MAKING TAX SIMPLER

TOWARDS A NEW TAX ADMINISTRATION ACT

A GOVERNMENT DISCUSSION DOCUMENT

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MINISTER OF REVENUE

The third in a series of government discussion documents looking towards a better tax administration system for New Zealanders

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CONTENTS

1 **OVERVIEW** **5**

A better tax administration 6

A framework for 21st century tax administration 7

How to make a submission 14

2 **THE ROLE OF THE COMMISSIONER OF INLAND REVENUE** **15**

The Commissioner's role as currently prescribed 16

The Commissioner's relationship with other organisations and cross-government reform 17

Administrative flexibility under the Commissioner's "care and management" responsibility 20

The role of care and management in non-tax functions 28

3 **INFORMATION COLLECTION** **31**

Inland Revenue's information-collection powers 33

The need for an information collection standard 35

Collection of large datasets 37

Remote accessing of information 40

4 **TAX SECRECY** **42**

Rationale for tax secrecy 43

Tax secrecy in other jurisdictions 45

Secrecy in other New Zealand agencies 45

Information sharing 46

Cross-agency information sharing 48

A new approach to tax secrecy 49

Tax secrecy or taxpayer confidentiality? 50

Releasing information with taxpayer consent 51

Cross-government information sharing 52

5 **THE ROLE OF TAXPAYERS AND TAX AGENTS** **55**

The assessment 55

Pre-populated tax returns for individuals 56

Technology and assessments for small businesses 62

The role of tax agents 62

6 **FUTURE ISSUES** **66**

Advice and disputes procedures 66

Time bar 68

Record-keeping requirements 69

Compliance and penalties 69

A **APPENDIX** Tax secrecy in other jurisdictions 72

CHAPTER 1

OVERVIEW

Rapid global change, with increasing reliance on the use of technology in everyday life, a growing population and greater urbanisation are continuing to influence how we work. Against this background, in which people and capital frequently move through countries with different tax systems, tax authorities around the world are being challenged to revisit their approaches to tax administration, to become as efficient as possible. Recognising changing social norms opens a range of opportunities for simplifying tax obligations and taxpayer interactions with government. For example, with change in the use of technology, tax compliance can be made easier by relying more on a business's existing systems or pre-populating tax returns.

The tax system, in a broader domestic context, is integral to supporting the Government's objectives for better public services, and ultimately for building a more competitive and productive economy. The Tax Administration Act 1994, which is the basis for the way our current tax system is administered, plays a significant role in ensuring the right incentives are in place to influence compliance with tax laws while also supporting these broader initiatives. In reviewing the Tax Administration Act in this consultation paper, fundamental issues have been considered. For example, some change is suggested to the current tax information and tax secrecy provisions to allow information to be better shared among government agencies so they can provide these better public services. The Commissioner of Inland Revenue's role is also discussed in this same context.

An increased emphasis on better interaction not just across government but also with foreign jurisdictions will be critical as we modernise New Zealand's system. The future Tax Administration Act must be capable of accommodating these shifting needs and allow for a more resilient and responsive tax system to better fit New Zealand's needs.

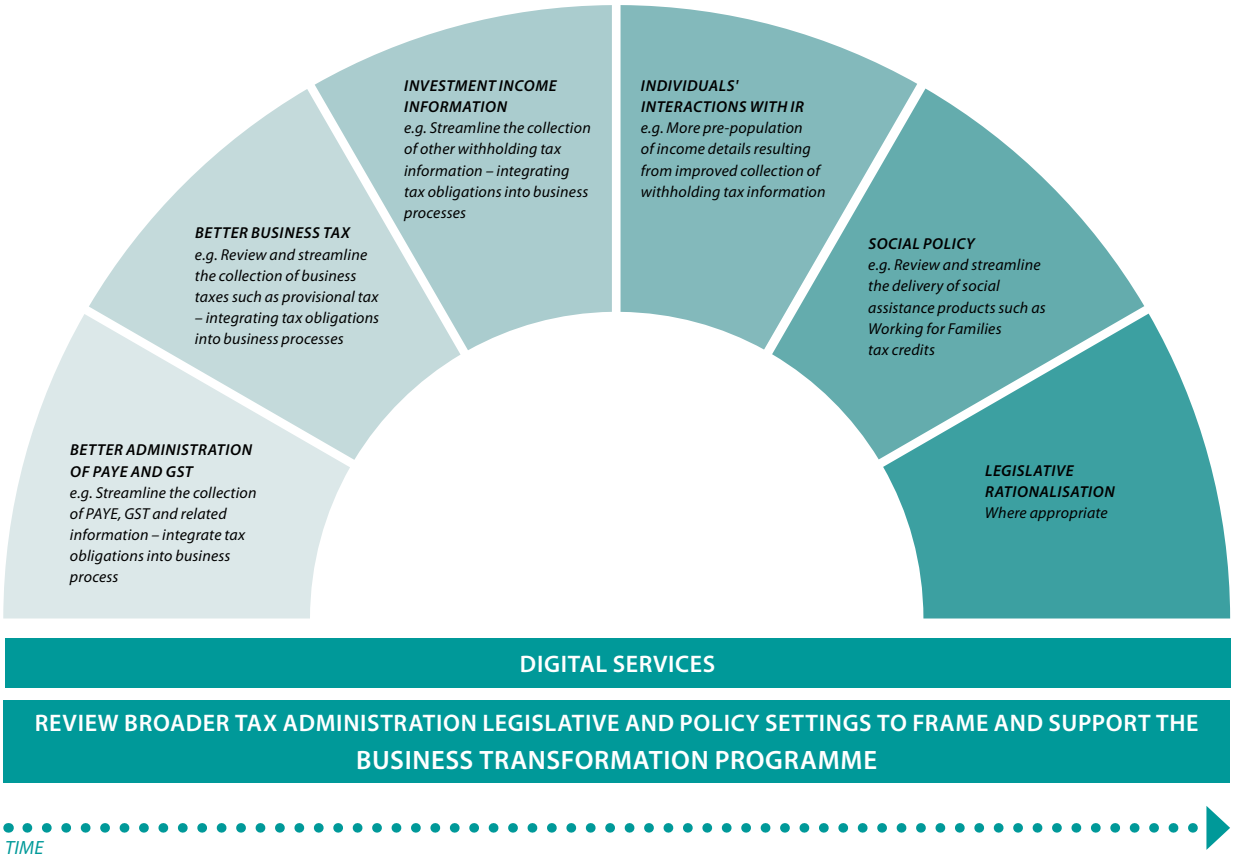
The proposals outlined in this document for a modernised tax administration are considered in this broader framework.

A BETTER TAX ADMINISTRATION

Tax administration refers to the rules and processes for collecting and disbursing the revenue and payments administered by Inland Revenue. The efficiency and effectiveness of these rules and processes is just as important for maintaining fairness in the tax system as the rules defining how much tax is due.

In March 2015 the Government released *Making Tax Simpler – A Government Green Paper on Tax Administration* (the *Green paper*).[1] The *Green paper* was the first in a series of proposed consultation documents looking towards a better tax administration for New Zealanders.

The illustration below shows a high-level summary of each of the key elements in the modernisation programme. For more information about the issues being considered for each of these areas, see the *Green paper*.

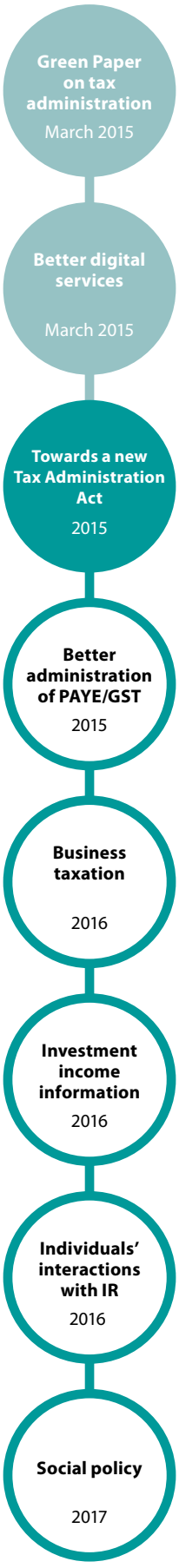


This discussion document introduces for public consultation a possible framework for our future tax administration. The Government's proposed modernisation and simplification of tax administration involves far more than simply updating a computer system. It also provides the opportunity to have a fundamental look at the way tax is administered in New Zealand and determine what changes need to be undertaken to meet the challenges of the 21st century.

A FRAMEWORK FOR 21ST CENTURY TAX ADMINISTRATION

The Government's proposed framework for tax administration focuses on the roles of Inland Revenue, taxpayers and tax agents in a modernised tax administration. Being clear about the role of each party involved in the collecting and disbursing of revenue and payments is a crucial part of the future policy development work announced in the *Green paper*. To clearly set out the roles of these parties, this document in some areas includes Government policy proposals, and in others further signals the likely key features of the modernised tax administration.

The proposed framework is set out in the following five chapters. Chapter 2 focuses on the role of the Commissioner of Inland Revenue. Information collection and tax secrecy are discussed in chapters 3 and 4. Chapter 5 sets out the future role of taxpayers and tax agents, and chapter 6 considers future issues relating to tax administration, including tax assessments.



Role of the Commissioner (Chapter 2)

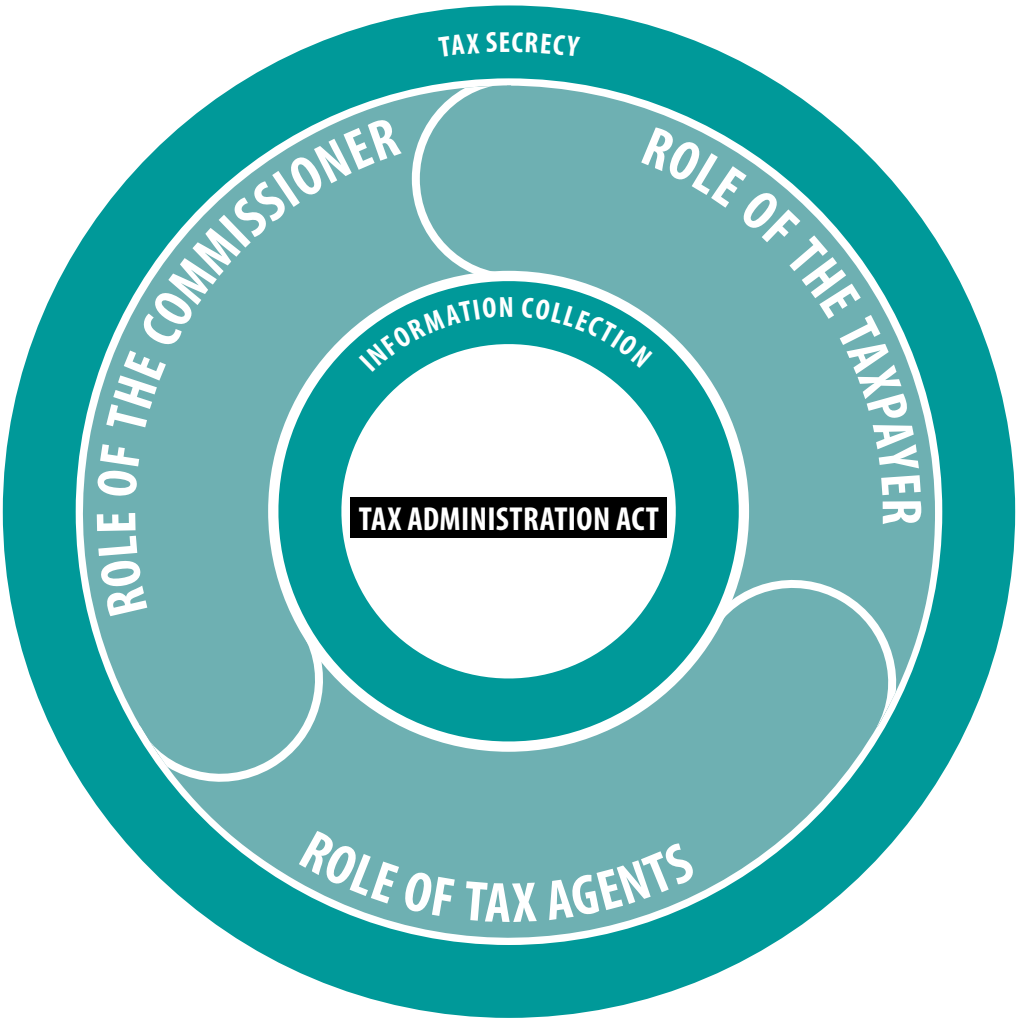
Tax can only be levied according to laws enacted by Parliament. Inland Revenue's role is to administer the Inland Revenue Acts and to collect tax to the best of its ability. In doing so, the integrity of the tax system and the confidentiality of people's tax affairs must be maintained. The Commissioner has statutory independence to ensure Inland Revenue is able to collect tax and carry out its duties. This discussion document examines the Commissioner's role in three particular areas.

The first is how the Commissioner's "care and management" responsibility can best co-exist with the relatively newly enhanced chief executive responsibilities in the State Sector Act 1988. As well as accountability for Inland Revenue, the Commissioner has a role in ensuring Inland Revenue works more closely with other government agencies to deliver more efficient public services. Requiring the Commissioner, as a state sector chief executive, to be responsive to the collective interests of government may impact on the Commissioner's statutory independence. The discussion document sets out how, in the transformed administration, the Commissioner's role will continue to be complementary to her chief executive functions.

Secondly, a clarification to the care and management provision in New Zealand is proposed, so that in some limited cases the Commissioner can apply the legislation in a way that does not tie up Commissioner and taxpayer resources in outcomes that are inconsistent with both parties' practice and expectations. As a starting point for discussion, the proposal is that the Commissioner would be able to:

- Apply a policy-based approach to small gaps in the tax legislation;
- Deal pragmatically with legislative anomalies that are minor or transitory;
- Address cases of hardship (inequity) at the margins; or
- Deal with cases in which a statutory rule is difficult to formulate (meaning that the relevant legislation has failed to adequately deal with the particular situation).

Thirdly, this document also considers whether the Commissioner's "care and management" responsibility in non-tax functions is adequately expressed in legislation. The non-tax functions include administering Working for Families tax credits, student loan repayments, child support, KiwiSaver and paid parental leave. Most of these functions are relatively new compared with Inland Revenue's functions for collecting tax. Clarification that the care and management responsibility applies to these functions would better support the Commissioner's ability to use resources as effectively as possible to deliver more efficient services.



Information collection and tax secrecy (Chapters 3 and 4)

Information flows are critical to Inland Revenue's interaction with taxpayers and third parties. Inland Revenue deals with large numbers of documents, forms, letters and tax returns that contain information about taxpayers' income or assets. Outside of the tax return process, Inland Revenue can require a person to provide any information considered "necessary or relevant" to Inland Revenue's functions. The "necessary or relevant" standard, or something similar, should remain in the modernised administration. Retaining this standard means Inland Revenue would not be able to use its information-gathering powers to obtain information that is not needed.

To administer the tax system efficiently, Inland Revenue must continue to be able to collect one-off taxpayer-specific and bulk information, and carry out repeated collection of third-party information. More robust rules for repeated access to large third-party datasets are therefore recommended.

More taxpayers are storing information in the cloud and utilising cloud-based software. While Inland Revenue is able to use its search powers to access information stored remotely in some situations, these powers will require review to ensure Inland Revenue can access this information in all relevant circumstances.

In order to ensure Inland Revenue's ability to obtain necessary or relevant information no matter how it is stored, it is proposed that the rules regarding remote searches by Inland Revenue are clarified. The preferred approach is to align the rules in the Search and Surveillance Act 2012 with clarification of how Inland Revenue uses the remote access rules. This recognises that many Inland Revenue searches are carried out without a requirement for a warrant.

Tax secrecy or taxpayer confidentiality laws exist in most countries. Traditionally, tax secrecy is viewed as a means of improving compliance by reassuring taxpayers that it is safe to provide their information to Inland Revenue. New Zealand's tax secrecy rule is considerably broader in application than it is in many other jurisdictions.

It will be necessary to change the rules that permit the release of Inland Revenue's information to make the modernised tax administration more efficient. Changing the rules will also allow Inland Revenue to work more closely with other government agencies.

It is proposed to narrow the application of the secrecy rule to information that identifies, or could identify, a taxpayer or taxpayers. The confidentiality of a taxpayer's individual affairs would remain, as a starting point, protected. This would not mean that individual taxpayer information would never be disclosed. Rather, as is the case now, a specific exception authorised by legislation to the general rule of confidentiality would be required.

Feedback is sought on whether taxpayers might be permitted to consent to the release of their information in certain circumstances. There is concern that a consent-based approach could result in coercion by third parties as a means of seeking information on an individual's creditworthiness. Chapter 4 canvasses these issues and includes possible ways of dealing with the concern.

Inland Revenue has the ability to enter into cross-agency information sharing agreements in the Tax Administration Act. Consideration could be given to greater use of this provision, or amending the criteria to better enable its use in a wider range of circumstances.

The role of taxpayers and tax agents (Chapters 5 and 6)

The transformed tax administration envisages providing improved delivery of digital services, greater use of withholding payments, enhanced pre-populated income tax returns and better use of a business's existing systems to automate interactions with Inland Revenue. These features have implications for the obligations and responsibilities of taxpayers and tax agents and these are discussed based on the premise that the concept of self-assessment would be retained.

Enhancing pre-populated tax returns with better information should reduce compliance costs and offer a more personalised tax return process. Tax

returns would also be more accurate, as the opportunity for taxpayer error would be reduced. This in turn would, for both taxpayers and Inland Revenue, reduce the resources currently required to correct return errors.

This document considers the following:

- the obligations of a taxpayer with a pre-populated return;
- what responses would be required from a taxpayer receiving a pre-populated return and what should occur in the case of a failure to respond to a pre-populated return; and
- the ability to amend information contained in the pre-populated return.

Individuals dealing with Inland Revenue via digital services would be issued with a pre-populated tax return. Once completed, the taxpayer would be required to ensure the correct amount of tax is paid and by a specified time, as it is now. If the taxpayer failed to respond, a default assessment would estimate the amount of tax to pay and would remain in place until the individual filed a return.

Better use of technology and information would allow Inland Revenue to add more than just PAYE information or taxes withheld at source to a pre-populated return. Reliable and comprehensive third-party information could be used in the pre-populated return. However, the specific nature of the information that could be pre-populated is likely to be considered in a later discussion document on improving the tax system for individuals.

Chapter 5 also discusses the important role performed by tax agents and how this might develop under business transformation but does not suggest any legislative change in the area at this time.

Finally, chapter 6 looks at the current advice and disputes rules, as well as the time bar and record keeping requirements. Feedback is sought on whether the current options for taxpayers to seek Inland Revenue's view on specific issues are working well. A more individualised approach to the time bar is also discussed, which could reflect what Inland Revenue may be able to do in the future.

Modernising the tax administration system provides an opportunity to recognise that taxpayer behaviour is complex. A combination of capability, opportunity and motivation make up compliance behaviour. Taking a new approach to compliance could mean taking a different approach to the way penalties are imposed. These matters will require further analysis once key features of the modernised tax administration have been decided and implemented. The starting point for this analysis will be the discussion document on improving the tax system for businesses.

SUMMARY OF PROPOSALS

Role of the Commissioner

The roles of the Commissioner and Chief Executive of Inland Revenue are complementary and would continue to be fulfilled by one person.

The Commissioner's "care and management" responsibility would be clarified to provide the Commissioner with greater administrative flexibility in limited circumstances.

The application of the Commissioner's "care and management" responsibility to Inland Revenue's non-tax functions would be clarified by introducing an additional limb to the current care and management provision.

Information collection and tax secrecy

Inland Revenue's information-collection powers would continue to ensure they support the modernised tax administration by retaining a "necessary and relevant" standard or an equivalent standard.

Inland Revenue's powers to access bulk third-party information would be clarified.

Inland Revenue would be able to access remotely stored information in the same way that information stored digitally or physically on a taxpayer's premises can be accessed.

The secrecy rule would be narrowed from referring to "all information" to information that identifies, or could identify, a taxpayer.

Consideration would be given to whether a taxpayer should be able to consent to the release of their information, in certain circumstances.

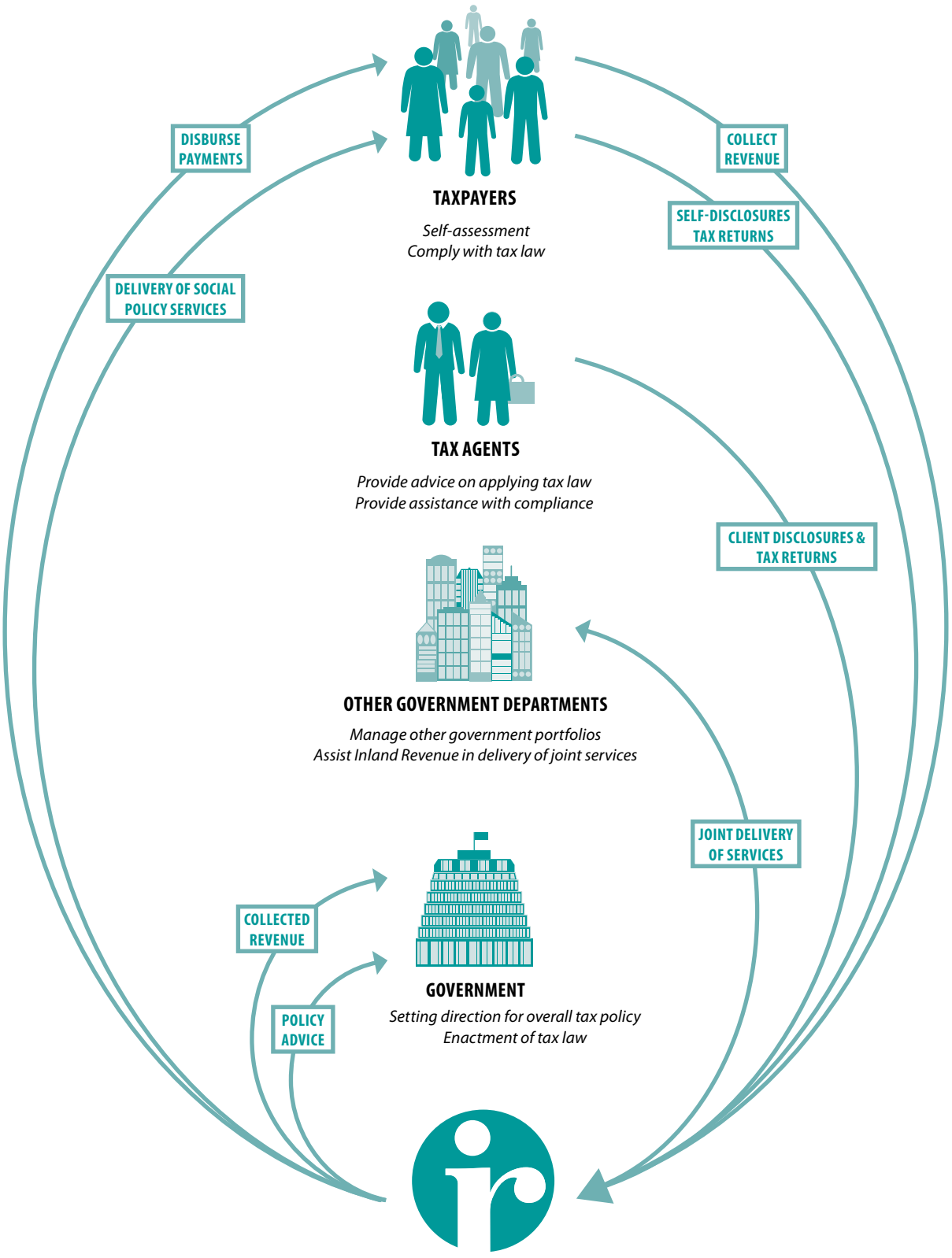
Consideration would be given to how to Inland Revenue could support improved information flows between government agencies.

The role of taxpayers and tax agents

When taxpayers receive a pre-populated tax return, an obligation to respond would be imposed.

The required response would either be to confirm the return is complete, or to provide further information.

Taxpayers receiving a pre-populated tax return would be required to assess their own liability, and confirmation of this return would be their self-assessment.


DISBURSE PAYMENTS
COLLECT REVENUE
TAXPAYERS
Self-assessment
Comply with tax law
SELF-DISCLOSURES TAX RETURNS
DELIVERY OF SOCIAL POLICY SERVICES
TAX AGENTS
Provide advice on applying tax law
Provide assistance with compliance
CLIENT DISCLOSURES & TAX RETURNS
OTHER GOVERNMENT DEPARTMENTS
Manage other government portfolios
Assist Inland Revenue in delivery of joint services
JOINT DELIVERY OF SERVICES
COLLECTED REVENUE
GOVERNMENT
Setting direction for overall tax policy
Enactment of tax law
POLICY ADVICE
INLAND REVENUE
Maintain the integrity of the tax system
Care and management of taxes
Compliance activity & assistance
Collect revenue & distribute payments
Assist in wider government initiatives

HOW TO MAKE A SUBMISSION

You are invited to make a submission on the proposed reforms and points raised in this discussion document. You can make a submission:

Online at:

taxadmin.makingtaxsimpler.ird.govt.nz

By email to:

policy.webmaster@ird.govt.nz with *A new Tax Administration Act* in the subject line.

By post, with submissions addressed to:

Towards a New Tax Administration Act
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140

The closing date for submissions is **12 February 2016**.

Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts thereof, on the grounds of privacy, or commercial sensitivity, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider that there is any part of it that should properly be withheld under the Act should clearly indicate this.

[1] vision.making tax simpler.ird.govt.nz

CHAPTER 2

THE ROLE OF THE COMMISSIONER OF INLAND REVENUE

SUMMARY OF PROPOSALS

The roles of Commissioner and Chief Executive of Inland Revenue are complementary and should continue to be fulfilled by one person.

The Commissioner's "care and management" responsibility should be clarified to provide the Commissioner with greater administrative flexibility in limited circumstances.

The application of the Commissioner's "care and management" responsibility to Inland Revenue's non-tax functions should be clarified by introducing an additional limb to the care and management provision to specifically refer to the non-tax functions.

Inland Revenue's primary functions are the collection and disbursement of revenue and payments. To enable Inland Revenue to carry out these functions, the Tax Administration Act confers on the Commissioner of Inland Revenue various responsibilities and powers. The Commissioner also has statutory independence from Ministers to ensure Inland Revenue is able to collect tax and carry out its duties independently. This chapter considers the role of the Commissioner, and how it should be described in the legislation.

While the role of the Commissioner is for the most part clear and adequately expressed in the Tax Administration Act, there are two areas where the Government considers the Commissioner's role could be reviewed to reflect the developments discussed in chapter 1.

The first area considered is the relationship between cross-government reform and the stewardship of the tax system: in particular, being clear about how in an "all-of-government" environment the Commissioner's statutory independence can best complement

her responsibilities as a state-sector chief executive.

The second area is how the "care and management" responsibility applies to Inland Revenue's functions. This discussion document looks at two issues in this context:

- Whether the Commissioner should, in limited circumstances, be provided with greater administrative flexibility under her care and management responsibilities; and

- Whether the care and management responsibilities should more clearly apply to the Commissioner's non-tax functions, especially as these functions have increased over time. These functions include administering Working for Families tax credits, student loan repayments, child support, KiwiSaver and paid parental leave.

Before discussing the above issues, the Commissioner's role as currently prescribed is considered.

THE COMMISSIONER'S ROLE AS CURRENTLY PRESCRIBED

As currently prescribed, the Commissioner has both responsibilities as a chief executive of a large government department under the State Sector Act, and specific powers and responsibilities as expressed in the Tax Administration Act and other Inland Revenue Acts.[2] The key responsibility under the Tax Administration Act is to protect the integrity of the tax system, which also extends to Ministers and officials with responsibilities under the Revenue Acts.[3]

Parliament's role

Parliament both guides and constrains the role of the Commissioner, and the relationship between the Commissioner and the taxpayer.

The authority to levy tax belongs to Parliament alone. Parliament prescribes the tax laws that determine what the Commissioner and the taxpayer must do to discharge their respective tax administration and tax compliance obligations. The appropriation of resources available to the Commissioner to carry out her responsibilities is also determined by Parliament.

Legislative prescription is necessary to ensure certainty in the rules and to retain a perception of impartiality by the Commissioner. Parliament determines how much prescription (versus Commissioner administrative decision-making) is desirable for these purposes.

The Commissioner's independence and accountability

The basis of the Commissioner's current independence and accountability arises from the State Sector Act, the Public Finance Act 1989 and the Tax Administration Act.[4] To protect the integrity of the tax system, the Commissioner exercises a wholly independent judgement in relation to the tax affairs of individual taxpayers and any interpretation of tax laws. The Valabh Committee Report noted that the Commissioner's independence "enhances the quality of such decisions (often of an expert kind) to the advantage of the parties directly concerned and indeed to the advantage of the Minister who can properly claim not to be responsible for the particular decision and to stand apart from it". [5]

Taxes play a critical role in improving the economic and social wellbeing of New Zealanders. The Commissioner must continue to have independence in relation to the tax affairs of individual taxpayers because this independence is critical in ensuring taxpayers receive impartial treatment. The non-partisan administration of tax laws influences taxpayers to view the tax system as fair. The Commissioner is similarly expected to exercise independence in relation to her non-tax functions.

THE COMMISSIONER'S RELATIONSHIPS WITH OTHER ORGANISATIONS AND CROSS-GOVERNMENT REFORM

A key priority for the Government is an efficient public service. This includes a responsibility to all New Zealanders to be efficient in administering the tax system. Government agencies, including Inland Revenue, are required to work more closely together and organise themselves around joint customers. Inland Revenue interacts with a large customer base as it connects with all New Zealanders and businesses. It therefore has an important role to play in building a more productive and competitive economy.

Central to this cross-government strategy is the sharing of information, and using that information to support the delivery of services to New Zealanders. This means sharing more functions and services, focussing on customers' needs, greater use of digital technology, and challenging old silos and barriers.

Inland Revenue works closely with a number of agencies, including the Ministry of Social Development, Accident Compensation Corporation, Ministry of Education, Ministry of Business, Innovation and Employment, Ministry of Justice, New Zealand Police and the New Zealand Customs Service. This cross-government approach includes delivering joint services and outcomes as well as providing and receiving information, which can be essential for all agencies to effectively perform their duties.

Cross-government reform and stewardship of the tax system

The dual roles of the Commissioner and the Chief Executive of Inland Revenue were considered in the Richardson review[6] and are, by design, allocated to the same person.[7] In 2013, legislative reforms relating to the responsibilities of public sector chief executives were undertaken to support the Government's Better Public Services objectives. The Commissioner as the Chief Executive of Inland Revenue, in a similar manner to other chief executives, is responsible for "responsiveness on matters relating to the collective interests of government".[8] This responsibility reflects the Government's objective of requiring government agencies to work together to be innovative and responsive.[9]

"Responsiveness on matters relating to the collective interests of government"[10] requires the Commissioner to be aware of the wider influences on, and expectations of, Inland Revenue. These include wider government opportunities and connections for Inland Revenue within the state sector and the implications of Inland Revenue's policies and activities for related agencies. This also means being alert to the role other government agencies might have in a more efficient revenue system.

The role of the Commissioner therefore has implications that can extend beyond Inland Revenue. Information Inland Revenue collects is critical to the delivery of some services by other agencies such as the Ministry of Social Development. The Government wants to see better information flows between government agencies to deliver more efficient outcomes for New Zealanders. It is within this context that the information collection powers and tax secrecy rules are discussed in chapters 3 and 4.

Separating the role of the Commissioner from the role of chief executive would be impractical. At its worst, separation could lead to information and co-ordination problems between the two roles and difficulties in fully separating the activities of Inland Revenue. The responsibility for "responsiveness on matters relating to the collective interests of government" and the Commissioner's statutory independence therefore need to co-exist. Requiring the Commissioner to be responsive to the collective interests of government implicitly requires her to consider allocating resources to the collective interests

of government. Other government officials with broad statutory independence are faced with a similar issue of reconciling the responsibilities of state-sector chief executives with their statutory independence. For example, the chief executive of the Serious Fraud Office and the Government Statistician both have independent functions that co-exist with their roles as public-sector chief executives.

Balancing two roles

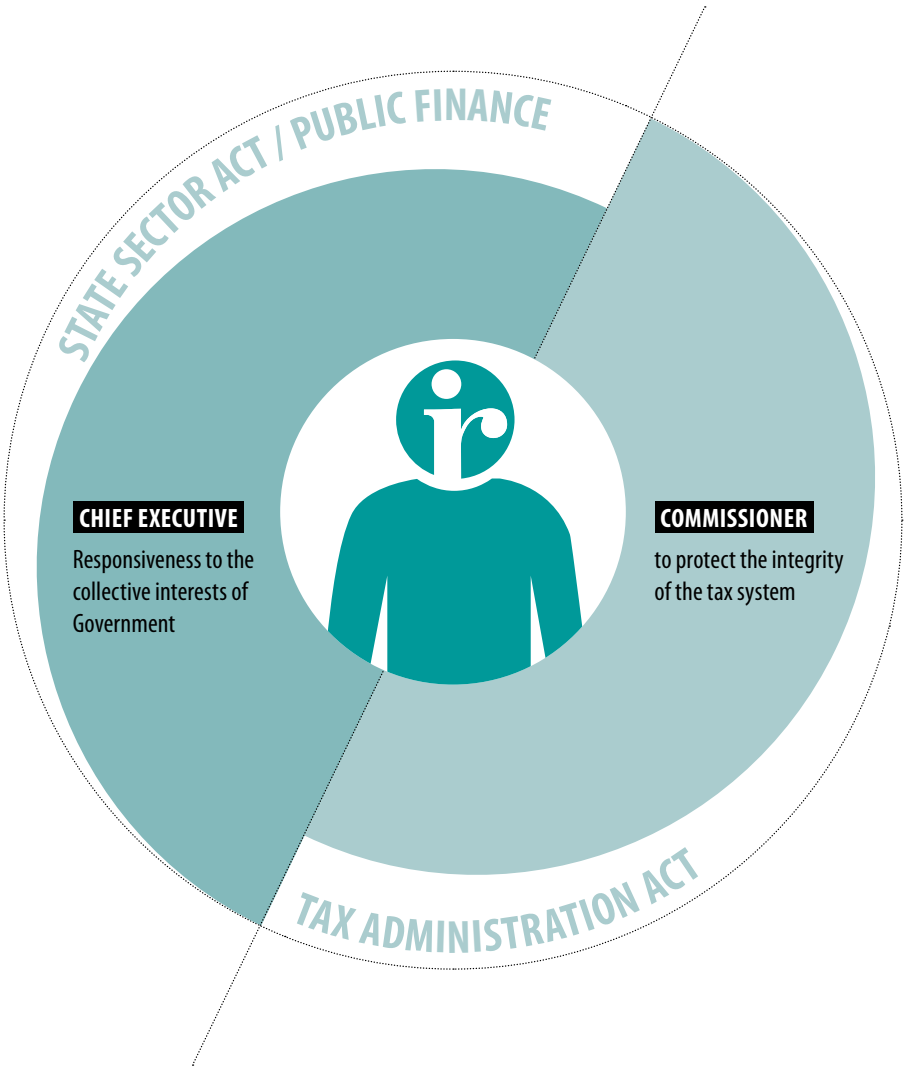
Currently, there may be occasions when there could be tensions between the collective interests of government and the Commissioner's collecting and disbursing role. Under the current law, the Commissioner must fulfil both roles as both are expressed in absolute terms. Three options for addressing any possible conflict between the two roles have therefore been considered:

- to maintain the status quo, where the Commissioner must reconcile the issue but may seek ministerial and state services sector advice in doing so;
- to explicitly provide that in the rare circumstances when there is a conflict, the collective interests of government should be given priority over the collecting and disbursing role; or
- alternatively, to explicitly provide that the Commissioner's collecting and disbursing role should be given priority over the collective interests of government.

Maintaining the status quo, as noted above, requires the Commissioner to comply with both roles. On the very rare occasion when the Commissioner has not been able to reconcile the responsibility to be responsive to the collective interests of government with her collecting and disbursing role, she can seek guidance from the State Services Commissioner and/or Ministers as appropriate. However, ultimately it is for the Commissioner to determine how to address the issue under her dual roles. When the whole-of-government obligations are considered as needing to take priority, Ministers and Parliament could consider whether a legislative change would be appropriate.

The Minister of Revenue currently has some ability to issue directions to the Commissioner in relation to the administration of the Inland Revenue Acts, even after contrary advice from the Commissioner.[11] However, the ability to give direction is limited. There can be no direction given concerning the tax affairs of individual taxpayers or the interpretation of tax law.[12] Further, under the Tax Administration Act, the Minister has the same obligation as the Commissioner to protect the integrity of the tax system.

The second option, in the rare circumstances when there is a conflict, would be to provide that the collective interests of government should be given priority over the collecting and disbursing role. Different mechanisms could be used to achieve that priority, including an amendment to the State Sector Act.



The third option for addressing the conflict would be to provide that the Commissioner's collecting and disbursing role should be given priority over the collective interests of government. This option would give the Commissioner the ability but not the obligation to maintain, as required, an appropriate balance between the interests of government and the integrity of the tax system.

On balance, it is proposed that the status quo is maintained. The existing framework recognises that the Commissioner's role as an independent statutory officer will continue to complement her chief executive function. The complementary nature of the roles is reflected in Inland Revenue's responsibility to all New Zealanders to be efficient in the collection of revenue used to fund government programmes. This includes developing a range of different working relationships with other organisations, including strategic partnerships, to deliver some services and support the wider government sector.

ADMINISTRATIVE FLEXIBILITY UNDER THE COMMISSIONER'S "CARE AND MANAGEMENT" RESPONSIBILITY

It is a reality of modern tax administration that Inland Revenue must carry out its functions in a way that that makes the most effective use of its resources. The Tax

Administration Act reflects this by charging the Commissioner with the "care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner".[13]

One of the key aspects of the Commissioner's care and management of the tax system is applying and explaining the law to taxpayers. Generally, the tax law can be interpreted consistently with the policy intent. However, in some cases the interpretation of the law when applying ordinary statutory interpretation principles may not accord with the policy intent. This ties up Commissioner and taxpayer resources in outcomes that are inconsistent with both parties' practice and/or expectations.

In this situation, the Commissioner cannot ignore or not apply the law as she has interpreted it. This is because, as a matter of constitutional law, only Parliament has the ability to impose (or suspend) taxes. While a legislative amendment can be sought to remedy the issue, this may not necessarily avoid the Commissioner and taxpayers having to commit resources to the issue.

This chapter considers two approaches to providing the Commissioner with greater administrative flexibility to reduce the resources that are tied up in outcomes that are inconsistent with the practice and policy intent.

The first approach is to extend the Commissioner's discretions or determination-making powers that attach to specific provisions. These generally exist to aid the administrative and self-assessment process by setting out detail for which primary legislation may not be the most efficient vehicle. However, the process could also be used to possibly address unforeseen interpretive issues for particular areas of tax law.

The second approach, which could apply within a more general framework, is to extend the Commissioner's administrative flexibility under her care and management responsibilities. It proposes clarifying the Commissioner's care and management responsibility to provide her with greater administrative flexibility in limited circumstances, based on the assumption that the current interpretation of the Commissioner's responsibility is a relatively narrow one. Enhancing the Commissioner's discretion under the care and management responsibilities more substantially would be another alternative, but may create risks for the tax system.

Discretions and determination-making powers

The Commissioner's current administrative discretions allow her to carry out her revenue-collection duties and generally assist taxpayers to assess their own tax liability. Discretions include the ability to:

- prescribe forms and notices;
- require further detail or take into

account any relevant factors;

- allow further time; and
- provide PAYE tables.

Determination-making powers allow the Commissioner to issue a determination under a defined process. Examples include determinations for:

- depreciation rates;
- financial arrangements;
- departure from the formula assessment for calculating child support;
- national average market values for livestock; and
- relocation payments and allowances.

Other discretions give further ability to the Commissioner to determine taxpayers' income tax liabilities. These discretions include provisions allowing the Commissioner to reconstruct a tax avoidance arrangement and the ability to amend an assessment despite the time bar. The objective of these discretions, which can apply to specific taxpayers or transactions, is to ensure the revenue base is protected.

Increasing the Commissioner's discretions and determination-making powers would provide her with increased administrative flexibility but may, on the other hand, increase the administrative resources needed to be allocated to the relevant issue. This may not be consistent with the efficiency objective of self-assessment. In addition, on a case-by-case basis, this approach would need to be scrutinised relative to Parliament's law-making function so that any perceived risk to the integrity of the tax system is minimised. Further, this approach would generally only increase administrative flexibility for situations that could be anticipated, such as complicated valuation issues. It will not generally assist when the interpretation of the law is subsequently found to be inconsistent with the policy intent.

Care and management responsibilities

The Commissioner has some broader administrative flexibility under her care and management responsibilities. The care and management responsibilities were modelled to some extent on the United Kingdom care and management provision. That provision has been interpreted in the United Kingdom statutory context as providing the Commissioner with wide managerial discretion. One of the key aspects of the United Kingdom statutory context is the well-established tradition of extra-statutory concessions. The New Zealand provision has been interpreted in the relevant statutory context more narrowly, providing the New Zealand Commissioner with more limited administrative flexibility. This is consistent with the lack of extra-statutory concessions in New Zealand.

The role of the Commissioner in New

Zealand was discussed by the Valabh Committee and the Organisational Review Committee. In its report on various aspects of the income tax system, the Valabh Committee noted that the Income Tax Act imposed the obligation to pay income tax, and that the Commissioner's statutory functions were directed to calculating the amount of tax liability. The Valabh Committee considered that in its "extreme form" the law obliged the Commissioner to "assess and recover all taxes which are due", an unrealistic obligation that did not match the practice of Inland Revenue.[14]

Following the Valabh Committee recommendations, the Organisational Review Committee was set up to investigate the optimal organisational arrangements for the tax system. The Organisational Review Committee considered that the Commissioner's responsibility for the "management of limited resources in the efficient and effective collection of taxes" was encapsulated by the term "care and management". The Organisational Review Committee defined care and management as "
[m]anagerial discretion as to the use of independent statutory powers in a cost effective manner".[15]

The Organisational Review Committee considered that the objective for the tax administration function of Inland Revenue should incorporate several elements, namely that Inland Revenue should:

- operate within the law;
- collect the highest revenue that is practicable over time. This recognises that the tax administration's objective should not be to collect either "all" or only "some" revenue;
- collect revenue at the least administrative cost;
- operate within the resources appropriated by Parliament; and
- have regard for the compliance costs incurred by taxpayers.[16]

Both the Valabh Committee and the Organisational Review Committee referred to the United Kingdom "care and management" provision. As noted earlier, while the New Zealand provision was to some extent based on the United Kingdom provision, the relevant provisions are worded differently, there are different statutory and administrative contexts, and there are different levels of administrative flexibility in the two jurisdictions.

Inland Revenue has published an interpretation statement providing an interpretation of the care and management responsibilities that takes into account the New Zealand legislative provisions and the approach of the New Zealand courts.[17] The statement views the "care and management" responsibility as two interrelated responsibilities. First, the Commissioner is charged with the "care of the taxes". This means the Commissioner is responsible for promoting the integrity and effective functioning of the tax system. To discharge this responsibility, the

Commissioner must seek to foster the tax system's capacity to function effectively throughout economic, commercial, technology and other change.

Secondly, the Commissioner is charged with the "management of the taxes". This means that she is responsible for making managerial decisions in the interests of bringing about the efficient and effective administration of the tax system. The "management" responsibility also recognises that the Commissioner makes decisions about the allocation and management of her resources and acts consistently with her responsibilities under the State Sector Act. This involves the Commissioner exercising judgement in how she carries out her duties and the relative resource she allocates to Inland Revenue's functions.

Importantly, the Commissioner's view is that she can manage and allocate resources but cannot deliberately act contrary to her view of the correct interpretation of the law. Some important implications of this are that the Commissioner cannot:

- disregard the requirements for the lawful exercise of powers and discretions conferred by other provisions;
- alter taxpayers' obligations and entitlements;
- issue extra-statutory concessions;
- administratively remedy legislative errors and other deficiencies;
- interpret provisions other than in accordance with statutory interpretation principles contained in the Interpretation Act 1999 and court decisions; or
- act inconsistently with the obligation to use her best endeavours to protect the integrity of the tax system.

Options for administrative flexibility

Two options have been considered for the Commissioner's administrative flexibility under her care and management power:

- legislating to make it clear that the Commissioner has greater administrative flexibility in limited circumstances; or
- significantly enhancing the Commissioner's discretion under the care and management power.

The Government proposes clarifying the care and management responsibility to allow the Commissioner some greater administrative flexibility in limited circumstances. Retaining the status quo is considered to provide the Commissioner with insufficient administrative flexibility in the modernised tax administration. Significantly enhancing the Commissioner's discretion under the care and management responsibilities, on the other hand, may create perceived risks for the tax system, such as inconsistent decision-making and less transparency. However, it is expected this would in practice very

rarely occur in a well-administered tax system.

Greater administrative flexibility in limited circumstances

Providing the Commissioner with greater administrative flexibility in limited circumstances would reduce the extent to which Commissioner and taxpayer resources were tied up in outcomes that were inconsistent with both parties' likely practice and expectations.

The New Zealand care and management provision was modelled to some extent on the United Kingdom care and management provision. The United Kingdom provision was considered in the House of Lords decision of *R v Inland Revenue Commissioners; Ex parte Wilkinson*.[18] The case involved a widower, Mr Wilkinson, who claimed that the Inland Revenue Commission (as it was called at the time of the case) had the power to grant him a widower's bereavement allowance from his income tax liability. The relevant provision granted a "widow" the right to an income tax reduction. The House of Lords held the provision did not extend to a widower. In deciding the case, the Court held that the discretion under the United Kingdom care and management provision enabled the commissioners to **formulate policy in the interstices of the tax legislation, deal pragmatically with minor or transitory anomalies, cases of hardship at the margins or cases in which a statutory rule was difficult to formulate or its enactment would take up a disproportionate amount of parliamentary time.** The Court held the issue in dispute in the case did not fall within the scope of these criteria so it was not within the Commissioner's care and management discretion to allow the income tax reduction for the widower.

It is arguable that subsequent United Kingdom cases have broadened the discretion of the United Kingdom Commissioner beyond the categories discussed in *Wilkinson*.[19] However, the criteria set out in *Wilkinson* may provide a suitable basis for a discussion of how to extend the administrative flexibility in New Zealand.

If such an approach were adopted, an issue would arise over whether the extension of administrative flexibility would be limited to situations that were taxpayer-favourable. This would not seem necessary, as given the very limited nature of the criteria, it would be expected that the change would in practice be limited in this way.

Significantly enhancing discretion under care and management responsibilities

Another approach would be to enhance the Commissioner's discretion under her care and management responsibilities more substantially. This could be achieved by providing the Commissioner with a broad discretion to administratively remedy legislative errors and deficiencies. However, it is considered that this could create undue risk to the tax system. First, it could undermine

Parliament's role in imposing tax. As a result, uncertainty could arise for taxpayers if the Commissioner was seen to have a general authority to ignore the law. This could arise, for example, from perceptions of inconsistency in treatment, a lack of transparency or uncertainty about the future application of the law. There would also be revenue risks if the Commissioner had a general authority to decide whether or not to apply the law in a specific circumstance especially if, as would be expected, the discretion only applied in taxpayer-favourable situations. Another concern is that it would be difficult to decide where to draw the line in determining whether to apply the discretion, and significant taxpayer and Inland Revenue resources could be tied up in debating such issues.

While it is acknowledged that a significantly enhanced discretion would provide the Commissioner with broad administrative flexibility, this option is not recommended for the reasons given.

Suggested approach

As a starting point for discussion, a clarification is proposed to the care and management provision in New Zealand to include the situations mentioned in *Wilkinson*.

The proposal would not be to incorporate the United Kingdom approach to the care and management provision, but instead to consider what could be drawn from the criteria listed in *Wilkinson*, adapted for the New Zealand statutory context.

On this basis, the proposal is that the Commissioner would be able to:

- apply a policy-based approach to small gaps in the tax legislation;
- deal pragmatically with legislative anomalies that are minor or transitory;
- address cases of hardship (inequity) at the margins; or
- deal with cases in which a statutory rule is difficult to formulate (meaning that the relevant legislation has failed to adequately deal with the particular situation).

It is less clear whether a criterion for the discretion should specifically include avoiding taking up a disproportionate amount of parliamentary time (as suggested in *Wilkinson*). That said, applying the discretion according to the criteria listed above would, in practice, produce the benefit of reducing the amount of parliamentary time taken up with minor or temporary anomalies.

There may also be a case for including an ability for the Commissioner to confirm an approach based on a long-standing established practice of both the Commissioner and taxpayers. However, further analysis of the potential boundaries of such an approach would be required.

We recognise that the criteria outlined above are a starting point for discussion and more detail will

need to be developed to establish the boundaries for their application. Submissions are therefore welcomed on this issue.

Any application of the proposed clarified care and management responsibility would need to be weighed against any possible implications for taxpayer compliance over time and the integrity of the tax system. Specifically, the Commissioner would have to weigh the application of the discretion against the right of a taxpayer to have their liability determined fairly and impartially. This would suggest that the Commissioner could not treat a taxpayer or group of taxpayers unfairly or preferentially compared with other taxpayers. The Commissioner would also have to ensure that any application of the clarified care and management responsibility had regard to promoting voluntary compliance by taxpayers and reducing compliance costs.

It is acknowledged that giving greater administrative flexibility to the Commissioner could, in theory, lead to greater uncertainty for taxpayers and questions as to the application of the rule of law. If the proposed clarification is limited in the way suggested, these implications are unlikely to be significant.

Examples

The following hypothetical examples are seen as falling within the criteria for the proposed clarification of the discretion. The examples represent situations when the Commissioner is dealing pragmatically with a minor or transitory legislative anomaly.

Example 1

The policy intent of a provision is to enable either a value for a fringe benefit to be established by reference to an open market transaction, or to be a value set by the Commissioner if that benefit cannot be valued under a specific provision. The policy intent and desired outcome are clear. The wording restricts the application of the rule to goods or services and does not allow the Commissioner to set a value for something that is not a good or a service, such as a discount on a sale price.

This situation would seem to be either an unintended gap in the tax legislation or a minor anomaly. Dealing with this issue quickly would eliminate any uncertainty and require fewer resources to resolve.

Example 2

A drafting error exists in a specific provision which prevents taxpayers from using different calculation methods for determining their foreign investment fund (FIF) income when they have more than one investment in the same FIF. This unintended restriction is contrary to the policy intent, which was to allow taxpayers to use different methods in certain circumstances. The policy intent and desired outcome are clear. A bill before Parliament provides for the drafting error to be remedied retrospectively.

The Commissioner would be able to deal pragmatically with the transitory legislative anomaly by allowing taxpayers to use different calculation methods.

THE ROLE OF CARE AND MANAGEMENT IN NON-TAX FUNCTIONS

It is also proposed to clarify how the care and management responsibilities relate to the Commissioner's non-tax functions. As noted earlier, the Commissioner's care and management responsibility is intended to allow the Commissioner to exercise appropriate management, given available resources, when faced with real-world challenges. Legislation for the care and management responsibility provides the Commissioner with a duty to "collect over time the highest net revenue practicable".[20] Legislatively clarifying how "care and management" applies to Inland Revenue's non-tax functions would better support the effective and efficient administration of these functions.

The Organisational Review Committee considered that a separate objective was required for Inland Revenue's "social assistance and information supply functions that are outside the narrow tax administration".[21] However, when the care and management provision was introduced, the definition of "tax" was amended to include any revenue or entitlements covered by the Inland Revenue Acts. This meant the care and management responsibility essentially covered all of Inland Revenue's functions. No separate objective was enacted for Inland Revenue's non-tax functions.

"Tax" is defined in seven separate paragraphs of the Tax Administration Act. The definition ensures that the Tax Administration Act applies to the non-tax functions for specific purposes (such as the penalties regime). The legislative history of the definition of "tax" in the Tax Administration Act suggests that the policy intent may not be clearly reflected in the legislation. This creates some uncertainty as to the application of care and management to the social policy functions performed by Inland Revenue.

For example, the definition is a mix of general concepts such as "tax means a tax, levy, or duty of any type…" and very specific language such as, tax means "an amount payable by a payer (as defined in section 153 of the Child Support Act 1991) under Part 10 of the Child Support Act 1991".

The use of very specific terms in the definition of "tax" raised in 2010, for example, the possibility that care and management had a specific and restrictive application to student loans inconsistent with the policy intent. To reflect the intent that care and management applied broadly to the non-tax functions, the definition of "tax" for student loan purposes was amended. This highlights the potential for ambiguity over the application of care and management to all non-tax functions.

As noted, Inland Revenue's guidance

has not previously considered how the care and management responsibility applies to non-tax functions. This, combined with the potential legislative ambiguity, suggests that clarification is needed to ensure care and management applies broadly to the social policy functions.

Potential solution

It is proposed that an additional limb to the care and management provision be added that is specific to the objectives of Inland Revenue's non-tax functions. This provision could reflect more accurately the Commissioner's role in non-tax areas, ensuring that the Commissioner can set priorities in the context of resources and real-world choices when collecting and distributing student loans, child support, KiwiSaver and Working for Families tax credits.

The Commissioner does not necessarily have sole responsibility for the stewardship of particular social policy programmes, compared with tax where she is the sole (or at least primary) custodian. For example, student loan policy is led by the Ministry of Education as part of wider tertiary education policy. Inland Revenue collects student loan repayments, ensures repayment obligations are met by borrowers, and provides operational policy advice on matters concerning collection of loans.

The approach suggested above would ensure that the care and management function applied broadly, consistent with the original policy intent envisaged by the Organisational Review Committee in 1994. In making managerial decisions about resource allocation, the Commissioner needs to take account of the opportunity costs, fairness to customers in similar situations and society, administrative and fiscal costs and impacts on the Government's broader policy objectives.

The role of care and management needs to be considered for each non-tax function. With this in mind, the Commissioner's role in administering the non-tax functions can be categorised in three ways:

- the Commissioner acting as an intermediary, collecting from one group and distributing to another (with or without an administrative charge or interest), usually on trust – for example, child support and KiwiSaver;

- the Commissioner distributing only, paying out an entitlement from Crown revenue, distinct from the obligation and liability to pay tax – for example, Working for Families tax credits and paid parental leave; and

- the Commissioner collecting only, recovering monies that are not tax revenue – for example, student loan repayments, and child support to offset benefit payments.

Providing for an additional limb to the "care and management" provision in the legislation would remove the risk that any amendment to the definition

KEY QUESTIONS FOR READERS

2.1 Do you support giving the Commissioner the discretion to enable her to:

- apply a policy-based approach to small gaps in the tax legislation;
- deal pragmatically with legislative anomalies that are minor or transitory;
- address cases of inequity at the margins; or
- deal with cases in which a statutory rule is difficult to formulate.

Do you agree with the proposed legislative clarification of care and management for the non-tax functions?

2.2 Are there any other issues relating to the Commissioner's role that should be taken into account?

of "tax" for another purpose will inadvertently affect the application of care and management in non-tax areas. It would also close the door to any debate over whether or not care and management principles apply in non-tax areas. Focusing on the efficient use of the Commissioner's resources on collection and compliance would better support the Commissioner's ability to deliver the Better Public Services efficiency gains the Government expects.

[2] As listed in the schedule to the Tax Administration Act 1994.

[3] Tax Administration Act 1994, section 6.

[4] See *Organisational Review of the Inland Revenue Department*, Report to the Minister of Revenue (and on tax policy, also to the Minister of Finance), April 1994, Wellington.

[5] Working Party on the Re-organisation of the Income Tax Act 1976 – First Report of the Working Party, July 1993.

[6] *Organisational Review of the Inland Revenue Department. Report to the Minister of Revenue (and on tax policy, also to the Minister of Finance)* from the Organisational Review Committee, April 1994

[7] The Chief Executive of Inland Revenue goes by the title of "the Commissioner" as explained in section 31 of the State Sector Act. This section and section 6A(1) of the Tax Administration Act do not, jointly or severally, create two statutory officers.

[8] State Sector Act 1988, section 32(1)(b).

[9] *"Better Public Services"* (6 July 2015) State Services Commission, www.ssc.govt.nz.

[10] State Sector Act 1988, section 32(1)(b).

[11] Tax Administration Act 1994, section 6B.

[12] Tax Administration Act 1994, section 6B(2).

[13] Tax Administration Act 1994, section 6A(2).

[14] *Working Party on the Re-organisation of the Income Tax Act 1976: first report of the Working Party.* July 1993.

[15] *Organisational Review of the Inland Revenue Department. Report to the Minister of Revenue (and on tax policy, also to the Minister of Finance*) from the Organisational Review Committee, April 1994, Glossary and Commonly Used Abbreviations.

[16] *Organisational Review of the Inland Revenue Department. Report to the Minister of Revenue (and on tax policy, also to the Minister of Finance)* from the Organisational Review Committee, April 1994.

[17] Interpretation statement "Care and management of the taxes covered by the Inland Revenue Acts – section 6A(2) and (3) of the Tax Administration Act 1994", *Tax Information Bulletin* Vol 22, No 10 (November 2010).

[18] *R v Inland Revenue Commissioners; Ex parte Wilkinson* [2005] UKHL 30.

[19] See for example, *R. (on the application of Gaines-Cooper) v HMRC* [2011] UKSC 47; R. *(on the application of UK Uncut Legal Action Ltd) v Revenue and Customs Commissioners* [2013] EWHC 1283.

[20] Tax Administration Act 1994, section 6A(3).

CHAPTER 3

INFORMATION COLLECTION

SUMMARY OF PROPOSALS

Inland Revenue's information-collection powers would be updated to ensure they will support the modernised tax administration. This would include:

- retaining a "necessary or relevant" standard, or something similar, for Inland Revenue's information-collection powers;
- clarifying Inland Revenue's powers for access to large third-party datasets[21]; and
- clarifying Inland Revenue's access to remotely stored information, just as information stored digitally or physically on a taxpayer's premises can be accessed.

Inland Revenue's information-collection powers are critical to the collection and disbursement of revenue and payments for the Government. As one court noted:[22]

> The whole rationale of taxation would break down and the whole burden of taxation would fall only on diligent and honest taxpayers if the Commissioner had no power to obtain confidential information about taxpayers who may be negligent or dishonest.

Improving information and intelligence capabilities is an important aspect of modernising the tax administration. The future tax administration will involve greater use of pre-populated tax returns, more automated and streamlined information flows, and a broader approach to compliance based on smarter use of information and a wider range of interventions. The management of information is therefore a critical factor in the success of the modernised tax administration.

The Government considers that Inland Revenue's information-collection powers work well and are consistent

with those of revenue agencies in other jurisdictions. However, the ways in which information is stored have changed. More information is stored in the "cloud" and large electronic datasets have become more commonplace. Inland Revenue's information-collection powers therefore need to be updated to ensure they continue to be fit for purpose.

Tax returns are a key source of information for Inland Revenue. There is a range of information reporting and return requirements set out in the various Inland Revenue Acts – for example, annual income tax returns, employer monthly schedules, and GST returns. Outside of the tax return process, Inland Revenue can require a person to provide any information considered "necessary or relevant" to Inland Revenue's functions. The Government considers that, in updating Inland Revenue's information-collection powers, a "necessary or relevant" standard or something similar should be retained. Retaining such a standard would give Inland Revenue and the public continued confidence that Inland Revenue will not use the information-gathering powers to obtain information that is not needed.

A key area for consideration, however, is the power to collect large datasets. Inland Revenue's information-collection powers were designed in a world where the collecting and analysing of such datasets was difficult to achieve. To efficiently administer the tax system, Inland Revenue needs to continue being able to collect one-off taxpayer-specific and bulk data, and carry out repeat collection of third-party information. The Government proposes clearer rules for repeating access to large third-party datasets.

Another question concerns access to remotely held data. To maintain the integrity of the tax system, the Government proposes ensuring that Inland Revenue is able to access all remotely stored information just as it

can access information stored digitally or physically on a taxpayer's premises.

INLAND REVENUE'S INFORMATION-COLLECTION POWERS

A taxpayer's information obligations include keeping all necessary information, disclosing to Inland Revenue in a timely and useful way all information required by the tax laws to be disclosed, and cooperating with Inland Revenue to the extent required by the law. Inland Revenue's general information-collection powers are set out in the Tax Administration Act. Some parts of the Search and Surveillance Act 2012 supplement the powers contained in the Tax Administration Act.[23]

Powers contained in the Tax Administration Act 1994

Inland Revenue's general information-gathering power is contained in section 17 of the Tax Administration Act. This section requires that:

- any person, upon request by the Commissioner, must furnish in writing any information, and
- produce for inspection any document,

the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of the Inland Revenue Acts or any other function lawfully conferred on the Commissioner.

Inland Revenue is also empowered to access premises to obtain information (a warrant is required for private dwellings) and to remove documents to copy or retain for a full and complete inspection.[24] There are further powers for Inland Revenue to conduct inquiries of any person, either before the Commissioner or before a District Court Judge.[25]

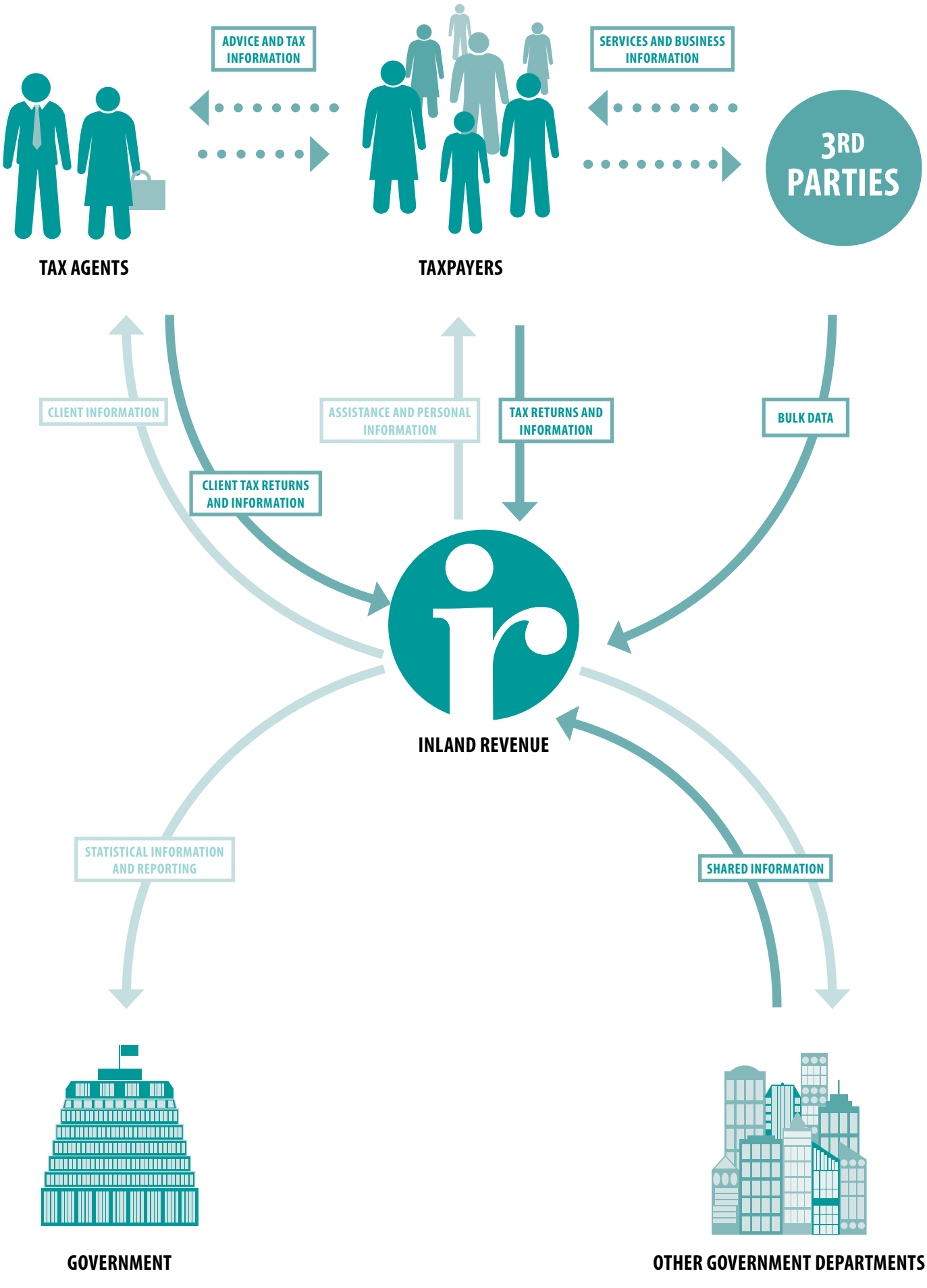
OECD comparative information from 2013 indicates Inland Revenue's information-collection powers are broadly consistent with those of revenue bodies in the OECD.[26]

Information-collection powers of other New Zealand agencies

Many New Zealand government agencies, including the New Zealand Customs Service, the Serious Fraud Office, the Department of Statistics, and the New Zealand Police have information-collection powers. Inland Revenue's information-gathering rules are generally broader than those of other New Zealand government agencies. This reflects the importance of revenue collection to fund government programmes.

While many other agencies have information collection or search powers, in most cases the issue of a warrant is required before these powers can be exercised. Inland Revenue's information-collection powers do not require a warrant, except in relation to searches of private dwellings.

The powers granted to the New Zealand Police for collecting information and evidence are set out in Part 2 of the Search and Surveillance


ADVICE AND TAX INFORMATION
SERVICES AND BUSINESS INFORMATION
3RD PARTIES
TAX AGENTS
TAXPAYERS
CLIENT INFORMATION
ASSISTANCE AND PERSONAL INFORMATION
TAX RETURNS AND INFORMATION
BULK DATA
CLIENT TAX RETURNS AND INFORMATION
INLAND REVENUE
STATISTICAL INFORMATION AND REPORTING
SHARED INFORMATION
GOVERNMENT
OTHER GOVERNMENT DEPARTMENTS

Act. Most of these powers require an "issuing officer" (a Judge or other person such as a Magistrate, JP or Registrar, at that time authorised under the Search and Surveillance Act) to issue a search warrant. Part 3 sets out powers of "enforcement officers". An enforcement officer includes an Inland Revenue officer.

THE NEED FOR AN INFORMATION COLLECTION STANDARD

As noted earlier, the Inland Revenue powers to access premises to obtain information, or to require information to be furnished, are bounded by the requirement that the Commissioner considers the information is "necessary or relevant" for carrying out Inland Revenue's functions.

Given the broad nature of Inland Revenue's information-gathering powers, the "necessary or relevant" requirement is an important assurance. It is important to be clear how this requirement applies to the features of the modernised tax administration that require information collection.

Information collection in the transformed environment

Similarly to many overseas revenue authorities, Inland Revenue is considering how best to use technology to improve compliance for small and medium-sized enterprises. Withholding taxes and income reporting systems have meant that, generally, high levels of compliance are achieved in relation to employment income and any other forms of income where there are similar withholding and reporting requirements. The standard of some small businesses' financial systems and business processes may in some cases adversely affect their ability to meet their tax obligations.

The OECD's Forum on Tax Administration issued a report in 2014 focusing on information collection as a means to support a "right from the start" compliance approach.[27] This report introduced the concept of "tax compliance by design". Tax compliance by design focuses on building compliance into existing business processes, and real-time collection of data about business transactions. While the report did not recommend any specific design, systems adopting this approach tend to rely on automated processes that translate the data into information about the taxes due, and where possible, automate payment of those taxes.

The OECD describes two approaches for implementing the "tax compliance by design" concept. Depending on the approach taken, there are implications for Inland Revenue's information-collection powers. A "secured chain" approach focuses on ensuring the appropriate certified systems (such as certified cash registers and approved online accounting systems) are used and therefore requires fewer information flows to Inland Revenue. A "centralised data" approach requires significantly more information flows to Inland Revenue. Inland Revenue would analyse and use that

information to pre-populate a tax return, which would then be sent to the business to verify and/or provide any missing information.

The table below summarises the main characteristics of "secured chain" and "centralised data" approaches.

CHARACTERISTICS	SECURED CHAIN	CENTRALISED DATA
Revenue agency example	Australia, Denmark	Chile, Korea
Revenue agency example	Taxpayer	Third parties
Level of data/information used by revenue body	Aggregated data	Transaction or aggregated data
Scope regarding number of taxpayers involved	Ideally all but sub-segments possible	Preferably all taxpayers
Scope regarding type of transaction data	All transactions for involved taxpayers	Preferably all but limited scope possible
Preferred environment for taxpayers	Extensive use of accounting software	Extensive use of third-party reporting and VAT e-invoicing
Main focus of Revenue agency	Detecting evasion outside secured chain	Structure and analyse data (for use)
Demand for third-party information	Limited but still a necessity (expectation is the taxation authority would still require some large external datasets)	Extensive
Pre-populating of tax returns	None or limited	Complete or almost complete

It is clear these strategies are not mutually exclusive and both could be used. In the *Green paper* the Government set out a vision for modernising the tax system. The vision for small and medium businesses in the modernised tax administration includes more elements of a secured chain strategy. For individual taxpayers the vision has more elements of the centralised data strategy.

As will be outlined in chapter 5, the current personal tax summary process involves using information collected from employers in the course of administering the PAYE system. It is proposed that there will be greater use of information to pre-populate individual tax returns – for example, the *Green paper* outlined a review of the information requirements for resident withholding tax (RWT). This review will look to enhance the provision and timeliness of information regarding RWT, with a view to using it for (among other things) pre-population of returns. Any changes to information provision rules in relation to this data would occur through changes to the specific RWT reporting rules. As discussed later in this chapter, where information is sought primarily for the purposes of pre-populating returns, formal third-party reporting regimes, such as those for PAYE or RWT, will normally be the most appropriate approach.

Collection of information on behalf of other agencies

The discussion document *Making Tax Simpler – Better administration of PAYE and GST*[28] asks whether there is information that employers provide to other government agencies that could more appropriately be provided to Inland Revenue through the PAYE process. As set out earlier in this document, increased information sharing is a priority for government, as a means to deliver better public services. Looking at how information is collected is another possible method of achieving efficiency and reducing compliance costs for customers interacting with government.

At this stage the Government is not proposing any broad changes to the type of information Inland Revenue collects. However, once the modernised tax administration is in place, there will be opportunities to consider how information might be collected on behalf of other agencies. If information is to be collected on behalf of other agencies, legislative change is likely to be required.

In considering collection on behalf of others, there are a number of issues, in addition to the wider government efficiency benefit, to be worked through. In particular, if Inland Revenue were to collect additional information on behalf of other agencies, the Government would want to be confident that this would not compromise the integrity of the tax system and, specifically, compliance with tax obligations.

COLLECTION OF LARGE DATASETS

The availability and usability of large datasets, aided by technology, has

greatly improved and is likely to continue. While the courts have made clear that Inland Revenue's existing information-collection powers do enable collection of such datasets, and such collection currently occurs, the powers were designed in a world when collecting and analysing these datasets was difficult to achieve. The Government proposes clarifying the existing rules to ensure Inland Revenue has appropriate powers to collect one-off taxpayer-specific and bulk data, and has repeat access to third-party information to enable it to administer the tax system efficiently. This clarification is focused on repeating collection of datasets primarily for compliance, analytical or customer education purposes, rather than to support pre-populating individual tax returns. Clarifying these powers will also provide greater comfort to the dataset holder of the circumstances when they will be required to comply with an information request.

Existing collection powers

The collection of datasets covering multiple taxpayers, or potential taxpayers, is not new. Inland Revenue has the power to require a person to provide any information considered "necessary or relevant" by the Commissioner. As with any information request, a request for an external dataset sits within the legislative framework of protecting the integrity of the tax system, and the Commissioner's "care and management" responsibility.

The courts have recognised that the power to require information to be provided is an important power and that it allows Inland Revenue to collect large datasets. A Court of Appeal decision observed:[29]

> Extensive powers of inquiry are a fundamental feature of revenue legislation in New Zealand as in other jurisdictions, and the Commissioner has in practice relied on section 17 and its predecessors as authorising the obtaining of relevant information, not only in relation to the affairs of specifically identified taxpayers, but also as to the identity of persons engaging in taxable or potentially taxable activities. The Directory of Official Information (1985, p460) records that the Commissioner has obtained a nominal index of all owners of land from the Valuation Department, schedules of payments to medical practitioners from the Department of Health and the Accident Compensation Corporation, and details of interest and dividends paid by banks, borrowing institutions, companies and other entities. And the Solicitor-General gave various other examples of lists of those engaged in particular commercial, and thus prima facie taxable, activities obtained from third parties.

To ensure the collection powers are used appropriately when dealing with large volumes of information from third parties, Inland Revenue has an External Dataset Framework. An "external dataset" is one that

relates to unknown individuals or entities and is requested by Inland Revenue from a third party for use in risk and intelligence analysis, and ensuring taxpayers pay the correct amount of tax and receive the correct entitlements. External datasets include bulk datasets, information is obtained from open sources such as public registers, commercially acquired datasets and information in the public domain.

Australian approach

The Australian Tax Office uses guidelines issued by the Australian Privacy Commissioner, entitled *Data Matching in Australian Government Administration*.[30] The Australian Tax Office website lists nine current data-matching protocols covering a wide range of information.[31] For example, the Specialised Payment Systems protocol sets out 18 entities from which data is sought, including banks, PayPal Australia and a range of other specialised payment systems. This is in addition to data collected under the Credit and Debit Card-matching programme which collects payment information from banks and credit card providers. Legal authority to obtain the information is provided by legislative provisions that are the broad equivalent of New Zealand's section 17 power to require any person to furnish information when requested, together with the power to require the information to be given under oath.[32]

The Australian Treasury has recently released an exposure draft of new rules on third-party reporting.[33] This follows the release of a discussion paper in February 2014.[34] The new rules, which operate in addition to existing information-collection powers, specify particular entities that are required to report to the Australian Tax Office on a regular basis. The general outline explains that a range of information is currently received from third parties for post-lodgement compliance activities through both legislated reporting regimes and ad hoc requests under the general information collection power.[35] While the information received through existing legislative reporting regimes is generally of a high quality, information gathered under the general collection power can have greater issues with timeliness, data formats and the ability to easily match the information to the relevant taxpayer.

The new rules are intended to further reduce compliance costs for individual taxpayers by increasing the range of information reported to the Australian Tax Office that can then be used for pre-populating returns. The information has the ability to be an effective compliance tool to deal with those taxpayers who omit or under-report income. There is a recognised policy trade-off, however, between the compliance benefits to taxpayers from improved data-matching capabilities and the compliance costs imposed on the third parties required to report. To minimise these costs, the new rules focus on third parties that already collect the information as part of their business or activities.

United Kingdom rules

The United Kingdom has enacted very prescriptive rules regarding the collection of information from "relevant data holders".[36] The rules set out in considerable detail who is a relevant data holder by reference to activities that give rise to income. The Her Majesty's Revenue & Customs *Compliance Handbook* states that the purpose of the information-gathering powers is to gather specific pieces of information about a group of people, for use in risk analysis.

Clarifying Inland Revenue's information-collection power

Consistent with the existing broadly cast information-collection powers, the Government proposes building on Inland Revenue's ability to collect external datasets, to better enable regular, repeat collection of such information. This would mean new additional powers, rather than a replacement of any part of the current rules. The primary focus of the proposed powers is on ensuring Inland Revenue has the ability to regularly collect external datasets, where the Commissioner considers collection is necessary or relevant, for compliance, analytical or customer education purposes, rather than for use in pre-populating returns.[37]

When it is considered that information should be collected regularly to support pre-populating returns, as mentioned earlier in this chapter, the Government considers a formal third-party reporting regime would be an appropriate option. This is because requiring third parties to provide this kind of information regularly could involve a significant compliance cost. This must be balanced against the wider compliance benefit to society resulting from greater detection of under-reported or non-reported income, and the efficiency of collecting the information in a large dataset rather than needing to seek information from many taxpayers, including perhaps those who are not operating within the tax system.

In proposing to clarify this collection power, the Government is considering whether a greater level of transparency might also be appropriate. As noted, in Australia there is a considerable degree of transparency covering the large dataset collection undertaken by the Australian Tax Office. In New Zealand, the Office of the Privacy Commissioner is currently trialling a transparency reporting programme by way of seeking standardised reporting from companies regarding the requests for information they receive from law enforcement agencies (including Inland Revenue).

REMOTE ACCESSING OF INFORMATION

More taxpayers are storing information using "cloud" technology and using cloud-based software. While Inland Revenue is able to use its search powers to access information remotely in some situations, these powers will require review to ensure Inland Revenue can access this information in all relevant circumstances. To maintain

KEY QUESTIONS FOR READERS

3.1 Do you agree with a more explicit collection power that covers remote access and bulk information datasets?

3.2 Do you have any comments on the necessary and relevant requirement that is proposed to be retained?

[21] Information requested by Inland Revenue for the purpose of administering the Revenue Acts, where the information is obtained from a third party and includes records relating to multiple unknown individuals or entities.

[22] *New Zealand Stock Exchange and National Bank of New Zealand v CIR* [1992] 13 NZTC 8,147.

[23] For a table summarising those parts that apply see Appendix 1 to the Commissioner's Operational Statement 13/01 The Commissioner of Inland Revenue's search powers.

[24] Tax Administration Act 1994, section 16.

[25] Tax Administration Act 1994, sections 18 and 19.

[26] OECD (2013), Tax Administration 2013: Comparative information on OECD and other advanced and emerging economies, OECD Publishing. The 2013 edition of the OECD series includes information on 52 advanced and emerging economies.

[27] OECD, (2014), *Tax compliance by design: Achieving improved SME tax compliance by adopting a system perspective*, OECD Publishing.

[28] payeandgst.making tax simpler.ird.govt.nz

[29] *New Zealand Stock Exchange and National Bank of New Zealand v CIR* [1992] 13 NZTC 8,147.

[30] Available at http://www.oaic.gov.au/privacy/applying-privacy-law/advisory-privacy-guidelines/data-matching-guidelines-2014

[31] https://www.ato.gov.au/General/Gen/Data-matching-protocols/

[32] Section 264 of the Income Tax Assessment Act 1936 and section 353-10 of the Taxation Administration Act 1953.

[33] http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Improving-tax-compliance

[34] http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Improving-tax-compliance

[35] For example employers, financial institutions, private health providers and businesses in the building and construction industry.

[36] Finance Act 2011 Schedule 23 – Data-gathering powers.

[37] However, where a dataset collected for compliance or analytical reasons is also of use in pre-populating returns this use would not be restricted.

[38] Under section 22(8) of the Tax Administration Act the Commissioner can authorise a taxpayer to store their records offshore.

[39] Inland Revenue does have the power to require a person to provide their password.

the integrity of the tax system it is important Inland Revenue is able to access this information in the same way as information stored digitally or physically on a taxpayer's premises.[38]

The Search and Surveillance Act contains specific provisions on remote access search powers. A "remote access search" is a search of an item such as an internet data storage facility that does not have a physical address that a person can enter and search. The powers in the Search and Surveillance Act, however, are crafted in relation to remote access searches authorised under search warrants. In many cases Inland Revenue's search powers are carried out without the need for a search warrant (unless the search is of a private dwelling, when a warrant is required). Inland Revenue is not therefore covered by these provisions when carrying out a search that does not require a warrant.

Currently Inland Revenue accesses "cloud" or other remotely stored information in the course of exercising its search powers under the Tax Administration Act – that is, when on-site at a business premises or private dwelling, and the relevant storage is open. This might be, for example, an email account that is open on the computer at the premises being searched. Certainty is needed on whether Inland Revenue is able to access electronically stored information under the following circumstances:

- when the account is closed and password protected;[39]
- when the information is encrypted; or
- when information has been deleted remotely by the taxpayer upon Inland Revenue entering the premises.

The issue of remote deletion is of particular concern. Inland Revenue is currently not accessing information stored remotely from sites other than a premises being searched. It is not being accessed from Inland Revenue offices by digital forensics experts.

To ensure Inland Revenue has the ability to obtain necessary or relevant information, no matter how stored, the Government proposes clarifying the rules around remote access searches by Inland Revenue. The preferred approach is to align the rules in the Search and Surveillance Act with clarification of how Inland Revenue uses the remote access rules, recognising that many Inland Revenue searches are carried out without requirement for a warrant. This will entail some remedial amendments to the legislative provisions governing remote access.

CHAPTER 4

TAX SECRECY

SUMMARY OF PROPOSALS

The confidentiality of a taxpayer's individual affairs should remain protected.

The coverage of Inland Revenue's secrecy rule should be narrowed from all information to protecting information that identifies, or could identify, a taxpayer.

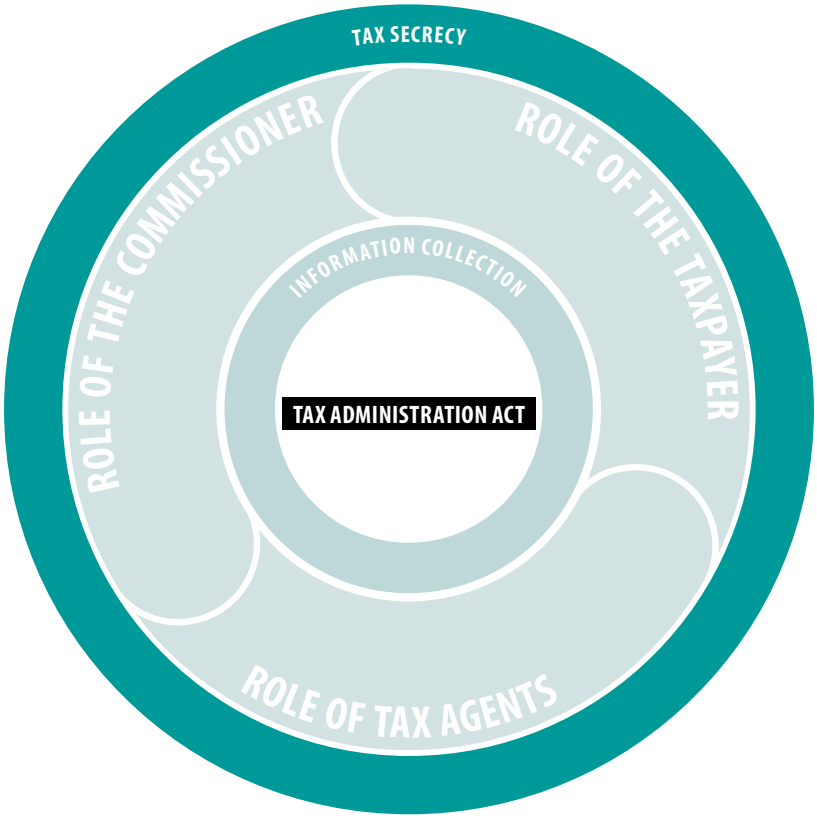
Options should be considered for:

- a taxpayer being able to consent to the release of their information in certain circumstances;
- Inland Revenue supporting improved information flows between government agencies.

Inland Revenue's current information approach involves the use of broad collection powers (as discussed in the previous chapter) and a strict rule of secrecy, with a number of exceptions. Other legislation relating to the release of information is largely subordinate to the rules set out in the Tax Administration Act.

Tax secrecy or taxpayer confidentiality laws exist in most countries. The tax secrecy rule in New Zealand is considerably broader in application than that of many other jurisdictions. The Government considers some degree of change is needed to allow the modernised tax administration to be more efficient and to ensure Inland Revenue can have, where appropriate, a more active role in working with other government agencies.

Provisions protecting taxpayer confidentiality have been in place for over 130 years.[40] Traditionally, tax secrecy was viewed as a means of improving compliance by reassuring taxpayers that the information provided to Inland Revenue would not be used for anything other than administering the tax system.



Today, the secrecy rule provides, as a general starting point, that Inland Revenue officers must maintain secrecy on all matters relating to the various legislation administered by Inland Revenue, and must not communicate any matter other than for the purpose of carrying into effect that legislation.[41] The tax secrecy rule is supported by taxpayer confidentiality and forms a key role in maintaining the integrity of the tax system.[42]

The coverage of the general secrecy rule is not limited to taxpayer-specific information, rather to all information relating to the legislation administered by Inland Revenue. This means that even statistical information or information that does not identify particular taxpayers is covered by tax secrecy and cannot be disclosed unless it is for tax purposes, or some specific exception is contained in the legislation.

While the tax secrecy rule has never been absolute, over time further exceptions have been added and there are now a number of exceptions to the general rule. Many of these exceptions relate to cross-agency disclosure of information.

A taxpayer cannot waive the tax secrecy rule for information about them – secrecy is an obligation imposed on Inland Revenue officers, not a privilege or right of the taxpayer.[43] The tax secrecy rule is distinct from the privacy protections in the Privacy Act that an individual can waive.[44] This means a specific exception is required to allow the disclosure of information about a specific taxpayer to that same taxpayer.

RATIONALE FOR TAX SECRECY

An important rationale for tax secrecy is as a balance for the broad information-gathering powers granted to Inland Revenue. Revenue agencies are generally granted wide information-collection powers so they can properly ensure that taxpayers

are meeting their obligations. It is sometimes said the quid pro quo for these powers is that the information is subject to a strict rule of secrecy. It has been noted by one court, in considering a challenge to Inland Revenue's information-gathering powers, that the "stringent secrecy obligations" imposed on Inland Revenue reflected "a legislative balancing of the public interest affecting privacy on the one hand and in the ascertaining of liability for tax on the other".[45]

The tax secrecy rule was traditionally considered necessary to promote compliance. As one court noted in an often referenced passage:[46]

> The total confidentiality of assessments and of negotiations between individuals and the Revenue is a vital element in the working of the [tax] system. It rests on the assurance provided by stringent official secrecy provisions that the tax affairs of taxpayers are solely the concern of the Revenue and the taxpayers and will not be used to embarrass or prejudice them.
>
> That fundamental premise underlies the secrecy provisions of the income tax legislation in New Zealand as in other countries and is reflected in the very limited disclosure provisions contained in standard double tax treaties.

It has also been observed that compliance would be placed in jeopardy unless all taxpayers know that Inland Revenue will act firmly and resolutely with those who do not meet their obligations, otherwise complying taxpayers will perceive there is a lack of integrity in the system and that they are carrying an unfair burden.[47] This supports the use of information to call taxpayers to account as a "carrying into effect" function. There have been situations in which Inland Revenue has disclosed confidential information in an attempt to bring taxpayers to comply in particular cases, as such disclosure was considered to be "carrying into effect the Revenue Acts".[48]

Recently, the protection of taxpayers' privacy has also featured as a justification for tax secrecy.[49] All Ministers and officials of any government agency that have responsibilities under the Inland Revenue Acts are required to protect the integrity of the tax system. The "rights of taxpayers to have their individual affairs kept confidential" is only one aspect of the integrity of the tax system; another is the responsibility of taxpayers to comply with the law.

Previously, Inland Revenue was required to publish names of taxpayers liable to shortfall penalties for evasion or an abusive tax position, those convicted of applying a deduction or withholding of tax to a purpose other than payment to Inland Revenue, and those convicted of evasion or a similar offence.[50] This requirement was repealed on the basis the rule was inflexible, excessively harsh on some taxpayers, and potentially ineffective. Publication of names does still occur

in appropriate cases, through publicity after court-imposed sanctions.

In the future, the ability to publicly disclose the names of taxpayers in certain circumstances may be re-considered. The focus is more likely to be on situations when there has been significant non-compliance, there is a continuing risk to the revenue base, and disclosure is for the purpose of maintaining the integrity of the tax system. Changes to the scope of these rules are being considered and may be included in a subsequent *Making Tax Simpler* discussion document.

TAX SECRECY IN OTHER JURISDICTIONS

A recent study of tax secrecy and tax transparency which compiled reports from 37 countries[51] (including New Zealand) found that most countries were, in principle, required to keep information confidential. However, the study found that whether, and to what extent, confidentiality might be considered an actual right in tax matters was a far more complex issue than it might first appear. There is a significant variation across countries regarding the transparency of tax information, ranging from countries that make tax information quite transparent, including allowing publication of tax-relevant information, to countries that strongly protect confidentiality. The appendix provides more information on the approaches taken in Australia, the United Kingdom, Canada, the United States and Finland.

SECRECY IN OTHER NEW ZEALAND AGENCIES

Inland Revenue is not the only agency subject to some form of statutory secrecy rules. Examples of others include the Serious Fraud Office, the Security Intelligence Service and Statistics New Zealand. Other agencies such as the New Zealand Customs Service also have particular restrictions on information use set out in their governing legislation.

Other relevant New Zealand legislation

While the Tax Administration Act plays the primary role in regulating Inland Revenue's use and disclosure of information, other legislation including the Privacy Act, the Search and Surveillance Act and the Official Information Act apply. There is also legislation relating to the maintenance and disposal of information, such as the Public Records Act.

The purpose of the Official Information Act is to facilitate open government and the presumption is that government agencies will be as open as possible. Similarly, the Privacy Act gives individuals the right to access personal information held by an agency about them. The Privacy Act also sets out Information Privacy Principles, relating to the collection, use and disclosure of personal information, and contains specific frameworks for the sharing of information by government agencies.

While the Privacy Act and the Official Information Act reflect broader

government policy, it is clear that they do not override specific provisions in other legislation, including the Tax Administration Act. Therefore, rights of access to information under both the Official Information Act and the Privacy Act are subject to the tax secrecy rule.

INFORMATION SHARING

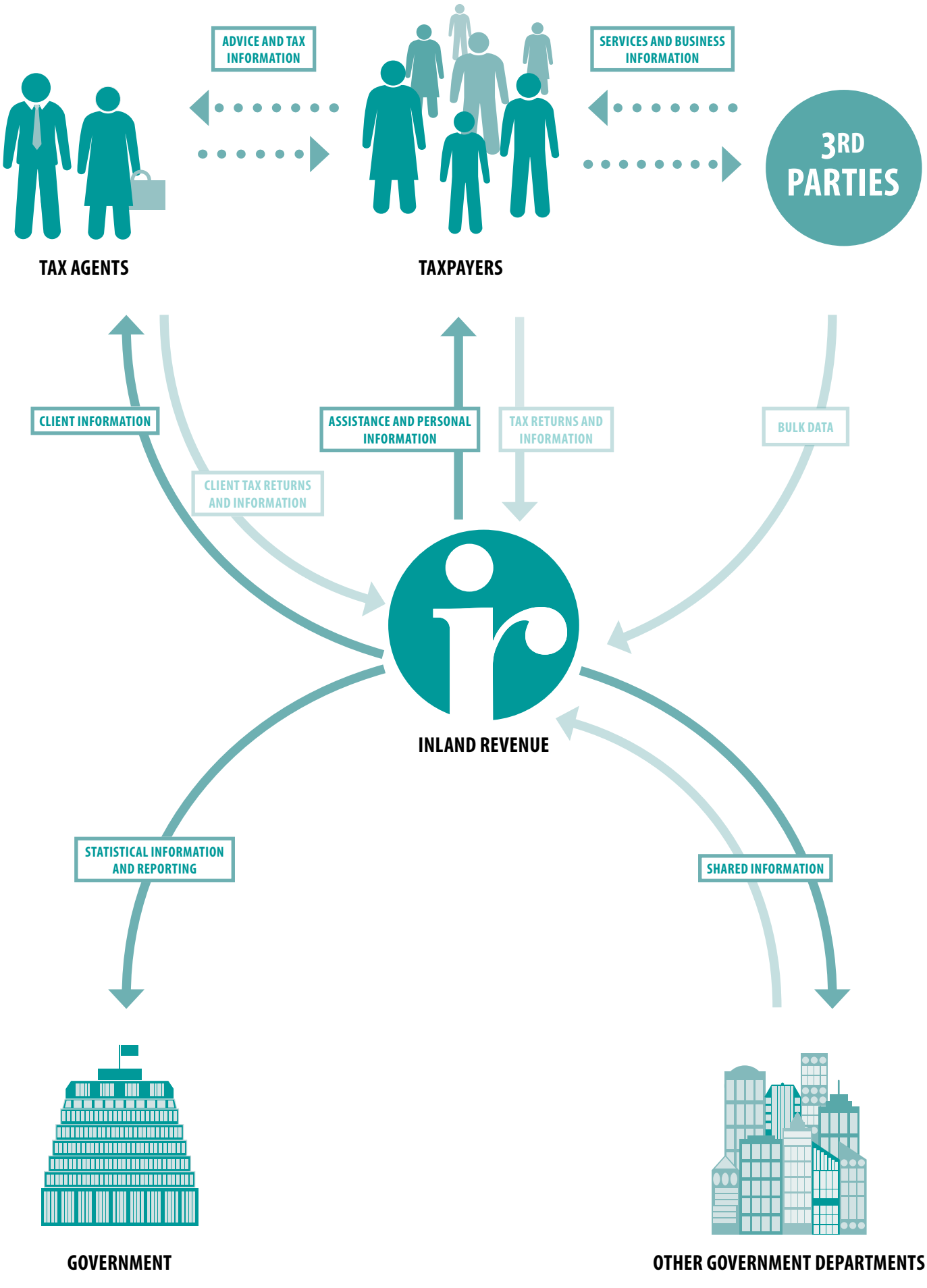
Inland Revenue currently has information-sharing agreements with 11 agencies.[52] These agreements are authorised either via specific exceptions to the tax secrecy rule, "information-matching" provisions, or broader information-sharing provisions. Currently there are 32 specific exceptions contained in section 81(4). For the most part these relate to disclosures to other departments.

Information sharing between other government agencies is generally regulated by the Privacy Act. In 2013, new rules were put in place permitting and governing "approved information-sharing agreements" (AISAs) between agencies delivering public services. A specific exception to the tax secrecy rule allows Inland Revenue to share "personal information about an identifiable individual" under an AISA. Therefore not all taxpayer-specific information held by Inland Revenue can be shared.[53] Inland Revenue also holds substantial amounts of information about non-individual taxpayers, such as companies. This information can be very sensitive and, in many cases, personal and non-personal information is mixed.

The Privacy Act also contains an exception to principle 11 (which prevents disclosure) permitting disclosures made in order to "avoid prejudice to the maintenance of the law". As Inland Revenue is subject to additional statutory secrecy requirements, the Privacy Act "maintenance of the law" exception does not apply.

The introduction of the AISA approach was intended to improve public service delivery by providing for "better and smarter information sharing".[54] Under this approach, Inland Revenue has entered into two agreements. The first allows Inland Revenue to obtain address information from the Department of Internal Affairs (being information received in the course of passport applications) for the purpose of locating and contacting overseas-based student loan borrowers. The second agreement is to enable Inland Revenue to share information with the New Zealand Police, for the purpose of combating serious crime.

Tackling and preventing organised criminal activity is an important focus for the Government.[55] Inland Revenue holds information that may be of assistance to other law enforcement agencies charged with addressing organised crime (including the New Zealand Police, New Zealand Customs Service and the Serious Fraud Office). The Government is giving particular consideration to how to use information more effectively to combat organised crime. This includes the possibility of Inland Revenue sharing non-individual


ADVICE AND TAX INFORMATION
SERVICES AND BUSINESS INFORMATION
3RD PARTIES
TAX AGENTS
TAXPAYERS
CLIENT INFORMATION
CLIENT TAX RETURNS AND INFORMATION
ASSISTANCE AND PERSONAL INFORMATION
TAX RETURNS AND INFORMATION
BULK DATA
INLAND REVENUE
STATISTICAL INFORMATION AND REPORTING
SHARED INFORMATION
GOVERNMENT
OTHER GOVERNMENT DEPARTMENTS

information with law enforcement agencies. Currently, sharing under the AISA with New Zealand Police is limited to information about individuals.

The need for greater information sharing is not only a domestic issue. Recent years have seen a significant increase in expectations around international sharing of tax information. The introduction of FATCA[56] has imposed requirements on financial institutions to collect and provide information to the U.S. Internal Revenue Service regarding the accounts of U.S. persons. In New Zealand, Inland Revenue has taken on the responsibility of collating the information provided by New Zealand financial institutions and passing it on to the U.S. Internal Revenue Service.

Following the information-collection requirements of FATCA is the OECD-led Automatic Exchange of Information (AEOI). AEOI involves the systematic and periodic transmission of bulk taxpayer information regarding sources of income from the country in which the income is sourced to the country in which the taxpayer is resident. Such information can provide timely indications of non-compliance. Compliance with AEOI is expected to be mandatory for New Zealand financial institutions from 1 January 2018.

AEOI has followed the earlier OECD (and Council of Europe) Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). That Convention provides for all possible forms of administrative co-operation between states for the assessment and collection of taxes, with a particular view to combating tax avoidance and evasion. Co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. New Zealand is a signatory to the Convention, which entered into force for New Zealand on 1 March 2014.

International sharing of tax information among revenue agencies is not a new concept. Providing information has long been part of New Zealand's double tax agreements. In addition, tax information exchange agreements are in place with some jurisdictions where there is no double tax agreement. What is new is the magnitude and automated nature of the FATCA and AEOI models, which will result in significant amounts of tax information being shared regularly and automatically around the world.

CROSS-AGENCY INFORMATION SHARING

The Government, through its Better Public Services initiative, expects agencies to work together to deliver improved services and results for New Zealanders. For Inland Revenue, the strict rules regarding secrecy can act, or be perceived, as a barrier to working more collaboratively with other agencies.

Over the years a number of exceptions have been added to the secrecy rules. While some of these relate to revenue purposes or functions of

Inland Revenue, others do not. In many cases these exceptions relate to situations when Inland Revenue information is used to support another government agency. As the Government seeks greater information sharing across agencies, and better co-operation in the form of initiatives including co-located sites, joined-up service delivery and fusion centre[57] arrangements, tax secrecy is increasingly a barrier to Inland Revenue contributing to wider Government goals.

The Government is currently considering how to better use agencies' information. The Data Futures Forum, a working group set up by Ministers, has provided some recommendations about how New Zealand could better use its data, based on guiding principles of value, trust, inclusion and control. The Government has recently announced the subsequent formation of the Data Futures Partnership, a cross-sector group that will work together to drive high-value and high-trust data use. The Data Futures work focuses more broadly than just Government sector information sharing, looking more generally at how to enable more data-driven innovation across all sectors.

Alongside the Data Futures work, the Government Chief Information Officer is leading work on the Government ICT Strategy, which includes making more effective use of government's information resources. The New Zealand Customs Service has also recently consulted on changes to its legislation, including changes to enable greater sharing of Customs' information.

The increasing momentum to share more information and participate in more cross-government initiatives, coupled with the current focus on how to better utilise government information, makes this an appropriate time to consider whether Inland Revenue's current secrecy rules remain fit for purpose in a transformed tax administration.

A NEW APPROACH TO TAX SECRECY

While the tax secrecy rule increasingly causes tensions for Inland Revenue in the cross-agency context, a starting principle that taxpayer information should be confidential is both a longstanding element of New Zealand tax law and consistent with most other jurisdictions across the world. The reasons for this principle are threefold: to increase voluntary compliance by assuring taxpayers their information will go no further; as a balance for the broad information-collection powers granted to Inland Revenue; and, in more recent years, to protect the privacy of taxpayers. These reasons are overlapping, and the courts have noted the necessity of balancing rights to confidentiality against taxpayers' obligations to comply with the law.

Inland Revenue is perhaps also unique in the quantity and breadth of information it holds. As discussed in chapter 3, some other New Zealand agencies also have significant information-collection powers. However, Inland Revenue collects and holds information on virtually all New Zealanders, and most corporate and other entities, such as trusts

and partnerships. In some cases the information held can be sensitive, particularly in the commercial context where a significant amount of financial information is held. The audit process, disputes procedures, binding rulings and other processes also generate highly sensitive information.

Confidentiality in the relationship between taxpayers and Inland Revenue is a longstanding and important concept. It is consistent with international norms (and with the basic premise of the Privacy Act), has a perceived positive impact on compliance and a clear role as a balance to Inland Revenue's broad information-collection powers. The Government does not therefore propose to step completely away from the concept.

The remainder of this chapter considers options for how a general framework of confidentiality with clear exceptions can be maintained, while modernising and allowing for greater cross-government information-sharing.

TAX SECRECY OR TAXPAYER CONFIDENTIALITY?

As the current tax secrecy rule covers all matters relating to the Inland Revenue Acts, it is not limited to taxpayer-specific information. This means, unless an exception applies, anonymised information, statistical information, information about processes, and many other types of information held by Inland Revenue cannot be disclosed. In Australia, Canada and the United States, the information subject to the tax secrecy rule is much narrower, being generally limited to information that would identify (directly or indirectly) the taxpayer to whom it relates.

The Government proposes narrowing the ambit of the tax secrecy rule so that it applies only to information that would directly or indirectly identify a taxpayer. The confidentiality of a taxpayer's individual affairs would remain, as a starting point, protected. This would not mean individual taxpayer information would never be disclosed, but rather, as is the case now, a specific exception authorised by legislation to the general rule of confidentiality would be required. In narrowing the secrecy rule, appropriate protections would remain in the Tax Administration Act for sensitive information about Inland Revenue processes, or when the release of information would be damaging to the integrity of the tax system.

Narrowing the tax secrecy rule would allow Inland Revenue to assist with more requests for information, when that information is anonymised, and in many situations, aggregated. It would also enable Inland Revenue to provide more information in response to Official Information Act requests. Tax secrecy takes precedence over the provisions in the Official Information Act (as is the case with any other specific information restrictions in other legislation), meaning Inland Revenue can only consider releasing information under the Official Information Act when the information is not required to be kept secret.

In narrowing the coverage of the tax secrecy rule, consideration needs to be given to how redacted information could be treated – for example, redacted adjudication reports or other decisions of interpretive assistance – and where the line between truly anonymised information and information that could identify a taxpayer lies.

RELEASING INFORMATION WITH TAXPAYER CONSENT

Tax secrecy is currently unable to be waived by a taxpayer in relation to information about them – secrecy is an obligation imposed on Inland Revenue officers, not a privilege or right of the taxpayer. This is distinct from an individual's privacy protections under the Privacy Act, which the individual can waive. Therefore, if a taxpayer needs to provide their tax information to a third party, including another government agency, they would need to request the information themselves and then provide it to that third party.

As part of the Government's Better Public Services initiatives, customer consent to their information being shared to improve services is increasingly being explored. Allowing taxpayers to consent to the disclosure of information about them could potentially enable greater participation in optional cross-government services, such as initiatives to make updating contact details across government agencies easier. It is important to note, however, that this would not affect Inland Revenue's ability to share information without consent where legislative authority exists.

Allowing taxpayers to consent to information about themselves being released would need to be subject to restrictions or limitations. This would ensure consent did not become, in effect, coerced, and avoid the requests becoming administratively burdensome for Inland Revenue.

The possibility that consent becomes essentially mandatory or coerced is a primary concern. While this could apply equally to consent-based sharing both within government and outside of government, there is potentially greater concern around the possibility, for example, of commercial providers of credit requiring tax records before processing or approving a credit application. This would effectively make the consent mandatory and result in significantly more information about a taxpayer's private financial affairs becoming available. This may suggest that should consent-based disclosure be permitted, it should, at least in the first instance, be limited to within government.

The changes considered here would not alter the position of a taxpayer seeking information about themselves. Currently, information is not provided to a taxpayer when it is not readily available within Inland Revenue, or when it is not reasonable or practicable to provide the information. In addition, the Privacy Act allows information to be withheld when the release of the information would prejudice the maintenance

of the law, when the release of information would involve the unwarranted disclosure of someone else's affairs, or when the information is evaluative material (this exception usually applies when the requester is an employee or potential employee).[58]

In practice, taxpayers can easily access a certain amount of information about themselves via online services. For example, by logging on to Inland Revenue's online services, a taxpayer can see income information, information about payments made and owing, social policy obligations, employer deductions and so on. It is possible that in the future, integrated services would largely negate the need for a legislative amendment to allow consented disclosures within government. In this case, the taxpayer could simply access the information themselves through an online portal and send it on to the relevant agency or agencies, without those agencies having to seek information from each other.

CROSS-GOVERNMENT INFORMATION SHARING

Information is a significant asset of government. For it to achieve the best value for taxpayers it is important that information can be shared across government when appropriate. Cross-government information sharing can lead to better service and ensure that New Zealanders receive their correct entitlements. While Inland Revenue already shares information with a range of other government agencies, research indicates that New Zealanders believe more information is shared across government than is actually the case.[59]

Historically, information sharing has required a specific legislative change to authorise the sharing. The Privacy Act AISA approach was designed to make information sharing easier for government agencies, while maintaining transparency for the public. Rather than specific legislative change, an AISA is authorised via the Order in Council process, meaning they can be put in place in a more timely and cost-effective manner than if a change to primary legislation is required. Inland Revenue's current cross-agency sharing provision in the Tax Administration Act operates in a similar way.

Given the current desire for greater sharing of information between government agencies, and the analysis currently occurring to improve the flow of information across the public sector, it is worth considering how the Tax Administration Act might be amended in the near term to support information sharing. As noted, Inland Revenue already has a cross-agency sharing provision in the Tax Administration Act. This provision allows information sharing agreements to be authorised by Order in Council where the receiving agency is entitled to collect the information itself but it is more efficient to obtain the information from Inland Revenue. Consideration could be given to greater use of this provision, or amending the criteria to better enable its use in a wider range of circumstances.

[40] The first tax secrecy rule was contained in the Property Assessment Act 1879. Section 8 stated: "Every officer, clerk, or other person appointed under this Act shall maintain, and aid in maintaining, the secrecy of all matters that may come to his knowledge in the performance of his official duties, and shall not communicate any such matter to any person whomsoever, except for the purpose of carrying into effect the provision of this Act."

[41] Tax Administration Act, section 81(1). Note that there are also secrecy and disclosure rules contained in some of the other Inland Revenue Acts.

[42] Tax Administration Act, section 6(2).

[43] With an attendant criminal penalty for breach – see section 143C of the Tax Administration Act.

[44] See Information Privacy Principle 11 paragraph (d) contained in section 6 of the Privacy Act 1993.

[45] *New Zealand Stock Exchange v Commissioner of Inland Revenue* [1990] 3 NZLR 333 (CA).

[46] *Knight v Commissioner of Inland Revenue* [1991] NZLR 30 (CA).

[47] *Raynel v Commissioner of Inland Revenue* (2004) 21 NZTC 18,853 (HC) – note this case concerned sections 6 and 6A of the Tax Administration Act rather than the secrecy provisions, however the discussion about the promotion of voluntary compliance is relevant. See also discussion in Keating, "Can you keep a secret? The obligation of secrecy and right to disclose taxpayers' information" (2009) 38 AT Rev 135.

[48] See for example: *BNZ Investments v Commissioner of Inland Revenue* [2008] 1 NZLR 598 (CA); [2009] 2 NZLR 709 (SC); R v Morris [2005] 2 NZLR 684 (CA).

[49] For example, *New Zealand Stock Exchange v Commissioner of Inland Revenue* [1990] 3 NZLR 333 (CA). Similar reasoning was expressed in *Tauber v Commissioner of Inland Revenue* [2012] 3 NZLR 549 (CA).

[50] Tax Administration Act, section 146. Repealed by the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005.

[51] Kristofferson, Lang, Pistone, Schuch, Staringer, Storck (eds.), *Tax secrecy and tax transparency: the relevance of confidentiality in tax law*, Peter Lang Publishing, 2013.

[52] Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Justice, Ministry of Social Development, Department of Internal Affairs, ACC, NZ Customs Service, NZ Police, Statistics NZ, The Treasury, Serious Fraud Office. Other exceptions to tax secrecy relate to matters such as disclosures to taxpayers, their agents, Student Loan Scheme contact persons, persons engaged by the Commissioner to perform services, and publication of certain matters.

[53] The obvious area not covered is non-individual taxpayers (corporates and other entities). It also does not cover information about deceased individuals.

[54] Privacy (Information Sharing) Bill 318-1 (2011) Explanatory Note

[55] Hon Anne Tolley,"Whole of Government action plan on tackling gangs" (4 August 2014), http://beehive.govt.nz/release/whole-government-action-plan-tackling-gangs

[56] The Foreign Account Tax Compliance Act is a piece of United States legislation. It aims to reduce tax evasion by US citizens, tax residents, and entities through reporting by international financial institutions. US citizens and tax residents are required to report their worldwide income to the Internal Revenue Service whether they live in the US or not.

Commercial information

Discussions on information sharing in the wider government context tend to focus on personal information. Alongside personal information, Inland Revenue also holds significant amounts of commercial information, much of it sensitive. Often the personal and non-personal information is inextricably linked. When the two can be separated, it reduces the value of the information to the user.

Inland Revenue's current information sharing about serious crime is an example of where this difficulty arises. Currently, information can be shared about individuals involved in serious crime, but not entities involved in serious crime. There are, however, situations when entity information ought to be shared in relation to serious crime, and personal information can be inextricably linked or the line between what is personal information and what relates to an entity can be unclear.

Certain types of information sharing about individuals, which may be used to ensure benefit entitlements are being appropriately accessed, are well established and appear to be reasonably well accepted. Outside of the Tax Administration Act, information about individuals is subject to the requirements of the Privacy Act, meaning there is a clear framework for how personal information is treated, and how it can be shared. No such legislative framework exists for business or commercial information. It may be that there is less concern about some basic business information such as identifying details or basic income information and more concern about sensitive information, such as information that could prejudice a business commercially.

The Government's New Zealand Business Number (NZBN) project will see a register of businesses created that contains basic information, that would be available to the public. A register of business information is not new – this builds on the existing Companies Register and extends a publicly available register to all businesses regardless of form. All companies have now been issued a NZBN as part of the first step of rolling the NZBN out to all New Zealand businesses. The NZBN Bill proposes that only "primary business data" will be available on the register. This is a limited category of information, namely the NZBN, entity type, location, business start date and whether it is an active business. For companies, the legal name and registered address is also included.

As noted, Inland Revenue is perhaps unique in the breadth and quantity of information it collects and holds. This is particularly so in relation to commercial information, much of which can be very sensitive. For example, the rulings function can give rise to taxpayers providing highly sensitive commercial information in order to obtain an advance ruling on the tax implications of a major transaction. This could, for example, be an as yet commercially confidential future transaction such as a takeover

KEY QUESTIONS FOR READERS

4.1 Do you agree with narrowing the coverage of secrecy to taxpayer-specific information?

4.2 Do you think consent-based disclosure should be permitted, and should it be limited to within government?

4.3 To what extent should Inland Revenue increase information sharing with other government agencies?

4.4 Is there any commercial information that should be subject to additional protections?

or restructure, or a complex financing transaction, or an advance pricing agreement. Equally, the audit and disputes processes can result in Inland Revenue obtaining very sensitive commercial information.

On the other hand, Inland Revenue also holds a wealth of information, including basic data and statistics about non-individual taxpayers that might be of use in the wider government context without prejudicing the commercial position of the taxpayer or taxpayers to which it relates. It is important to find an appropriate dividing line to balance the sharing of data where that would significantly aid the integrity of the tax system or lead to significantly enhanced cross-government processes and the need to ensure that businesses are not commercially prejudiced.

An example of a situation in which sharing commercial information might enhance cross-government processes is in relation to streamlining business imports to remove any timing mismatch between GST input and output tax. Submissions from businesses on the recent review of the Customs and Excise Act have suggested that there is an opportunity to manage GST at the border more efficiently. Any such changes would require greater sharing of information between Inland Revenue and the New Zealand Customs Service.

[57] A fusion centre involves agencies working together to share resources and intelligence to deliver better outcomes. The aim is to create a holistic end-to-end view of particular issues (such as organised crime) and then apply the appropriate interventions (for example, deciding which legislation is appropriate to use).

[58] Sections 27(1)(c), 29(1)(a) and 29(1)(b) of the Privacy Act, and see also sections 6(c) and 9(2)(a) of the Official Information Act.

[59] P*ublic attitudes to the sharing of personal information in the course of online service provision* Lips, Eppel, Cunningham & Hopkins-Burns, 2010.

CHAPTER 5

THE ROLE OF TAXPAYERS & TAX AGENTS

SUMMARY OF PROPOSALS

Taxpayers who receive a pre-populated tax return would have an obligation to respond to that return.

The required response by a taxpayer to a pre-populated tax return would be to either confirm the return is a complete and accurate record of their tax affairs, or provide further adjustment information.

Taxpayers who receive a pre-populated tax return would be required to assess their own liability, and the confirmation of this return, with or without further adjustment information, would be their self-assessment.

If taxpayers who receive a pre-populated return do not make an assessment, Inland Revenue would be able to make a default assessment.

To modernise the tax administration, the Government wants to improve the delivery of digital services, expand withholding tax mechanisms, pre-populate income tax returns for individuals and make greater use of a business's existing financial systems to automate interactions with Inland Revenue. These features have implications for the obligations and responsibilities of taxpayers and tax agents.

Taxpayer self-assessment is a key feature of New Zealand's tax administration. An assessment, which determines the final amount of tax payable, is a critical part of the tax collection function and underpins the role taxpayers and tax agents have in tax administration. The discussion below considers the assessment system, and the current and future responsibilities of taxpayers and tax agents in making an assessment.

THE ASSESSMENT

An assessment is often the trigger point for a wide range of compliance and administrative actions by Inland Revenue. Depending on how the assessment system operates, the roles

and responsibilities of taxpayers and tax agents in making an assessment can vary.

Taxpayer self-assessment reflects the fact that a taxpayer has the relevant information and is often in the best position to determine their tax liability.[60] Self-assessment means taxpayers are responsible for:

- considering the facts relating to their own financial affairs;
- interpreting and applying the law to those facts;
- determining the amount of tax owing; and
- making that determination with an appropriate degree of finality.

Not all of these responsibilities are explicitly stated in the legislation, but they are inherent in taxpayers' obligations to determine their tax liability.

A self-assessment tax system generally provides an efficient basis for tax collection and should continue, because taxpayers have the information that is likely to result in the most accurate assessment. Self-assessment allows Inland Revenue to put its resources to best use. This means balancing resources between processing and checking the correctness of assessments, carrying out taxpayer audits and helping taxpayers to meet their obligations.

We next consider how the assessment obligations may change for taxpayers who are issued with a pre-populated tax return or who are using software that automates business interactions with Inland Revenue.

PRE-POPULATED TAX RETURNS FOR INDIVIDUALS

To make it easier for people to meet their tax obligations, the Government proposes that individuals receive income tax returns pre-populated

with information that Inland Revenue holds or sources from reliable third-parties. Pre-populating income tax returns could reduce compliance costs for taxpayers and can be an effective compliance response to some taxpayers omitting or under-reporting income.

Many OECD countries now pre-populate income tax returns.[61] For example, the Australian Tax Office has, since 2007, added information received for compliance purposes from third parties, directly to the relevant tax return. In the United Kingdom, taxpayers when filing a return online, see certain pre-populated data that HMRC holds.

In moving to greater pre-population, several questions arise, including who files tax returns, the point in time when an assessment occurs, and the obligations of taxpayers that underpin these actions. The specific nature of the information that could be pre-populated and who would be issued with a pre-populated return will likely be considered in a later discussion document on improving the tax system for individuals.

Filing of tax returns

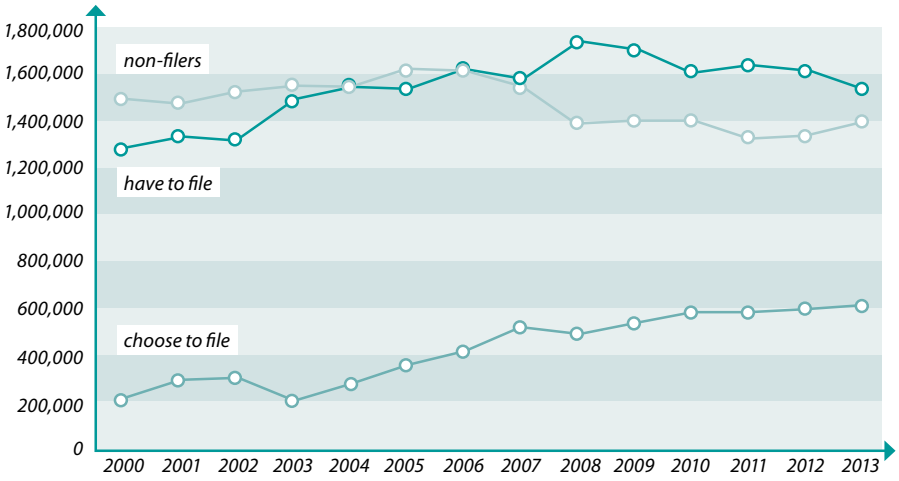
Filing a tax return and making an assessment are key parts of a taxpayer's obligation to pay the correct amount of tax on time. However, not all individuals are currently required to file tax returns. The personal tax summary (PTS) was introduced in 2000 and removed the requirement to file a tax return for individuals who earned income solely from salaries, wages, dividends and interest. The PTS provides a simplified means for some individuals to reconcile their affairs. A PTS is issued by Inland Revenue and shows gross income, taxes deducted and any refund or payment due.

Before the PTS was introduced, about 1.2 million taxpayers were required to complete an end-of-year tax return. It was envisaged that changes to the square-up process would reduce the number of taxpayers needing to file a return. The PTS system was originally designed so that the great majority of taxpayers would be freed from the annual obligation to square-up their tax affairs.

There are now growing numbers of taxpayers who are filing returns, or otherwise interacting with Inland Revenue, including individuals filing a donations rebate form or those that have in excess of $200 of interest or dividends with tax incorrectly withheld. Likewise, Inland Revenue's growing involvement in the delivery of social policies, such as Working for Families tax credits, has also substantially increased the number of taxpayers who file or interact with Inland Revenue.

INDIVIDUAL TAXPAYERS – NUMBER OF TAXPAYERS

The following graph shows the number of individuals filing income tax returns or PTSs from the years 2000 to 2013.



Tax return pre-population is one measure which can help to achieve the goal of simplifying taxpayer interactions with Inland Revenue. By pre-populating income tax returns, Inland Revenue could offer a more personalised and simpler return process. Furthermore, tax returns should be more accurate as the opportunity for error would be minimised. In turn, this should reduce the resources needed to correct simple errors.

Information Inland Revenue will populate

While there are practical limits to the completeness and accuracy of information that can be populated by Inland Revenue, it could be expected that Inland Revenue would add more than just information about PAYE or other taxes withheld at source to a pre-populated tax return.

For some types of income, the comprehensiveness of third-party information could allow income figures to be added to the return. For other types of income, third-party information may only allow Inland Revenue to personalise the prompts for further information to be added. As noted already, the specific nature of the information that could be pre-populated is likely to be considered in a later discussion document on improving the tax system for individuals.

Individuals will be issued with a pre-populated return

It is likely that only individuals with an IRD number would be issued with a pre-populated return. Currently it is not compulsory for every individual to have an IRD number and this is not expected to change. However, an IRD number would be needed for Inland

Revenue to pre-populate a tax return because it is an essential data point that enables information-matching.

In Australia, a Tax File Number (TFN) is the equivalent of the New Zealand IRD number. Although it is not mandatory for taxpayers to register for a TFN, taxpayers who do not register for a TFN cannot lodge their tax returns electronically or obtain an Australian Business Number.

While digital channels are the most effective way of delivering pre-populated returns, the Government's vision for the delivery of digital services incudes providing alternatives for taxpayers that cannot manage their transactions digitally. Taxpayers who cannot manage their transactions digitally may still receive a pre-populated return. For these taxpayers it may not be possible to effectively replicate all of the features of a digital pre-populated return in non-digital channels.

Obligations of a taxpayer issued with a pre-populated return

A taxpayer's response to a pre-populated return would be a proxy for the four elements of an assessment as outlined above. Therefore taxpayers would continue to be responsible for interpreting and applying the law to the facts relating to their own financial affairs.

It is proposed that a taxpayer issued with a pre-populated return must respond to that return within a prescribed period. If a pre-populated tax return provides a complete and accurate record of the taxpayer's affairs, the required response would be confirmation that the return is correct. In other situations the taxpayer may need to add further information, or amend the pre-populated information so that the correct net loss, terminal tax or refund due is calculated.

The obligation to respond within a prescribed period would be similar to the current obligation to file an income tax return by no later than the prescribed date. It is likely that the period would be informed by the extent to which information could be pre-populated and would take account of the time third parties needed to supply the information to Inland Revenue that was used for pre-population.

The date on which Inland Revenue receives a taxpayer's response would be treated as the date the assessment is made. This is because that date would be the first time Inland Revenue and the taxpayer were aware that the tax liability, as determined by the taxpayer, is intended to be final. In a digital environment, Inland Revenue could immediately notify the taxpayer of the point in time when the response had been received and the assessment therefore made.

Failure to respond to a pre-populated return

If Inland Revenue issued a pre-populated return but no response was received, it is important that there is still an assessment. As noted, an assessment is the usual trigger

point for penalties, and a wide range of compliance and administrative actions. Two approaches have been considered for ensuring there is an assessment if Inland Revenue receives no response to a pre-populated return. The choice involves a trade-off between administrative costs and the effects on compliance.

The first approach is a system of "deemed acceptance". This approach would mean when no response is received within the prescribed period, the taxpayer would be considered to have made an assessment in accordance with the pre-populated return. It is unclear, however, how the criteria for making an assessment could reconcile with deeming a taxpayer to have made an assessment. In many cases, no consideration may have been given by a taxpayer as to whether the pre-populated information was a complete and accurate reflection of their individual circumstances.

Deeming the acceptance of a pre-populated return may not, therefore, create the right incentives for taxpayers to respond to Inland Revenue when they have income that is not pre-populated. Whether this is a significant issue will likely depend on the comprehensiveness and accuracy of the pre-populated return.

The second approach would be to allow Inland Revenue to make a "default assessment". A default assessment is an estimation of tax liability made by Inland Revenue that remains in place until the individual files the return. After a default assessment has been issued, the onus is on the taxpayer to establish that the default assessment issued by Inland Revenue is wrong and by how much.

Due to the methods used, a default assessment may result in a tax liability that is slightly higher than a self-assessment. In these circumstances a default assessment may encourage taxpayers to confirm or amend their assessment. The default assessment by its nature cannot be expected to be completely accurate. Despite this, the default assessment approach is preferred because it provides Inland Revenue with a tool to address non-compliance by creating better incentives for taxpayers to respond to their pre-populated return.

Overwriting information on a pre-populated return

There are practical limits to the completeness and accuracy of pre-populated returns generated by Inland Revenue. It is therefore necessary to decide whether some pre-populated information should be "locked" so it cannot be overwritten, or if it is better to allow taxpayers to amend all pre-populated information.

In Australia and the United Kingdom, information that has been pre-populated can be amended by a taxpayer during the return-filing process. If pre-populated information can be amended while responding to a return, the benefit pre-populated returns offer as a compliance tool may be reduced, and administrative costs could be increased depending on the process adopted for verifying taxpayer

amendments.

Making it too difficult to amend pre-populated figures could have undesirable consequences. For example, it could mean:

- taxpayers are over reliant on the figures provided;
- taxpayers do not pursue the correction of genuine errors;
- additional compliance costs for taxpayers (and potentially information providers); and
- an increased revenue risk through additional undeclared income.

There is therefore a trade-off between the administrative costs and the benefit pre-population offers as a compliance tool. In some instances Inland Revenue may need to make some assumptions about a taxpayer's individual circumstances to allow information to be pre-populated. As taxpayers are ultimately responsible in a self-assessment system for the assessments they make, it is suggested that all pre-populated return information is able to be overwritten during the return-filing process.

To ensure taxpayers are aware of their self-assessment responsibilities as more pre-populated information becomes available, it would be made clear that taxpayers are responsible for the accuracy of their assessment, and that penalties for underpayment and certain types of error or other behaviour can still apply. This is consistent with equivalent approaches taken in Australia and the United Kingdom to pre-populating tax return information for individuals.

TECHNOLOGY AND ASSESSMENTS FOR SMALL BUSINESSES

To make it easier for small businesses to comply with their tax obligations, the Government is considering various options, including ways to encourage the use of improved business systems and accounting software that meets specific standards. These options focus on systems being designed in a way that gives both Inland Revenue and taxpayers comfort that the right amount of tax has been determined and paid.

Businesses would benefit as these options could:

- reduce the number of errors by assisting taxpayers to classify transactions;
- reduce taxpayer effort by aligning Inland Revenue information requirements with a taxpayer's normal business processes; and
- simplify interactions with Inland Revenue by automating the supply of information.

Software that can automate the supply of information to Inland Revenue may mean that "returns" in the traditional sense are no longer required for some businesses. However, even with business systems that can automatically supply information to Inland Revenue throughout a period, there will likely need to be a point in time at which a business's assessment is treated as made. Therefore a business may be required to confirm the aggregate final figures in order to trigger the assessment. Confirming the aggregate final figures is a proxy for a business having interpreted and applied the law to the facts relating to their own financial affairs, and shows an intention that the amount of tax determined is final. Any final withholding-type taxes would provide an exception to this approach.

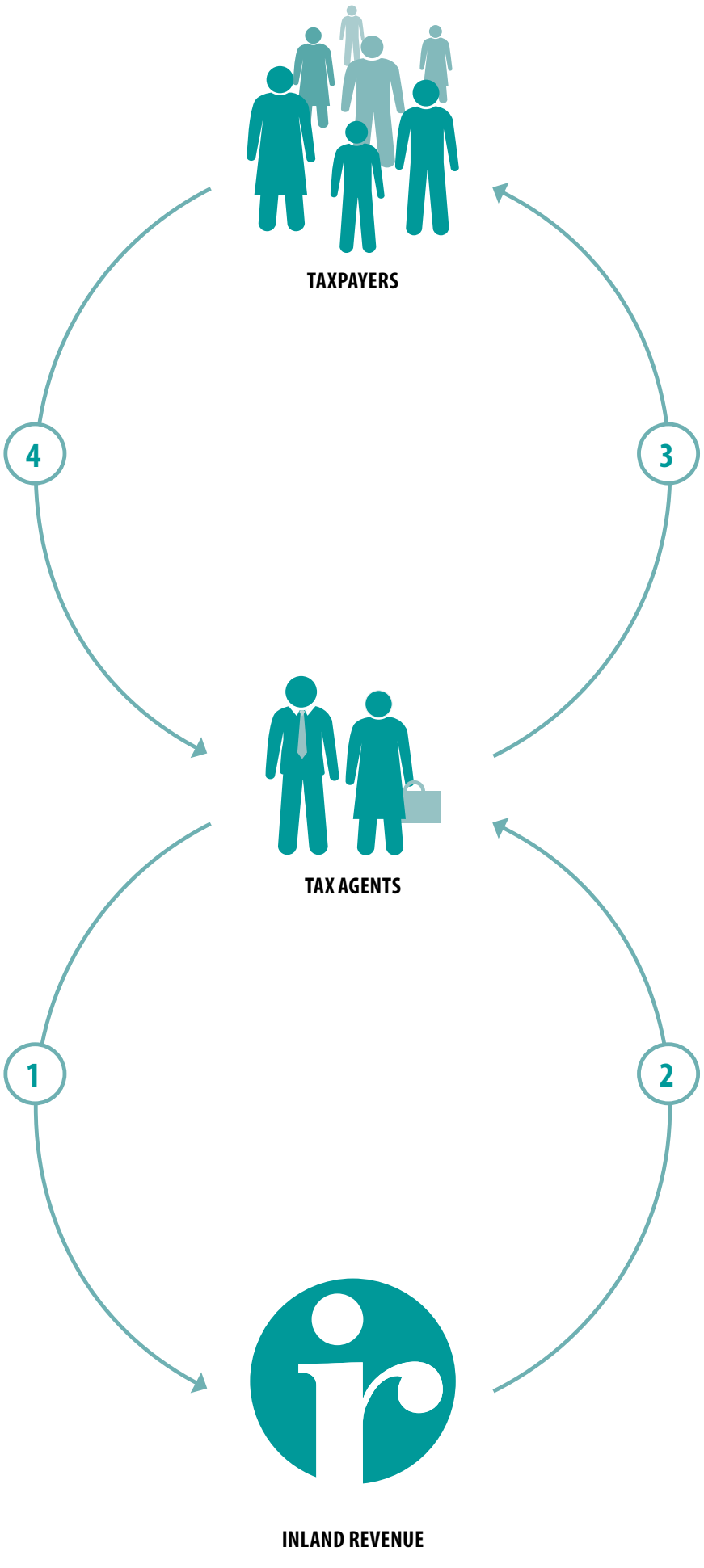
Options for improving the tax system for small businesses are being considered and may be included in a subsequent *Making Tax Simpler* discussion document.

THE ROLE OF TAX AGENTS

About 5,300 tax agents are registered with Inland Revenue and they manage the tax affairs of nearly two million clients. Tax agents range from individual bookkeepers working from home, to large businesses that offer consulting and accounting services. The advice and assistance tax agents give their clients contributes significantly to the smooth running of the tax system. While features of the modernised tax administration suggest the nature of the support agents provide may change, tax agents are expected to continue to have a key role in compliance outcomes.

Recognising the role of tax agents

Clients place a high degree of trust in the services of tax agents. Many tax agents are also members of professional bodies and associations, whose brand gives a client comfort the agent has an appropriate standard



1 **TAX AGENTS MANAGE THEIR CLIENTS':**

- relationship with Inland Revenue
- tax affairs
- compliance needs

2 **INLAND REVENUE PROVIDES:**

- access to clients' information
- tax agent services

3 **TAX AGENTS PROVIDE:**

- advice on how to comply
- education on tax law for specific transactions
- assistance to clients with compliance matters

4 **TAXPAYERS:**

- provide information
- seek advice

of skill and experience. A client can have greater confidence they are paying the right amount of tax when the advice and support a tax agent provides is based on complete information using the agent's expertise in tax law and practice.

Using a tax agent allows a taxpayer to focus their time and resources on their business. Some of the ways tax agents assist their clients to comply with their tax obligations include:

- helping with the requirements for setting up a business;
- providing on-going transactional tax and accounting advice;
- advising on the nature and quality of records required to be kept;
- ensuring clients meet their filing and paying obligations;
- educating clients on specific areas of law and administrative requirements; and
- taking responsibility for managing correspondence and interactions with Inland Revenue.

Inland Revenue recognises the important role of tax agents by providing support and special services. For example, all tax agents have an agent account manager who serves as the primary contact with Inland Revenue. A dedicated telephone service provides tax agents with a convenient channel for communicating with Inland Revenue, and myIR provides tax agents with a range of online self-service options that allow tax agents to manage their clients' taxes quickly and easily.

In addition, tax agents are provided with an extended period of time in which to file their clients' income tax returns. To be eligible for this extension of time, a person must prepare income tax returns for 10 or more taxpayers, and be:

- a practitioner carrying on a professional public practice;
- a person carrying on a business or occupation in which annual returns of income are prepared; or
- a Māori Trustee.

The broad range of eligible persons for the extension of time recognises the important role of tax agents and allows them to better manage their clients' tax affairs. An eligible person will be listed as a tax agent unless this would adversely affect the integrity of the tax system. Occasionally Inland Revenue may have concerns about a particular applicant's suitability to be a tax agent or about existing tax agents or key office holders. To maintain the integrity of the tax system, Inland Revenue may refuse to list a tax agent, or can remove them from the list of tax agents. The removal of entities from the list of tax agents is infrequent and the number of declined applications is low. This is not expected to change.

Consideration has been given to whether more regulated tax agent rules such as Australia's would

KEY QUESTIONS FOR READERS

5.1 Will pre-populated tax returns make it easier for people to meet their tax obligations?

5.2 For taxpayers receiving pre-populated returns do you agree with the proposed process for outlining the related obligations and responsibilities?

5.3 If the supply of regular information is automated through the use of business accounting systems, will the time at which the aggregate final figures are confirmed be an appropriate point of self-assessment?

5.4 For tax agents using Inland Revenue's current service offering, what services do you consider most important to facilitate your role in advising and assisting clients?

5.5 What sort of services would you like to see Inland Revenue make available to tax agents or other tax service providers in the modern tax administration?

5.6 What would you want considered in designing more digital service offerings for tax agents and other tax service providers?

[60] See *Legislating for self-assessment*, a government discussion document, August 1998.

[61] *OECD, Tax Administration 2013 Comparative Information on OECD and Other Advanced and Emerging Economies* 2013, Paris, OECD.

be beneficial to New Zealand. On balance, it appears that any tax integrity benefit would be outweighed by higher compliance and administrative costs.

Enhancing access to Inland Revenue tax agent services

The definition of a "tax agent" used for determining who can have an extension of time for filing is also used for determining who can access the services Inland Revenue provides to tax agents. This means that other tax service providers, for example, those only filing GST and PAYE returns for clients, are not able to access these services. While these providers can still look after the tax affairs of clients under the nominated person process, the additional services Inland Revenue provides to them is limited.

Modernising the tax system provides Inland Revenue with the opportunity to allow other tax service providers to access the broader range of services currently only available to those that meet the definition of a tax agent. To achieve this, legislative change may not be needed.

Tax agents' role in modernising the tax administration

Modernising the tax system will require change over a number of years. Tax agents will have a key role in enabling their clients to benefit from the new features of the tax administration. These changes may allow tax agents to spend less time on routine processes and more time on other services. For example, it could mean focusing on ensuring that businesses are inputting the correct information and that their systems are appropriate, and that clients are educated on how to navigate new processes.

Improving the delivery of digital services could mean tax agents have better access to the information Inland Revenue holds about their clients, and any actions Inland Revenue is taking. These improvements and other changes may provide increased opportunity for tax agents to work in "real time", reducing end-of-year work pressures. In the future this could mean the extension of time for tax agents becomes less relevant.

The need to carefully review information and make sure it is accurate will become even more critical as information collection is streamlined. The opportunity for tax agents to influence compliance outcomes is broader than income tax filing and payment compliance. Advice on how tax law applies to client circumstances will remain an important part of tax agents' services. In this regard it will be important to consider the increase in cross-border transactions, in part facilitated by new technologies, which enables more businesses to enter international markets.

CHAPTER 6

FUTURE ISSUES

A quicker more efficient tax administration requires a look at some of the tax system's key regimes and underpinning rules in the Tax Administration Act. This chapter considers the advice and disputes regimes, the time bar, record-keeping requirements, and the future compliance and penalties approach. In all of these areas analysis will be followed by consultation once key features of the modernised tax administration have been decided and implemented.

ADVICE AND DISPUTES PROCEDURES

The proposals on the future assessment approach in the last chapter will necessitate some change to the disputes and binding rulings procedures, but the degree of change is still to be determined. In considering any changes, an important consideration will be the need for the tax system to focus on speed, accuracy and predictability in business taxation matters. The avenues for taxpayers to seek advice from Inland Revenue, and procedures for resolving disputes, are essential mechanisms that impact these objectives.

Options available for taxpayers to seek Inland Revenue's view

In a self-assessment system taxpayers need to ascertain their tax positions with reasonable certainty. Inland Revenue supports individuals and businesses to meet their obligations by providing information, reminders, self-assessment tools, online services and advice.

In providing advice to taxpayers, Inland Revenue must balance taxpayers' obligations to self-assess against its role in protecting the integrity of the tax system by ensuring consistency and certainty. A key constraint in determining the balance is that Inland Revenue will never have sufficient resources to advise all taxpayers about the implications of every transaction or income source. The provision of advice is therefore prioritised and streamlined for different contexts and to different audiences – for example, specific taxpayers and for the wider public.

Inland Revenue provides advice to the wider public by publishing interpretation statements, interpretation guidelines, public

rulings, *Questions We've Been Asked, Agents Answers, Business Tax Updates* and other guides to assist taxpayers with their obligations. More specific advice is provided by Inland Revenue community compliance officers. This service is free to any individual or organisation in business, anyone considering setting up in business, sports clubs and other non-profit bodies. Some advice can also be sought through Inland Revenue's call centres.

Modernising the tax administration will mean simplifying and automating many processes. However, the nature of tax means there will be matters where:

- the law (or advice on the law) is unclear and there is more than one possible interpretation;
- new legislation applies and requires a new process or response;
- a transaction is novel, sensitive or controversial;
- an arrangement raises significant financial issues or has a wide impact; or
- the arrangement involves a complex transaction.

In these situations taxpayers may require more specific advice, particularly before providing their self-assessment. Giving this specific advice is an important part of the role of tax agents, tax advisors and other professional advisors. However, seeking Inland Revenue's view on an issue should afford a taxpayer some additional certainty. As Inland Revenue must administer the tax system with limited resources, allocating these to providing specific advice can mean directing resources away from compliance activities. On the other hand, giving this advice can also encourage better compliance.

Options for a taxpayer to seek advice from Inland Revenue (other than straightforward advice) include seeking a binding ruling or requesting non-binding informal advice. Each of these options has limitations.

The binding rulings regime represents a balance between a desire to provide an efficient service to taxpayers that will enhance business certainty, and the need to provide adequate protection for the revenue base. The cost, the disclosure requirements and the restricted situations in which Inland Revenue can (or will) rule limits the number of taxpayers that may benefit from seeking a private ruling.

A more informal option is non-binding advice. One type of non-binding advice is Inland Revenue's indicative view. An indicative view provides the taxpayer with an "initial reaction" to any concerns or potential areas that may be contested in respect of an arrangement or tax position. The indicative view is normally only available to larger taxpayers when a binding ruling cannot be given or when the arrangement is in its very early stages (or other legally non-binding stage). They may be sought because an arrangement in the

early stages may change materially. Indicative views are not ordinarily available on matters of tax avoidance or overly complex transactions or issues.

In limited circumstances a taxpayer may seek to clarify how the law applies by initiating a dispute through the use of a taxpayer initiated notice of proposed adjustment. It is questionable whether using the disputes process in this way is efficient, as the disputes process starts to apply even if there is no genuine dispute and Inland Revenue will, at any point in time, be unaware of when the process is planned to be used.

To guide future considerations, the Government seeks feedback on whether the current options for taxpayers to seek Inland Revenue's view on specific issues are working effectively and, if not, the Government welcomes reader's views on how these products may be improved to better meet future needs. It is important that feedback takes account of the wider business transformation objectives, including proposals around the time bar and penalties.

TIME BAR

An important part of Inland Revenue's role in a tax system based on self-assessment is to carry out checks to ensure the correctness of assessments made by taxpayers. In the modernised tax administration Inland Revenue's role is expected to increase in the period before a taxpayer makes an assessment. It will involve, for example, pre-populating tax returns for individual taxpayers and building compliance measures into a business's natural systems. However, post-assessment activities, including investigations, will continue to be a crucial part of Inland Revenue's role in protecting the integrity of the tax system.

When an assessment is incorrect it can be amended by Inland Revenue to increase the amount of tax until the end of the period known as the "time bar". The period chosen for the time bar attempts to balance the obligation of taxpayers to assess the correct amount of tax with the need for finality. Finality is desirable given the important and sometimes complex nature of tax, the need to keep records, and the consequences for a taxpayer, which may result from the failure to discharge their obligations. For the Government, the desirability and advantage of finality is in providing the right balance between enforcement and future compliance.

The current time bar mostly stops Inland Revenue from being able to amend an income tax or GST assessment to increase the amount of tax if four years have passed from the end of the tax year in which the taxpayer provided the tax return. To maintain fairness, there are some exceptions to this rule. This four-year fixed-period approach is relatively simple; taxpayers and Inland Revenue generally know when finality will be achieved. The disadvantage of the current fixed-period approach, however, is that it does not allow compliant taxpayers to achieve finality sooner.

A similar limitation applies to the refunding of overpayments of tax. Any changes to the time bar for decreasing the amount of tax would be considered at the same time as changes to the time bar for increasing tax.

An alternative approach to the time bar

The proposed features of the modernised tax administration, including increased use of technology in pre-populating tax returns for individuals, information matching and better compliance profiling may give Inland Revenue a higher degree of comfort that a return is correct. Once these features are implemented, the Government could consider a change in approach.

Options could include a reduced time period for Inland Revenue to make an enquiry or a reduced time bar in situations where Inland Revenue was comfortable that returns were very likely to be materially correct. These approaches will allow Inland Revenue to focus available resources on collecting the highest net revenue practicable over time.

The Government seeks feedback on the desirability of a change in approach that reflects what Inland Revenue may be able to determine in the modernised tax administration about a taxpayer's likely compliance. As noted, it is only once features of the modernised tax administration are implemented, that the Government could consider a change in approach.

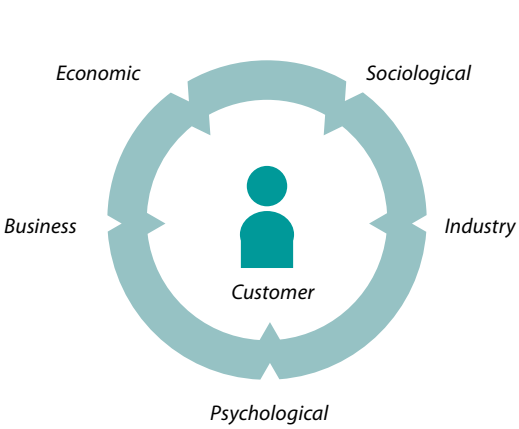
RECORD-KEEPING REQUIREMENTS

The main record-keeping requirement for businesses is that records must be kept for seven years after the end of the income year or GST period to which they relate. Inland Revenue may require records to be retained for up to three additional years if an audit or investigation is being conducted or actively considered.

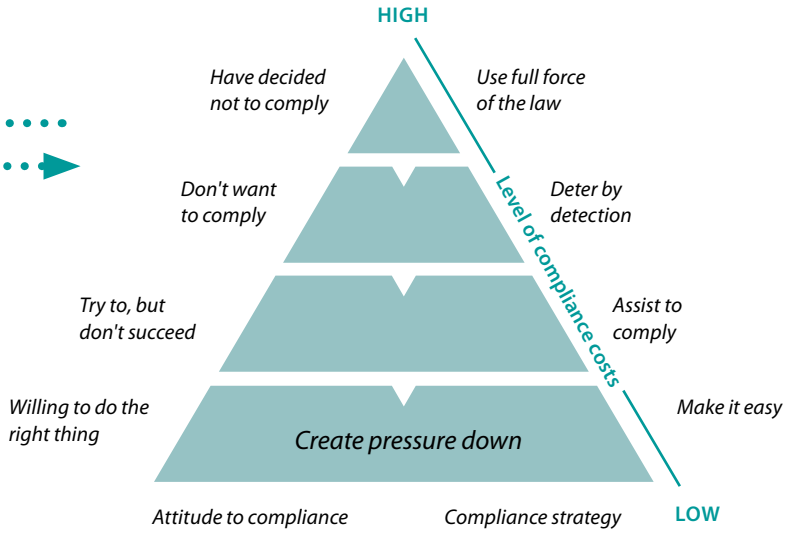
The record-keeping legislative requirements could, in the future, be updated to reflect the costs of keeping records in a digital environment, and that Inland Revenue may have more information from interacting with business systems. In updating the record-keeping requirements there is a question of whether the current time-periods for keeping records would be suitable in the future and whether, for example, they could be aligned with the time bar, including any revised time bar. Any changes would need to take account of other non-tax record-keeping obligations imposed on businesses.

COMPLIANCE AND PENALTIES

Tax compliance means people pay the correct amount of tax and receive the entitlements they should. For those that do not comply with their payment obligations it is important that consequences are in keeping with the severity of the actions in question. The illustration below shows the "triangle" compliance model Inland Revenue has used to determine how to respond to various levels of compliance and non-compliance. The "triangle" compliance model



Factors that influence customer decisions and behaviour



was introduced in 2001. It was new thinking then, and moved Inland Revenue from a largely enforcement-based approach to a service-orientated approach. The "triangle" model takes account of taxpayer attitudes and how Inland Revenue should respond, and recognises that most taxpayers are compliant. Shortfall penalties are imposed when a required standard of behaviour has not been met.

Modernising the tax system provides an opportunity to recognise that taxpayer behaviour is about more than attitude. A combination of capability, opportunity and motivation make up compliance behaviour. Inland Revenue needs to think more widely about taxpayer needs and behaviours, and start building an environment that supports taxpayers right from the start. To support this, a new compliance model has been developed that emphasises the fact that Inland Revenue's approach is not prescriptive and needs to be tailored for each taxpayer.

The new compliance model is made up of moveable wheels that show how Inland Revenue should be flexible and adaptive. At the centre of the new compliance model is the customer and what forms their behaviour. The middle wheel shows the five key principles of the new compliance model. The outer wheel shows the seven activities Inland Revenue uses to build compliance.

KEY QUESTIONS FOR READERS

Are the current options for taxpayers to seek Inland Revenue's view on specific issues working effectively?

If not, what are your views on how the provision of advice may be improved, taking into account any limitation on Inland Revenue's resources?

What suggestions do you have for how the time bar and record-keeping period rules could be developed in the modernised tax administration?

The new approach to compliance could mean a different approach to penalties. Further analysis of this important area may be included in a subsequent *Making Tax Simpler* discussion document.

APPENDIX

TAX SECRECY IN OTHER JURISDICTIONS

Australia

In Australia, it is an offence to disclose "protected information", being information obtained under a tax law that relates to the affairs of, or identifies an entity.[62] The information must have been obtained as a "taxation officer".

The Australian secrecy rule is subject to a wide range of exceptions, which permit disclosures in the course of performing duties, to Ministers, to various specified government departments and for law enforcement purposes.

Consent of the entity to which the information relates is not a defence to prosecution for disclosure. However, it is not an offence to disclose when the information was already available to the public. The Australian legislation also contains rules about disclosure of protected information by persons who are not taxation officers.

United Kingdom

In the United Kingdom, revenue and customs officers may not disclose information held by HMRC in connection with the functions of HMRC.[63] This rule is subject to a public interest disclosure rule and a rule regarding disclosure to prosecuting authorities. Disclosure is also permitted for functions of HMRC, for civil or criminal proceedings (relating to revenue or customs), on the order of a court, and with the consent of the taxpayer concerned.

Revenue or customs information that specifies the person's identity or would allow their identity to be deduced is exempt from disclosure under the Freedom of Information Act 2000. Otherwise, information protected by the secrecy rule is not exempt from the provisions of the Freedom of Information Act.

Canada

In Canada, information collection and disclosure is regulated at both the federal and provincial levels. Of primary relevance, the federal Income Tax Act provides that officials may not disclose or use taxpayer information other than in the course of the administration or enforcement of the Income Tax Act or certain other legislation.[64] "Taxpayer information" is

defined as information relating to one or more taxpayers but not including information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.[65]

There are a significant number of exceptions to the non-disclosure rule. These include disclosure when there is imminent danger of death or injury to an individual, disclosure to government or provincial officials for policy formulation or evaluation, administration or enforcement of various acts (generally relating to entitlements or savings), in relation to debts to the Crown, and when required by certain (specified) other Acts. Information may also be disclosed if the taxpayer concerned has consented to the disclosure.

United States

In the United States, the debate over whether tax privacy promotes individual compliance has been described as "as old as the income tax itself".[66] Today, the federal government is prevented from publicly releasing the details of any specific taxpayer's return or audit history, unless the taxpayer consents.[67]

The US Code protects "returns" and "return information", both of which are defined. A "return" is a tax or information return, declaration of estimated tax or claim for a refund. "Return information" is a much broader class of information about a taxpayer, including their identity, income, deductions, credits, and their audit and penalty history. It does not however, include information in a form which cannot be associated with, or otherwise (directly or indirectly) identify a particular taxpayer.

As with the other jurisdictions considered, there are a range of legislative exceptions to the general rule. Many of these relate to tax administration purposes, but non-tax purposes are also included, such as locating fugitives for use in criminal investigations to intelligence agencies in relation to applications under Federal loan programmes, and certain Medicare purposes. In addition, while it is not done at the federal level, some state tax authorities publish online the detail of "delinquent taxpayers" (individuals and corporates) who have outstanding tax liabilities.[68]

Finland

In some other countries, for example Finland, the position is somewhat different. While tax secrecy rules still exist in Finland, protecting tax documents concerning a taxpayer's financial position and other tax documents containing information on an identifiable taxpayer, lists of all individual taxpayers and their income are published annually.[69] Certain information regarding the taxation affairs of corporations is also public, including their taxable income and property, total amount of taxes imposed, total amount of withholding tax, and the amount to be levied or refunded in the course of tax collection.

[62] Taxation Administration Act 1953 (Cth) Schedule 1, Chapter 5, Division 355.

[63] Commissioners for Revenue and Customs Act 2005, section 18.

[64] Income Tax Act, RSC 1985, c1 (5th Supp) section 241(1).

[65] As above, section 241(10).

[66] Blank, J.D. "USA", in Kristofferson, Lang, Pistone, Schuch, Staringer, Storck (eds.), *Tax secrecy and tax transparency: the relevance of confidentiality in tax law*, Peter Lang Publishing, 2013, p1163.

[67] 26 USC § 6103.

[68] See, for example, Vermont http://www.state.vt.us/tax/delinquenttaxpayers.shtml; Wisconsin http://www.revenue.wi.gov/html/delqlist.html; New York http://www.tax.ny.gov/enforcement/delinquent_taxpayers_individuals.pdf.

[69] Aima, K & Hellsten, K, "Finland", in Kristofferson, Lang, Pistone, Schuch, Staringer, Storck (eds.), *Tax secrecy and tax transparency: the relevance of confidentiality in tax law*, Peter Lang Publishing, 2013, p404.