

POLICY AND STRATEGY

Tax policy report: Collecting regular datasets from payment service providers

Date:	28 January 2021	Priority:	Medium
Security level:	In Confidence	Report number:	IR2021/020

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations Authorise the submission of the Cabinet Economic Development Committee paper to the Cabinet Office	4 March 2021

Contact for telephone discussion (if required)

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28 January 2021

Minister of Revenue

Collecting regular datasets from payment service providers

Purpose

1. This paper seeks your agreement to refer the attached Cabinet Economic Development Committee paper and draft consultation document to the Cabinet Office by 10:00 a.m., 4 March 2021 for the Cabinet Economic Development Committee (DEV) to consider at its meeting on 10 March 2021.
2. The draft paper is seeking Cabinet's agreement to draft an Order in Council and delegate authority to you to then release the Order in Council, once drafted, with the attached discussion document for consultation with stakeholders.

Context and background

3. The Tax Administration Act 1994 (TAA) allows for the bulk collection of data from persons holding that data, where necessary or relevant for a function lawfully conferred on the Commissioner of Inland Revenue. The Commissioner has a duty to protect the integrity of the tax system and to collect the highest net revenue over time with certain data critical to the undertaking of these duties.
4. Datasets from third parties are currently collected under this power on an ad hoc basis. The reason for this is that the legislative provision they are collected under was not designed for repeat requests and so requires the Commissioner to issue a notice under the TAA legislative power each time the data is required.
5. Inland Revenue has been collecting datasets on a semi-regular basis from two major payment service providers operating in New Zealand since 2005.¹ The datasets collected consist of aggregated data of merchants' incoming financial transactions and are valuable for several purposes.² Primary among these is the insights they make possible for ensuring compliance through education, marketing and targeted campaigns as well as the identification of potential non-compliance. Macro-analysis of this information is also used in research and to inform policy.
6. New legislation was enacted in early 2019 to address the need for the regular collection of large datasets.³ The change provides for recurring collection of datasets on a continuing and regular basis, enabled by Order in Council. Officials are now seeking to use this new power for the first time and collect data sets from payment service providers on a regular and repeating basis.
7. This new mechanism for dataset collecting will provide a more efficient and transparent process for collecting the same type of information Inland Revenue does currently, but more regularly, and from more payment service providers.

¹ A payment service provider is defined as a third-party business who facilitates payment for goods and services between customers and merchants. Examples include Windcave and Verifone, etc. Some recognised names, such as Apple Pay and AliPay, are excluded from this definition as these are considered products supported by the various banks rather than payment service providers in their own right.

² A merchant is defined as a person or entity that is engaged in a business activity. This aggregated data will consist of data from merchants who use payment service providers.

³ Section 17L of the Tax Administration Act enables Regulations providing for the regular collection of bulk datasets

8. In June 2020, officials provided the previous Minister of Revenue with the necessary Cabinet paper and accompanying discussion document to be submitted to Cabinet seeking authorisation for consultation. These were approved by the previous Minister of Revenue ahead of the election however there was not enough time for them to progress through Cabinet before Parliament dissolved. Officials are now seeking to resume this process.
9. In this report, officials seek your approval for the attached discussion document and Cabinet paper. The Cabinet paper is seeking that Cabinet:
 - agree the content of the attached discussion document,
 - authorise you to instruct the Parliamentary Counsel Office to draft an Order in Council for consultation, and
 - delegate authorising the release of the discussion document and draft Order in Council to you.

Improving voluntary compliance

10. Inland Revenue has previously collected datasets from payment service providers on an ad hoc basis. This process is very time and resource-consuming and has resulted in data being collected irregularly. Irregular collection makes it difficult to achieve outcomes such as accurately assessing compliance over several years and providing timely support.
11. The data collected to date has been crucial to improving Inland Revenue's ability to know where and when to direct resources to realise value for taxpayers, Inland Revenue and the Government. This information has been used and will continue to be used for three main purposes:
 - to increase compliance through education, marketing and targeted campaigns to enable taxpayers to fulfil their tax obligations right from the start,
 - to undertake risk analysis, including the detection of those operating in the hidden economy, and
 - to inform policy development through macro-analysis research and aid in policy evaluation and application.

Example of this data helping taxpayers get it right from the start

A new business has recently started trading and, due to a predicted annual turnover of \$40,000, is not GST registered. After a successful start-up period, they receive \$75,000 of income in their first six months.

Inland Revenue can verify the business' income through the information provided by the relevant payment service provider and take proactive steps to remind the business owner that they are now required to register for GST, providing education and support earlier and enabling them to fulfil their tax obligations. They are able to meet their tax obligations and embed best practices, rather than receiving an unexpected tax bill for the oversight.

12. Irregular dataset collection makes it difficult for us to achieve outcomes such as gaining insights into behaviour over several years and providing timely support or enforcement action. Information sharing between payment service providers and Inland Revenue will be streamlined under the proposal. This will improve efficiency and so help promote compliance and maintenance of the integrity of the tax system.

13. The payment service provider market continues to change and is no longer dominated by a small number of major players. Under this new legislation, the Order in Council would apply to a class of persons rather than specific, named entities. The outcome of this is that the repeat request for datasets made under this provision would apply to all payment service providers operating in New Zealand, leaving no party at a commercial disadvantage. Increasing the number of payment service providers Inland Revenue receives information from also mitigates the impact of these market changes on potential insights.
14. Although the first use for this provision is proposed to be for payment service providers, it will be used for more industries in the future to realise further insights. It is therefore important that an effective process is established as part of this initial use so that Inland revenue can more efficiently utilise this provision in the future.

Privacy is a priority

15. The aggregated merchant payment data received from payment service providers will show debit, credit, cash out and refunds, both volume and value, per merchant ID for the previous three-month period. This will be accompanied by generic merchant information as outlined in the discussion document (e.g. merchant unique identifier, trade name, contact information, etc). The data received will not relate to individual customer detail and individuals' payment data will not be identifiable in what is collected.
16. Inland Revenue has been working closely with the Office of the Privacy Commissioner throughout the lifecycle of this project and will continue to do so through the creation of the Order in Council.

Consulting on the draft Order in Council

17. An Order in Council can be made for the regular collection of information for the purpose of administration or enforcement of the Inland Revenue Acts, or to fulfil a function lawfully conferred on the Commissioner. The Order in Council is required to prescribe:
 - the type of information that may be collected;
 - to whom the regulations apply;
 - the frequency of reporting;
 - the form of the information; and
 - the specifications for the reporting method.
18. The making of an Order in Council requires certain consultation to be undertaken. Consequently, the Cabinet paper seeks to commence consulting on the proposal and draft Order in Council in order to meet these requirements.
19. The draft discussion document will be finalised, and the draft Order in Council attached once drafted. These will then both be released for consultation with the Privacy Commissioner, interested stakeholders, and other organisations who represent the interests of the public affected by the regulation, to further develop the proposal and determine the above requirements.
20. The attached Cabinet paper will seek Cabinet's approval for you to invite the Parliamentary Counsel Office to commence drafting an Order in Council to give effect to this proposal and allow us to consult on it. Officials have indicated to the Parliamentary Counsel Office that a report is being provided to you on this matter.

Consultation

21. Initial consultation was undertaken with identified payment service providers in formulating the discussion document. This means that all major players in this market are aware of our intention to consult on and enact an Order in Council under section 17L of the Tax Administration Act.
22. The Treasury, the Parliamentary Counsel Office, the Office of the Privacy Commissioner and the Ministry of Business, Innovation and Employment were consulted in preparing these papers, including the discussion document.
23. Key stakeholders, including the Privacy Commissioner, will be formally consulted on the discussion document and draft Order in Council.

Proactive release of documents

24. Cabinet papers are required to be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is a good reason not to. The attached Cabinet paper contains a proposal to delay its proactive release, alongside the associated minutes and key advice papers, until the launch of consultation.

Next steps

25. If you agree for us to consult, a Cabinet Economic Development Committee paper is attached for your consideration and referral to the Cabinet Office.
26. Following consultation, officials will report back to you and Cabinet on the outcome of submissions and seek final policy approval. Officials anticipate this will be in mid-2021.
27. The proposed timeline for this is:

Cabinet authorises the discussion document for consultation and authorises you to instruct Parliamentary council to draft an Order in Council for inclusion as part of consultation.	March 2021
Parliamentary Counsel Office drafts Order in Council	March to May 2021
Officials report to you seeking your approval to release the discussion document and draft Order in Council	May 2021
Discussion document and draft Order in Council released for consultation	May to July 2021 (minimum of 6 weeks in line with section 17L requirements).
Officials report back to you and Cabinet on the outcome of submissions and seek final policy approval	September 2021 (factoring time for PCO to redraft the OIC in line with consultation analysis and final policy proposals)

Recommended action

We recommend that you:

28. **Note** the contents of the attached draft Government discussion document *Regular dataset collection from payment service providers: a government discussion document* and the associated Cabinet paper, seeking agreement to consult on this proposal.

Noted

29. **Agree** to submit the attached discussion document and Cabinet Economic Development Committee paper, seeking approval for consultation, to the Cabinet Office by 10am on Thursday 4 March 2021 for the Committee to consider at its meeting on 10 March 2021.

Agree/Not agreed

30. **Agree** to the delayed proactive release of this Cabinet paper, associated minutes, and key advice papers until the launch of consultation, subject to redactions under the Official Information Act 1982.

Agree/Not agreed

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Hon David Parker

Minister of Revenue

/ /2021