

Hon David Parker, Minister of Revenue

Information Release

Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021

July 2022

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2022/2022-ir-cab-leg-21-sub-0003>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2021/004	Tax policy report	Order in Council: amending New Zealand's list of AEOI Reportable Jurisdictions	22 January 2021
2	LEG-21-SUB-003	Cabinet paper	Order in Council: Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021	18 February 2021
3	LEG-21-MIN-003	Minute	Order in Council: Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021	18 February 2021

Additional information

The Cabinet paper was considered by the Cabinet Legislation Committee on 18 February 2021 and confirmed by Cabinet on 22 February 2021. OR

One attachment to the Cabinet paper is not included in this information release as it is publicly available:

- Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021¹

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

9(2)(a) to protect the privacy of natural persons, including deceased people

¹ Available at <https://www.legislation.govt.nz/regulation/public/2021/0022/latest/whole.html>

Accessibility

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POLICY AND STRATEGY

Tax policy report: **Order in Council: amending New Zealand's list of AEOI Reportable Jurisdictions**

Date:	22 January 2021	Priority:	Medium
Security level:	In Confidence	Report number:	IR2021/004

Action sought

	Action sought	Deadline
Minister of Revenue	Note the contents of this report Approve the attached Cabinet paper Sign the attached Cover Sheet	10am, 11 February 2021

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Kilford	Policy Lead	s 9(2)(a)
Graham Hunt	Policy Advisor	

22 January 2021

Minister of Revenue

Order in Council: amending New Zealand's list of AEOI Reportable Jurisdictions

Purpose

1. This report seeks your approval of the attached Cabinet paper for lodgement with the Cabinet Office by 10am 11 February 2021, consideration by the Cabinet Legislation Committee (LEG) at its meeting of 18 February 2021, and then by Cabinet at its meeting of 22 February 2021. The Cabinet paper seeks approval for submission of a draft Order in Council to the Executive Council.
2. The Order in Council will add New Caledonia to New Zealand's existing list of 96 'reportable jurisdictions', for the purposes of the G20/OECD *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, commonly referred to as the AEOI Standard, or AEOI. New Caledonia has recently joined the AEOI initiative.
3. Adding jurisdictions to the reportable jurisdictions list is non-controversial and is largely a mechanical exercise, which needs to be repeated periodically as jurisdictions continue to join the AEOI initiative and complete implementation. We are endeavouring to limit such updates to no more than one per year. International developments in 2020 have been slow, due to COVID-19, and this year's update only consists of one addition.
4. A draft of the Order in Council is attached for your information. The Parliamentary Counsel Office will forward the signature and certification copies of the Order direct to Cabinet Office, for association with the Cabinet paper.

Background

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. Reportable jurisdictions are those that Inland Revenue can provide AEOI information to (in accordance with our tax treaty and international obligations). Pursuant to section 226D of the Tax Administration Act 1994, any additions to and removals from the list must be confirmed by Order in Council.
7. The Order in Council will authorise Inland Revenue to provide AEOI information to New Caledonia. For the majority of New Zealand financial institutions, this change will have no implications. In any case, international expectations are such that New Zealand would need to be able to clearly justify to the G20 and OECD any decision not to add jurisdictions to the list as they complete implementation. We are not aware of any reasons to consider refusing to exchange with New Caledonia.

Consultation

8. The Ministry of Foreign Affairs and Trade has been consulted and agrees with the proposal.
9. The Treasury does not need to be consulted but has been informed.

Next steps

10. The attached Order in Council cover sheet ('goatskin') should be signed and submitted to the Cabinet Office along with the Cabinet paper. The Parliamentary Counsel Office (PCO) will forward the signature version of the Order in Council along with the requisite number of copies direct to the Cabinet Office for association with the Cabinet paper before it is submitted to LEG. However, a copy of the draft Order is attached to this report for your information.

Recommended action

We recommend that you:

11. **sign** the attached Order in Council cover sheet;
Signed/Not signed
12. **note** that the PCO will provide the signature version of the Order in Council, along with the requisite number of copies, direct to Cabinet Office;
Noted
13. **authorise** the lodgement of the attached Cabinet paper and the signed Order in Council cover sheet with the Cabinet Office, by 10am Thursday 11 February 2021.
Authorised/Not authorised

Paul Kilford
Policy Lead
Policy and Strategy

Hon David Parker
Minister of Revenue
/ /2021

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



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

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

Portfolio **Revenue**

On 18 February 2021, the Cabinet Legislation Committee:

- 1 **noted** 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 **noted** 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 **authorised** the submission to the Executive Council of the Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021 [PCO 23383/3.0];
- 4 **noted** that the Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2021 will come into force on 1 April 2021.

Charlotte Doyle
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Carmel Sepuloni
Hon David Parker
Hon Poto Williams
Hon Michael Wood (Deputy Chair)
Hon Kiri Allan
Hon Dr David Clark
Hon Meka Whaitiri
Kieran McAnulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Revenue