Act 1994 every Inland Revenue employee must use their best endeavours at all times to protect the integrity of the tax system (including the rights of the taxpayers to have their individual affairs kept confidential).

Inland Revenue is co-locating with other government agencies in some offices and call centres across New Zealand. While some co-locations have been able to be achieved while still maintaining physical separation between agencies (which minimises secrecy risks) such separation is not always possible – for example, in post-earthquake Christchurch co-locations are “open-plan”.

Inland Revenue employees are exposed to the risk of inadvertently disclosing taxpayer information to other government agencies at co-located sites. This could arise if the other agency’s employees were to overhear conversations (between Inland Revenue staff discussing a case, and conversations with taxpayers themselves), or if they happen to see Inland Revenue correspondence, or as a result of shared office facilities and equipment.

Given that further co-location is planned (including in open-plan sites) this gives rise to the issue of proximity with other government employees and inadvertent disclosure of taxpayer information with those employees. It is considered that no amount of training or best practice guidelines or adopted behaviour is likely to adequately address the substantial risk of Inland Revenue employees inadvertently disclosing taxpayer information to other government employees in the co-location environment.

Detailed analysis

Under the proposed amendment to section 81 of the Tax Administration Act 1994, an Inland Revenue employee will not be considered to have breached the secrecy provision where:

- the employee unintentionally discloses taxpayer secret information;
- to an Inland Revenue employee or an employee of another government agency subject to same secrecy standards;
- in a place in which the Commissioner of Inland Revenue expects Inland Revenue officers to perform their duties.

The proposal will only protect the employee where the disclosure is unintentional. Unless otherwise excused under section 81, an Inland Revenue employee will have breached section 81 when they intentionally disclose information to another Inland Revenue employee or an employee of another government agency.

Further, an Inland Revenue employee will only be protected where the disclosure is to an Inland Revenue employee or an employee of another government agency that has signed a secrecy certificate under section 87 of the Tax Administration Act 1994. A person who has signed a secrecy certificate under section 87 is subject to the same penalties for disclosing taxpayer secret information as an Inland Revenue employee. As a result, the proposed amendment to section 81 will align the approach to co-located staff working in open-plan areas, with the current approach to Inland Revenue staff working in open-plan areas. In other words, the proposal will apply the same high-level of protection for tax secret information to co-located areas as is currently imposed in open-plan Inland Revenue areas.

The amendment will only apply to places in which the Commissioner expects Inland Revenue officers to perform their duties. This will provide the Commissioner of Inland Revenue with some flexibility as to the types of co-locating arrangements that are entered into.

The amendment also confirms that employees of a government agency, required by their employer to perform their duties in a co-located environment, can sign a secrecy certificate under section 87.

SPECIAL TAX CODES

(Clauses 71, 83 to 87, 101 and 102)

Summary of proposed amendments

Amendments are being made to the Tax Administration Act 1994 to allow the Commissioner of Inland Revenue to provide special tax code certificates directly to the Ministry of Social Development (MSD) to help people receiving New Zealand Superannuation or a veterans' pension to meet their income tax obligations. These amendments reduce the compliance costs imposed on superannuitants or veteran pension recipients in providing the certificate to MSD and remove any delay in the application of the correct tax deduction rate.

Application date

The amendments will come into force on the day of enactment.

Key features

Several amendments are being made to the Tax Administration Act 1994 to:

- enable the Commissioner to provide a special tax code certificate directly to MSD when the superannuitant or veterans' pension recipient has applied for a special tax code certificate and advised the Commissioner they want the certificate to apply to their New Zealand Superannuation income or veterans' pension income;
- require MSD to apply the special tax code to the next payment of New Zealand Superannuation or veterans' pension, or when this payment has already been calculated by MSD, the certificate will commence from the payment following the next payment;
- require the Commissioner, once the certificate has been sent to MSD, to notify the superannuitant of the special tax code and that it has been forwarded to MSD; and
- reflect the introduction of new section 24IB. These amendments are made to section 24F(4) (special tax code certificates) and to the definition of "responsible department" in section 3 (interpretation).

Enabling Inland Revenue to send superannuitants' special tax code certificates directly to MSD would reduce the compliance costs faced by New Zealand superannuitants or veterans' pension recipients in complying with the special tax code certificate requirements and minimise delays in the application of the special tax code, thereby reducing the extent of any over- or under-deduction of tax at year-end.

Background

The PAYE tax deduction system requires employers to deduct tax from the salary and wages that employees earn during the year. There are standard tax rates that apply to the deduction of tax from salary and wages and these are accurate for most employees. However, for a group of taxpayers the standard tax rates are not accurate because of the employee's particular circumstances. In these instances an employee can apply to the Commissioner of Inland Revenue for a special tax code certificate.

A special tax code is a personalised tax deduction rate that is calculated by the Commissioner to help the employee avoid an under- or over-deduction of tax at year-end by having the right amount of tax deducted during the year.

An over- or under-deduction of tax during the year can occur as a result of such things as an end-of-year tax refund, tax losses carried forward from previous years, changes in personal circumstances, fluctuating earnings or the PAYE deduction system not deducting the correct tax amount on an annual basis.

New Zealand superannuitants or recipients of a veterans' pension, like any other PAYE income earner, can apply for a special tax code certificate and ask that it be applied against their New Zealand Superannuation or veterans' pension income. The current legislation requires that the certificate be sent to the superannuitant and veterans' pension recipient, who in turn, provides it to MSD. However, this imposes compliance costs on superannuitants and veterans' pension recipients who, as part of the application process, would have already advised Inland Revenue that they want the certificate to be applied against their New Zealand Superannuation or veterans' pension income. It would also delay the application of the special tax code, which increases any over- or under-deduction of tax at year end.

NOTICES OF DEDUCTIONS FROM SALARY OR WAGES

(Clauses 169, 185, 217, 219 and 221)

Summary of proposed amendment

The Tax Administration Act 1994 allows the Commissioner to require an employer to make additional deductions from an employee's salary or wages when the employee has defaulted on tax, child support, gaming duty or student loan repayment obligations. To do this the Commissioner must first notify the employer and send a copy of the notice to the employee. Currently these additional deductions are prevented when the defaulter has failed to notify a change of address so Inland Revenue is unable to advise them of the intended additional deductions. This amendment is intended to correct an administrative problem so the proper intent of the rules – that people in default of their tax and social policy obligations should make restitution – are realised.

The TAA 1994 allows the CIR to require an employer to make additional deductions from an employee's salary or wages when the employee has defaulted on tax, child support, gaming duty or student loan repayment obligations. To do this the CIR must first notify the employer and send a copy of the notice to the employee. Currently these additional deductions are prevented when the defaulter has failed to notify a change of address so Inland Revenue is unable to advise them of the intended additional deductions. This amendment is intended to correct this administrative problem so the proper intent of the rules – that people in default of their tax and social policy obligations should make restitution – are realised.

Application date

The amendments will come into force on the date of enactment.

Key features

When a defaulting taxpayer, liable parent, gaming machine operator or student loan borrower is already having PAYE, child support, gaming duty or student loan repayment deductions made from their salary or wages, Inland Revenue will be able to require the employer to make additional deductions from the person's wages or salary to recover outstanding taxes, child support, gaming duty or student loan repayments, without concurrently notifying the employee.

This will be achieved through amendments to similar provisions in each of the following:

- The Tax Administration Act 1994
- The Goods and Services Tax Act 1985
- The Child Support Act 1991
- The Gaming Duties Act 1971
- The Student Loan Scheme Act 2011.

Background

Deductions from wages or salary are one of the most efficient means of debt collection available to Inland Revenue. If they are imposed soon after a default is detected they have the effect of limiting the growth of late payment interest or penalties as well as ensuring early recovery of the debt.

Current law requires Inland Revenue to issue a notice to an employer when it requires deductions to be made from an employee's wages or salary. Inland Revenue must also provide a copy of the notice to the employee at the same time.

This requirement can pose a problem if people do not advise Inland Revenue promptly that they have changed their address, as the returned correspondence creates an "invalid" address and prevents the issue of further correspondence to that address. This means that although Inland Revenue has confirmation of the person's employer it cannot issue a notice to make deductions from the person's wages or salary because it cannot issue the copy to the employee.

The proposed changes will help to ensure that people in default of their tax and social policy payment obligations repay their debts in the shortest possible time, minimising the application of late payment interest and penalties.

Detailed analysis

The bill proposes the following changes:

Section 157 of the Tax Administration Act 1994 will be amended by replacing current subsection (5) with a new subsection which maintains the same general requirement for Inland Revenue to issue a copy of a deduction notice to the affected taxpayer. However, new subsection (5B) will allow Inland Revenue to dispense with the requirement to send a copy to the taxpayer at the time the deduction notice is sent to the taxpayer's employer for deductions to be made from the taxpayer's wages or salary. New subsection (5B) will also first require Inland Revenue to make reasonable enquiries to find a valid address for the taxpayer.

Section 43 of the Goods and Services Tax Act 1985 will be amended by replacing current subsection (5) with a new subsection which maintains the same general requirement for Inland Revenue to issue a copy of a deduction notice to the affected taxpayer. However, new subsection (5B) will allow Inland Revenue to dispense with the copy to the taxpayer at the same time the deduction notice is going to the taxpayer's employer for the deductions to be made from the taxpayer's wages or salary. New subsection (5B) will also first require Inland Revenue to make reasonable enquiries to find a valid address for the taxpayer.

Section 50 of the Student Loan Scheme Act 2011 will be amended by inserting new subsection (2B), which will allow Inland Revenue to dispense with the copy of the deduction notice to the student loan borrower at the same time the deduction notice is going to the borrower's employer for the deductions to be made from the borrower's wages or salary. New subsection (2B) will also first require Inland Revenue to make reasonable enquiries to find a valid address for the borrower.

Section 12L of the Gaming Duties Act 1971 will be amended by inserting new subsection (4B), which will allow Inland Revenue to dispense with the copy of the deduction notice to the gaming machine operator at the same time the deduction notice is going to the operator's employer for the deductions to be made from the operator's wages or salary. New subsection (4B) will also first require Inland Revenue to make reasonable enquiries to find a valid address for the operator.

Section 156 of the Child Support Act 1991 will be amended by inserting new subsection (3), which will allow Inland Revenue to dispense with the copy of the deduction notice to the liable person at the same time the deduction notice is going to the liable person's employer for the deductions to be made from the liable person's wages or salary. New subsection (4B) will first require Inland Revenue to make reasonable enquiries to find a valid address for the liable person.

EXEMPTION FROM REQUIREMENT TO APPLY FOR CHILD SUPPORT

(Clauses 215 and 216)

Summary of proposed amendments

Amendments are proposed to section 9 of the Child Support Act 1991 to exclude some social security beneficiaries from the compulsory requirement to apply for child support when there is insufficient evidence to establish paternity, there is risk of violence or similar compelling circumstances to warrant an exemption.

The amendments, which reflect exemptions already contained in the Social Security Act 1964, will align the two pieces of legislation and result in greater certainty for beneficiaries, and administrative efficiencies for Work and Income and Inland Revenue.

Consequential changes are proposed for section 122 of the Child Support Act 1991.

Application date

The amendments will apply on the date of enactment.

Key features

Sole parent beneficiaries and recipients of the Unsupported Child Benefit are required to apply for a formula assessment of child support.

It is proposed that section 9 of the Child Support Act be amended to include exemptions from the requirement to file for a formula assessment of child support. The grounds for the exemptions would mirror the grounds in section 70A of the Social Security Act.

A social security beneficiary would not be required to apply if Work and Income is satisfied that:

- There is insufficient evidence to establish who is, in law, the other parent.
- The beneficiary or any of the beneficiary's children (and the child's immediate family where applicable) would be at risk of violence if the beneficiary makes an application for formula assessment or takes steps to make an application for formula assessment.
- The potential liable parent died before an application for a social security benefit was made (they are widowed).
- The qualifying child was conceived as a result of incest or sexual violation.
- There is another compelling circumstance for the beneficiary not to apply.

Sections 9(6), 9(7) and 122(2) of the Child Support Act are also to be updated to reflect that section 70A of the Social Security Act 1964 only applies to sole parents and not to Unsupported Child Benefit recipients.

Background

The Social Security Act 1964 was amended in 2005 to increase the penalty that applied to a beneficiary for failure to apply to child support and to introduce new exemptions from the penalty. At the time, the responsible Minister indicated that if sole parents could prove such things as violence against them or their children, or it is proper that they are able to be exempted because they are refugees or asylum seekers or the other parent is deceased, they would not be required to establish paternity or apply for child support. However, the legislative changes only exempted beneficiaries from the penalty for not applying for child support – it did not amend the principal requirement to apply.

The policy intent of the 2005 changes was that sole parents should apply for child support to ensure the other parent provides financial support for the child (or bear a financial penalty directly). In some special circumstances, however, it was accepted that involving the other parent was impracticable or inappropriate – for example, when taking steps to apply for child support would result in violence to the child or the beneficiary.

Detailed analysis

Currently, the Child Support Act 1991 requires all beneficiaries to apply for child support, while the Social Security Act 1964 implies that child support applications are not required when specified criteria are met. This creates uncertainty for beneficiaries over their legal requirements and inefficient administrative practices between Work and Income and Inland Revenue.

Section 9 of the Child Support Act 1991 requires all social security beneficiaries to apply for child support at the time they apply for a benefit if:

- they are expected to meet the definition of “receiving carer” by providing at least 35 percent of the ongoing daily care of the child; and
- they are not already a receiving carer in the child support system.

Social security beneficiaries are defined in the Child Support Act as sole parents in receipt of a main benefit and people receiving the Unsupported Child Benefit.

If they fail to apply, the Child Support Act says they will be subject to a penalty under section 70A of the Social Security Act 1964. The two agencies can share information to determine which beneficiaries have failed to apply and therefore are subject to the penalty.

There is no cross-reference in the Social Security Act 1964 to the requirement for a sole parent beneficiary or an Unsupported Child Benefit recipient to apply for child support. However, section 70A provides authority for a benefit to be reduced if a beneficiary has failed to meet certain obligations, including applying for child support in accordance with section 9 of the Child Support Act 1991.

Section 70A goes on to exempt beneficiaries from the penalty if Work and Income is satisfied that specified criteria apply. These criteria are:

- there is insufficient evidence available to establish who is, in law, the other parent; or
- the beneficiary is taking active steps to identify who is, in law, the other parent; or
- the beneficiary or any of the beneficiary's children would be at risk of violence if the beneficiary carried out or took steps to carry out any of the required actions (including making an application for child support); or
- there is a compelling circumstance for the failure or refusal to carry out the required actions and even if the beneficiary did carry out the actions, there is no real likelihood of child support being collected in the foreseeable future from the other parent; or
- the child was conceived as a result of incest or sexual violation.

Furthermore, section 70A only applies to benefits for sole parents – it does not provide authority to impose a penalty on Unsupported Child Benefit recipients.

While the Social Security Act provides grounds for when a sole parent need not meet the obligation to apply for child support, the Child Support Act indicates that applications are compulsory for all social security beneficiaries (as defined in the Child Support Act). The disconnect between the two pieces of legislation can lead to conflicting advice about whether a person needs to apply or not and creates uncertainty over the scope of the information-sharing powers between Work and Income and Inland Revenue.

CHANGES TO PERSONAL TAX SUMMARY REFUND THRESHOLDS

(Clauses 59 and 116)

Summary of proposed amendment

When a salary or wage earner (not a business taxpayer) needs an end of year assessment they are issued (or can request) a personal tax summary (PTS). If the result is a refund they can confirm the PTS and the refund will be issued. If the refund is less than \$200 and they do not confirm their PTS, the refund will be automatically released to the individual after 30 days.

The bill proposes reducing the time delay and increasing the threshold so credits would be released 15 days after the PTS was issued if the refund is less than \$600. Reducing the time delay to 15 days still gives the taxpayer sufficient time to receive, check and if necessary correct their PTS before any refund is released. Increasing the threshold to \$600 will mean taxpayers who are entitled to the independent earner tax credit of up to \$520 per year can receive this without having to contact the department. This tax credit is automatically calculated by Inland Revenue and does not require additional information from the taxpayer.

Application date

The amendment is proposed to come into force on 1 April 2016 and will apply to all PTSs issued from this date.

Key features

The proposed change to section RM 5(1) of the Income Tax Act 2007 raises the threshold at which a person must confirm their PTS before receiving their refund to \$600.

The proposed change to section 80H(3)(c) of the Tax Administration Act 1994 provides that a PTS is considered an assessment on the 15th day after it is issued, if a refund showing on that PTS exceeds the threshold set in section RM 5(1) of the Income Tax Act 2007.

CHANGES TO RULINGS REGIME

(Clauses 130 to 131, 136 to 138, 145, 148 and 152)

Summary of proposed amendments

The purpose of the binding rulings regime is to provide certainty on a tax position for a taxpayer. The proposed amendments remove some unnecessary restrictions on Inland Revenue's ability to provide a binding ruling and some unnecessary compliance costs by:

- allowing the Commissioner of Inland Revenue to fix minor errors in financial arrangement determinations;
- allowing the Commissioner of Inland Revenue to rule on issues that are not the same as the issues that are the subject of a dispute;
- clarifying when a ruling ceases to apply when an assumption stated in the rulings proves to be incorrect; and
- allowing the Commissioner of Inland Revenue to notify the publication of a status ruling in a publication other than the *Gazette*.

Application date

The amendment will come into force on the day of enactment.

Background

A binding ruling is Inland Revenue's interpretation of how a tax law applies to a particular arrangement. If a binding ruling applies to a taxpayer and they follow it, Inland Revenue is bound by it (provided that the taxpayer has entered into the arrangement exactly as described in the ruling, and that they satisfy any stated assumptions or conditions). A taxpayer is not required to follow the approach in the ruling.

Binding rulings can provide certainty on the tax position for a wide range of transactions, from complex financing transactions to land subdivisions. Anyone can apply for a binding ruling on a transaction, but there are some restrictions on Inland Revenue's ability to provide a binding ruling and some unnecessary compliance costs.

Key features

The proposed amendments remedy four problems with the current binding rulings regime.

First, the Commissioner does not have to withdraw and reissue a ruling to correct a typographical or minor error in a ruling. However, there is no provision allowing Inland Revenue to correct minor errors in a signed financial arrangement determination. Instead, even if there is only a minor or typographical error in a financial arrangement determination, the Commissioner must make a new determination to correct the original determination. The proposed amendment will allow the Commissioner to correct a

typographical or minor error in a financial arrangement determination without having to withdraw and reissue it.

Secondly, the Commissioner is currently prevented from ruling on an arrangement where the same tax type is the subject of a notice of proposed adjustment (that is, it is going through the disputes process). This unnecessarily restricts the Commissioner from ruling on issues that are not the same as the issues that are the subject of the dispute. The proposed amendment will allow the Commissioner to rule on an issue unless a notice of proposed adjustment has been issued that relates to:

- the person;
- the arrangement; and
- the same tax type or a separately identifiable issue.

Thirdly, there is currently a lack of clarity about when a ruling will cease to apply because an assumption listed in a ruling subsequently proves to be incorrect. The amendment clarifies that:

- an assumption must be material to be included in a ruling; and
- a breach of an assumption must be a material breach before the ruling ceases to apply.

Fourthly, there is currently a requirement that a status ruling be notified in the *Gazette*. In contrast, product rulings are only required to be notified in a publication chosen by the Commissioner and a publication of the department. The proposed amendment allows a status ruling to be notified in the same way as a product ruling. A similar amendment is also being made to allow the Commissioner to publish an extension of a public ruling in a publication chosen by the Commissioner and a publication of the department.

REPEAL OF SPECIAL HOME OWNERSHIP ACCOUNT PROVISIONS

(Clauses 4, 47, 67, 68, 71, 111, 153 and 169)

Summary of proposed amendment

The proposed amendment repeals the obsolete special home ownership account provisions in the Income Tax Act 2007 and the Tax Administration Act 1994. The amendment will allow an account to be closed without paying the withdrawal tax that would otherwise have applied.

Application date

The amendment will come into force on the date of enactment.

Key features

The proposed amendment repeals the special home ownership account provisions in the Income Tax Act 2007 and the Tax Administration Act 1994. Importantly, the amendment repeals section RZ 8, which requires a financial institution to withhold the withdrawal tax from an amount payable to a person when the money has not been withdrawn to purchase a house. The repeal of section RZ 8 will allow an account to be closed without paying the withdrawal tax that would otherwise have applied.

Background

Special home ownership savings accounts were introduced in 1974 to help people save to purchase a house. The amount of the annual increase in a person's account (up to a maximum of \$3,000 per annum) received a tax credit of 45%. This occurred until the account:

- reached a maximum of \$10,250;
- was closed to purchase a house; or
- was otherwise withdrawn.

When the account was closed and the money was withdrawn (and not used to purchase a house), a tax of 45% was imposed on the amount of the withdrawal.

No new home ownership accounts have been able to be opened on or after 1 August 1986, and no tax credits have been able to be generated since 1 August 1991. Although these accounts are now very old, under the current law withdrawal tax of 45% still applies to any withdrawals that are not used to purchase a house.