

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **Order in Council: Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021**

### **Proposal**

1. This paper seeks approval to submit a draft Order in Council, the *Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021*, to the Executive Council.
2. The Order, to be made under section 226D of the Tax Administration Act 1994, will add New Caledonia to the existing list of 96 'reportable jurisdictions' that New Zealand maintains for the purpose of the *Automatic Exchange of Financial Account Information for Tax Purposes* (AEOI) rules.
3. Reportable jurisdictions are those that Inland Revenue is authorised to share financial information with under the AEOI rules.

### **Policy**

4. The making of the proposed Order is a routine matter and has not required any new policy decisions.
5. AEOI is an international initiative, led by the G20 and OECD, for cooperation between jurisdictions in the detection and prevention of 'offshore tax evasion'. Offshore tax evasion occurs when people hide their wealth from tax authorities by locating it in offshore accounts. To counter this, AEOI rules require financial institutions worldwide to (i) identify accounts held or controlled by non-residents and (ii) annually report information on those non-residents and accounts to tax authorities. The tax authorities then exchange the information under tax treaties, to ensure that each country receives the relevant information needed to be able to verify that its residents are correctly reporting income for tax purposes.
6. New Zealand incorporated the AEOI rules into the Tax Administration Act 1994 in 2017 and Inland Revenue has been conducting annual exchanges of AEOI information since then. The original list of reportable jurisdictions established in 2017 for the initial exchanges has grown each year as additional jurisdictions joined the initiative. Covid-19 appears to have slowed developments this year, and only New Caledonia stands to be added in this year's update to the list. Adding New Caledonia will help to further close off opportunities for tax evasion as well as helping New Zealand meet its international obligations. Exchanges with New Caledonia will be

made under the *Multilateral Convention for Mutual Administrative Assistance in Tax Matters*.

7. The AEOI rules, as enacted, authorise Inland Revenue to provide AEOI information to jurisdictions approved by Order in Council as 'reportable jurisdictions'. The Order in Council mechanism was included because AEOI involves exchange of highly sensitive personal and financial information with other jurisdictions. Government oversight and the ability to refuse exchange with particular jurisdictions is a safeguard. It is, however, a safeguard of last resort as it co-exists with many other international and domestic safeguards that are designed to ensure information is only exchanged, held and used as intended.
8. I consider the addition of New Caledonia to the list of reportable jurisdictions to be uncontroversial and am not aware of any reasons why the Government should consider refusal.

### **Timing and 28-Day Rule**

9. I propose that the Order be in force by 1 April 2021, to coincide with the beginning of the next AEOI reporting/exchange cycle. This timing can be met without any need for a waiver of the 28-day rule.

### **Compliance**

10. The proposed Order complies with:
  - 10.1 the principles of the Treaty of Waitangi;
  - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 10.3 relevant international standards and obligations; and
  - 10.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
11. The proposed Order generally complies with principles and guidelines set out in the Privacy Act 1993. However, all exchange of information under tax treaties inherently conflicts with some of the privacy principles set out in that Act (such as the limitation imposed, at section 6 of the Act, on the disclosure of personal information). For this reason, section BH 1 of the Income Tax Act 2007 authorises the Privacy Act 1993 to be overridden for exchanges of information under tax treaties. The Privacy Commissioner was consulted during the enacting of New Zealand's AEOI implementation legislation and indicated support for that legislation.

### **Review Committee**

12. I am not aware of any grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House of Representatives under Standing Order 319.

### **Certification by Parliamentary Counsel**

13. The Parliamentary Counsel Office has certified that the Order is ready to be submitted to Cabinet.

### **Impact Analysis**

14. A Regulatory Impact Assessment is not required as this Order in Council will not involve creating, amending or repealing legislation and provides solely for the operation of existing legislative provisions.

### **Communications**

15. As for previous updates, Inland Revenue will advise by email all financial institutions and others registered as an AEOI stakeholder of the change to the reportable jurisdictions list. Inland Revenue will also publish information about the change in its monthly *Tax Information Bulletin* publication.

### **Proactive release**

16. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers (except for officials' names) within 30 working days of Cabinet making final decisions.

### **Consultation**

17. Public and agency consultation on the reportable jurisdictions list was undertaken during the development of the initial list of reportable jurisdictions in 2017. When the list was first amended, financial institutions and AEOI stakeholders were asked to provide feedback on whether adding additional reportable jurisdictions would create any difficulties or concerns. No issues were raised with us during either of these consultation rounds.
18. Given the lack of any concern during these prior rounds, no additional public consultation was undertaken on this occasion. The Ministry of Foreign Affairs and Trade was consulted on whether the addition of New Caledonia to the list raises any concerns and did not identify any. The Treasury and the Department of the Prime Minister and Cabinet were informed.

### **Recommendations**

The Minister of Revenue recommends that the Committee:

1. note that the *Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021* is a routine annual update made under section 226D of the Tax Administration Act 1994 and that no new policy decisions were required;
2. note that this update adds New Caledonia to the existing list of 96 reportable jurisdictions that Inland Revenue is authorised to provide financial account information to under the OECD *Automatic Exchange of Financial Account Information for Tax Purposes* initiative;

3. authorise the submission to the Executive Council of the *Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021*;
4. note that the *Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021* will come into force on 1 April 2021.

Authorised for lodgement

Hon David Parker  
Minister of Revenue