

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

REGULAR DATASET COLLECTION FROM PAYMENT SERVICE PROVIDERS

Proposal

1. This paper seeks the Committee's authorisation to release a discussion document, *Regular dataset collection from payment service providers: a government discussion document*, for consultation with stakeholders.
2. This paper also seeks the Cabinet Economic Development Committee's agreement to invite the Minister of Revenue to instruct the Parliamentary Counsel Office to draft an Order in Council for consultation.
3. Following Cabinet approval of the release of the discussion document and the drafting of the Order in Council, delegate the release of these documents to the Minister of Revenue.

Relation to Government Priorities

4. This proposal is part of the information collection and use workstream on the Government's current tax policy work programme. The efficient and effective collection and use of information helps to support voluntary compliance with tax obligations and ensures that compliance and administration costs are minimised. The proposal also supports wider Government priorities of minimising opportunities for avoidance and evasion.

Executive Summary

5. Inland Revenue can collect datasets from third parties on an ad hoc basis under the Tax Administration Act 1994 (TAA). The reason for this irregular collection is that the legislative provision they are collected under was not designed for repeat requests and so requires the Commissioner of Inland Revenue to issue a notice under the TAA's legislative power each time the data is required. This is inefficient and resource intensive, resulting in irregular collection despite the valuable insights such data makes possible.
6. Datasets have previously been collected from a limited number of payment service providers operating in New Zealand. The datasets collected consist of aggregated data of merchants' incoming financial transactions and are valuable for several purposes. Primarily the insights they make possible for ensuring compliance through education, marketing and targeted campaigns including investigation of high-risk cases. As an example, these datasets directly result in the early identification of ceased merchants who may need assistance in finalising their tax affairs or new merchants who may need support to understand their tax obligations and how best to comply.

7. Electronic payment has grown exponentially in New Zealand and is now the main way that most businesses make sales. These electronic transactions are facilitated by payment service providers. The legislative provision for data collection is now out-dated in this context and does not allow for regular information collection from a third-party. Currently, a notice is required to be issued each time such data is required.
8. New legislation was enacted in early 2019 to address the need for the regular collection of large datasets. This new regulation power represents a streamlining, rather than increase, of existing dataset collection from third parties, improved transparency for taxpayers and, by applying to a 'class of persons' rather than named entities, equality amongst organisations in the same industry from whom data is collected.
9. In this Cabinet paper, I am seeking authorisation to progress the making of an Order in Council under this regulation making provision. The Order in Council will enable the collection of datasets from payment service providers on a regular and repeating basis.

Improving voluntary compliance

10. Inland Revenue is committed to helping taxpayers *get it right from the start*. This approach supports compliant behaviour, drives out error and reduces the possibilities of non-compliant behaviour. The purpose is not just to reduce unintentional mistakes, but also to reduce evasion and to strengthen the overall willingness to comply.
11. The goal is first time accuracy and a reduction in subsequent adjustments. This enhances taxpayer certainty, fairness across the system and reduces the resources taxpayers and the Commissioner need to commit to the process. Data underpins this commitment and is increasingly at the heart of ambitions for a modernised tax system. Inland Revenue collects datasets from key third parties to improve information and intelligence capabilities under powers contained in the TAA.
12. Currently, the legislative authority enabling the gathering of this information is for one-off requests for information, not ongoing requests, requiring the process to be repeated every time information is required. This is a time and resource intensive process which has resulted in irregular collection, reducing effectiveness.
13. Existing powers were created in a world where the collecting and analysing of such datasets was difficult to achieve. The legislation was consequently not designed for repeat collection of data from a single entity or industry. Irregular collection makes it difficult to achieve outcomes such as accurately assessing compliance over several years and providing timely support.
14. New legislation, section 17L, was enacted in early 2019 to address this need for regular collection of large datasets. The change provides for the collection of datasets on a continuing and regular basis, enabled by Order in Council. This legislation enables the collection of data from a 'class of persons' rather than named entities. This means that data will be collected from all entities within a defined industry under one request, improving fairness, rather than a request being made to each entity individually.

Example – Timely, targeted support

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.

Collecting data from payment service providers

15. Inland Revenue has been collecting large datasets on a semi-regular basis from a limited number of payment service providers operating in New Zealand since 2005.¹ Due to time and resource demands as well as the legislative limitations noted above, these requests have been made only to the major players within the market.
16. This new legislative power provides a more efficient and transparent process for Inland Revenue to collect the same type of information it already does, but regularly and from more providers. Information sharing between payment service providers and Inland Revenue will therefore be streamlined under this provision and the making of an Order in Council.
17. The datasets consist of aggregated data of merchants' financial transactions and are used to support improved compliance and detect those operating in the hidden economy. The aggregated merchant data collected to date has been crucial to improving Inland Revenue's insights, including knowing where and when to direct resources to make positive change for taxpayers, the department and the Government.
18. The information proposed to be collected relates to all merchants who engage a payment service provider and whose activity through the payment service provider is up to \$30 million per year.² This information has and will be used for three main purposes:
 - 18.1. to increase compliance through education, marketing and targeted campaigns, to enable customers to get their tax obligations right from the start,
 - 18.2. to undertake risk analysis, including the detection of those operating in the hidden economy or intentionally not complying with tax obligations, and
 - 18.3. to inform policy development through macro-analysis research, and aid in policy evaluation and application.
19. 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 proposal is for the Government to make an Order in

¹ A payment service provider is defined as a third-party business who facilitates payment for goods and services between customers and merchants.

² The \$30m figure is in line with the requirements for International Financial Reporting Standards (IFRS). Entities with a turnover above this amount are considered to have better checks and balances on income compared to smaller entities.

Council authorising the collection of information, on a regular basis, from payment service providers on merchants' aggregated transactions and account information.

Privacy is a priority

20. The government takes the protection of personal information seriously. The proposed collection would include controls and processes to minimise any risk of a privacy or secrecy breach occurring. The data received will not relate to individual customer detail and individuals' payment data will not be identifiable in what is collected.
21. The information collected from payment service providers will be the aggregate monthly income data of a merchant. This information will include transactions – showing debit, credit, cash out and refunds (both volume and value) - as well as related identity and contact information. Some account-specific information will be collected to enable accurate matching. These datasets include only aggregated merchant data and do not go to the level of individual transactions ensuring that it is not possible to identify customer's payment data in what is collected.
22. Inland Revenue is targeting the information request at businesses. Most of the information collected relates to the merchant entity and those individuals who run those businesses. Only the minimal personal information necessary will be included in the data request. The personal information relates to merchants who are undertaking business in their own name, as well as individuals who are the contact point for the merchant.
23. 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.

Improving transparency for taxpayers and providers

24. Improving the tax system means comprehensively supporting its integrity for a better experience for all, not just more revenue collected. In line with this, a commitment to transparency is at the heart of this proposal.
25. Currently, the payment service providers from whom data is collected under the current provision are not publicly known, and there is limited public awareness that this data is being collected by Inland Revenue. Under this proposal, the information collected is authorised by a regulation and details on what types of data it collects and from whom will be public.
26. This increased transparency also means the legal provision for what information can be shared with Inland Revenue, and the legal mechanism authorising this sharing, is understood and visible. Section 17L provides greater certainty of authority for disclosure of information so there is no risk to reputation through the perception of information sharing practices only understood behind closed doors.
27. The purpose of publishing these details on the Inland Revenue website is to improve transparency for individuals. This also ensures that there is no commercial disadvantage through customer perception of payment service providers who provide information to Inland Revenue vs those that do not.

Releasing a discussion document

28. The attached draft discussion document provides a detailed and informative overview of the specific collection of datasets that is proposed to be authorised by the regulation made under this power. Responses are invited to specific questions as part of the document which are designed to ensure that the Order in Council is comprehensive, fit for purpose and future proof.
29. Releasing the document is intended to support informed discussion amongst key stakeholders and therefore covers context and issues critical to the design of the Order in Council, as prescribed in section 17L. These issues include ensuring that the definition of 'payment service providers' used will effectively capture all entities within the industry and seeks information from stakeholders that will inform the frequency and format of information requested. A chapter is devoted to outlining the safeguards around information handling and disposal.
30. I am now seeking Cabinet approval to progress this work by authorising the release of the attached discussion document, *Collecting data from payment service providers: a government discussion document*, for consultation with stakeholders. These stakeholders include payment service providers, relevant industry bodies and the general public. I am also seeking authority to instruct Parliamentary Counsel Office to draft an Order in Council to give effect to the regular collection of datasets, which will be sent to stakeholders alongside the discussion document for consultation.
31. A summary of how I am proposing that each of the elements that the Order in Council is required to prescribe under section 17L are addressed, is attached as **Appendix A**. A full list of the persons to whom the discussion document and draft regulation are proposed to be provided is available in **Appendix B**.
32. Consultation for a minimum of six weeks on the draft Order in Council is required by law. Once this has been completed, any necessary changes will be made to the draft Order in Council, and I will report back to Cabinet with the outcome of consultation and seek approval for the making of the Order in Council.

Financial Implications

33. Approving the release of the attached Government discussion document is not expected to have any fiscal implications. Any fiscal implications resulting from the proposals will be included in final policy advice to Ministers and Cabinet following consultation.

Legislative Implications

34. I am required by legislation to undertake a consultation process, for which I am seeking approval in this paper.
35. The release of the discussion document will not give rise to any immediate legislative implications. However, an Order in Council will be necessary to give effect to the regular collection of payment service provider data.

Impact Analysis

Regulatory Impact Assessment

36. The Regulatory Impact Assessment (RIA) panel at Inland Revenue has reviewed and confirmed that the discussion document substitutes for a RIA and so a RIA is not required to be prepared at this point. The discussion document is likely to lead to effective consultation and support the delivery of a quality RIA.
37. Should Ministers recommend progressing the regular collection of datasets from payment service providers following public consultation, a RIA will form part of the submission to Cabinet, seeking final agreement on the dataset collection Order in Council. It is anticipated that this will be in late 2021.

Climate Implications of Policy Assessment

38. The Ministry for the Environment has been consulted and confirms that the Climate Implications of Policy Assessment (CIPA) requirements do not apply to this proposal, as the threshold for significance is not met.

Population Implications

39. This proposal has no population implications.

Human Rights

40. I consider that the proposals contained in the discussion document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

41. Initial consultation was undertaken with identified payment service providers in formulating the discussion document.
42. The making of an Order in Council requires certain consultation to be undertaken. Consequently, formal consultation will be undertaken with the Privacy Commissioner, interested stakeholders and other organisations who represent the interests of the public affected by the regulation in the discussion document and draft Order in Council.
43. The Treasury, the Parliamentary Counsel Office, the Office of the Privacy Commissioner and the Ministry of Business, Innovation and Employment were consulted in preparing this paper.

Communications

44. The discussion document and draft Order in Council will be released as part of a focused consultation with identified stakeholders and interested parties. The consultation will contain a summary of the proposals and will seek views on questions raised in the discussion document.

Proactive Release

45. The discussion document will be finalised and released in full for consultation alongside the draft Order in Council once the latter is complete.
46. I propose to delay the 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.

Recommendations

The Minister of Revenue recommends that the Cabinet Economic Development Committee:

1. Note the contents of the attached draft Government discussion document *Regular dataset collection from payment service providers: a government discussion document*;
2. Authorise the drafting of an Order in Council for the regular collection of information from payment service providers, which will be consulted on with interested parties;
3. Invite the Minister of Revenue to instruct the Parliamentary Counsel Office to prepare the draft Order in Council;
4. Authorise the Minister of Revenue to approve editorial, presentational and other minor changes to the discussion document before its release;
5. Agree to the Minister of Revenue releasing the attached Government discussion document and draft Order in Council once drafted for consultation;
6. Invite the Minister of Revenue to report back to the Cabinet Economic Development Committee on the outcome of consultation and final recommendations in late-2021.

Authorised for lodgement

Hon David Parker
Minister of Revenue

APPENDIX A: THE PROPOSED CONTENT OF THE REGULATIONS

1. Under section 17L (2), The Governor-General may, by Order in Council on the recommendation of the Minister of Revenue, make regulations—
 - (a) authorising the Commissioner to collect on a continuing and regular basis, information in the form of datasets from a person, or a class of persons:
 - (b) prescribing—
 - (i) the type of information that may be collected:
 - (ii) the person or the class of persons to whom the regulations apply:
 - (iii) the frequency of reporting by the person or class of persons:
 - (iv) the form of the information:
 - (v) the specifications for the reporting method that must be used:
 - (c) setting out the way in which the information is necessary for the purposes set out in subsection (1):
 - (d) specifying a person or class of persons who may be given an exemption from some or all of a requirement under paragraph (a), (b), or (c):
 - (e) prescribing how provisions of this Act or another Inland Revenue Act must be applied or modified for the purpose set out in section 17B.

I am proposing that each of these elements are addressed in the manner outlined below.

The type of information that may be collected

2. As a minimum, Inland Revenue would require the below information from each payment service provider:
 - a. Merchant unique identifier
 - b. Identity and contact information
 - c. Legal name, Trade name, Merchant name
 - d. Contact person and details, including locations
 - e. IRD number or NZBN (if held)
 - f. Merchant bank account
 - g. Aggregated monthly data on payments
 - h. Debit, credit, cash out, refunds – both volume and value
 - i. Details relating to aggregated overseas transactions.

3. The payment service providers will vary in size, market capture and technological architecture. Thus, the level of information they hold will vary. Consequently, Inland Revenue would be seeking the above information, supplemented by relevant additional fields individual payment service providers may hold.

To whom the regulations apply

4. The regulations will apply to payment service providers. A payment service provider is defined as a third-party business who facilitates the payment of goods and services between customers and merchants.

The frequency of reporting

5. The data is to be provided on a quarterly basis.

The form of the information

6. The information is to be provided in a structured formatted electronic file sent by a secure transmission mechanism.

The specifications for the reporting method

7. The reporting method will be dependent on the technological capability of the payment intermediary but may include web services, API and email. Manual records or the sending of digital media such as CD or USB key will not be accepted. As technologies change so too may the reporting methods in the future.

How is the information necessary or relevant for a purpose relating to the administration or enforcement of a matter arising from or connected with a function lawfully conferred on the Commissioner

8. The Commissioner has a duty to protect the integrity of the tax system and to collect over time the highest net revenue. In order to undertake these duties, the Commissioner must ensure that all taxpayers are meeting their tax obligations. The information is necessary and relevant to allow the Commissioner to ensure that this is happening.

Setting out a person or class of persons that may be given an exemption from some or all of a requirement

9. A payment service provider will be exempt where they contract another payment service provider to undertake the processing of the payments on the proviso that the required information is held by the contracted intermediary.

Prescribing how this Act or another Inland Revenue Act must be applied or modified for the purpose set out in section 17B.

10. There are no provisions that must be applied or modified.

APPENDIX B: PROPOSED PERSONS TO BE FORMALLY CONSULTED WITH

11. It is proposed that the draft Order in Council is released alongside the discussion document for consultation with stakeholders. This will be available publicly on the Inland Revenue website as well as being provided to identified stakeholders. It is currently proposed that those provided with the consultation documents are:

a. Payment service providers operating in New Zealand. As at January 2021, these are currently identified as:

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|-------|---|--------|---------------------------------|
| i. | Airpass Financial Technologies Ltd | xii. | Magic Compass Ltd |
| ii. | ANZ | xiii. | MyPay NZ Ltd (trades as IE Pay) |
| iii. | ASB | xiv. | Paymark Ltd |
| iv. | AttractPay Ltd | xv. | Payment Express/Windcave Ltd |
| v. | Bartercard Ltd | xvi. | PayPlus Ltd |
| vi. | BNZ | xvii. | RPay Ltd |
| vii. | Dynamic Payment Pty Ltd | xviii. | Smartpay Ltd |
| viii. | ePayments Ltd | xix. | Stripe NZ Ltd |
| ix. | Infidigi Ltd | xx. | Transfereasy NZ Ltd |
| x. | Kiwibank | xxi. | Verifone Ltd |
| xi. | Latitude Technologies Ltd (trades as Latipay) | xxii. | Westpac |

b. The Office of the Privacy Commissioner

c. Relevant representative and member bodies. These are

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|------|---|-------|---------------------------------------|
| i. | Chartered Accountants Australia and New Zealand | vi. | Payments NZ |
| ii. | Business NZ | vii. | Restaurant Association of New Zealand |
| iii. | Hospitality NZ | viii. | Retail NZ |
| iv. | New Zealand Association of Convenience Stores | ix. | Small Business Advisory Group |
| v. | New Zealand Law Society | | |