

Privacy Commissioner's submission to the Finance and Expenditure Committee on the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill 93-1

1. Introduction

- 1.1. I am pleased to provide this submission on the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill. I do not request to speak to this submission but would be pleased to appear if that would assist the Committee in its deliberations.
- 1.2. My comments focus on clauses 26 and 73. These clauses will facilitate the sharing of information under a bilateral agreement (or Arrangement) between New Zealand's Inland Revenue Department (Inland Revenue) and the Australian Taxation Office (ATO) in relation to New Zealand student loan borrowers residing in Australia.
 - Clause 26 includes amendments to the Student Loan Scheme Act 2011 to define the scope of and limits on information sharing.
 - Clause 73 introduces a new exception to taxation secrecy provisions in the Tax Administration Act 1994 to allow Inland Revenue to provide the necessary information to the ATO to support the Arrangement.
- 1.3. I support these amendments as I consider they provide an appropriate domestic regulatory framework needed to implement the international arrangements. They provide legal certainty and transparency, while being appropriately constrained to ensure fairness for those individuals affected.
- 1.4. Inland Revenue consulted my Office regularly during the development of these proposals. I am confident that ongoing consultation with my Office will provide the oversight necessary to ensure the service level agreement supporting the new legal provisions includes appropriate privacy safeguards.

2. Executive summary

- 2.1. I am satisfied the legislative changes proposed in this Bill to facilitate information sharing between Inland Revenue and the ATO are proportionate and will not unduly affect the privacy rights of New Zealand taxpayers. While the detail of the Arrangement and of the supporting service level arrangements have yet to be finalised, I am comfortable appropriate privacy safeguards will minimise and manage any potential adverse effects on individuals, including:
 - the Information provided by one agency to the other must only be used for the purpose of the bilateral Arrangement and must not be used for any other purpose

- the receipt of contact information by Inland Revenue from the ATO will not unduly prejudice any individual as it will not in itself trigger adverse action, but will be used to contact the individuals concerned to confirm their identity and circumstances
- the Arrangements do not preclude any individual from seeking a review of the actions of Inland Revenue or the ATO by the Office of the Privacy Commissioner in New Zealand or the Information Commissioner in Australia, respectively
- the draft Arrangement has been developed in consultation with my Office and with my counterpart in Australia and the Arrangement requires ongoing compliance with privacy laws in both countries (namely the New Zealand Privacy Act 1993 and the Privacy Act 1988 (Cth) in Australia).

3. Background to the information sharing provisions proposed

- 3.1. The purpose of the amendments proposed in clauses 26 and 73 is to give effect, in New Zealand law, to a Trans-Tasman bilateral *Arrangement for the Exchange of Information regarding New Zealand Student Loans* (the Arrangement). The Arrangement aims to address the significant problem of New Zealand student loan borrowers who move overseas and subsequently default on their loan obligations. The Arrangement was signed by the respective Commissioners of the two tax authorities in March 2015, but it cannot be implemented without changes to domestic law that restricts Inland Revenue from disclosing information it holds relating to New Zealand tax payers to other parties.

4. The problem addressed by the proposed amendments

- 4.1. Despite introduction of a number of initiatives in recent years aimed at encouraging compliance with student loan obligations, repayment rates for overseas-based borrowers are low. Inland Revenue is hampered in its ability to recover outstanding debt where it does not have up-to-date contact details for overseas-based borrowers.
- 4.2. Section 193C(1) of the Student Loan Scheme Act (*Changes relating to contact details of borrower*) currently requires that student loan borrowers must promptly notify the Commissioner of Inland Revenue if there is a change in any of the borrower's contact details. Section 193C(2) of that Act further provides that for the purpose of verifying the borrower's address details, the Commissioner may receive the borrower's address details from any other person if the information is shared in accordance with any other provision of this Act or any other enactment.
- 4.3. Despite these existing obligations, a significant number of student loan borrowers fail to keep their contact details up to date when they go off-shore, making it extremely difficult for Inland Revenue to contact them and recover outstanding debt. In the Regulatory Impact Statement relating to these proposals, Inland Revenue estimated that approximately 90 percent of all

student loan repayment defaulters are now based overseas, with around 65 percent of these believed to now be residing in Australia.

- 4.4. The information exchange between the two tax offices would allow Inland Revenue to match details for borrowers believed to be off-shore against the ATO database of Australian taxpayers. Inland Revenue would then be able to contact the individuals concerned to remind them of their loan obligations and, where appropriate, progress recovery of outstanding student loan debts.
5. **The statutory authority for information sharing is appropriately defined**
- 5.1. Clause 26 inserts a new section 209A into the Student Loan Scheme Act 2011, titled *Disclosure of information to Australian Taxation Office in relation to borrowers who are, or may be, overseas-based*. The purpose of this new section is to facilitate the exchange of information between Inland Revenue and the ATO to assist Inland Revenue to
- obtain or verify contact details of borrowers who are, or may be, overseas-based; and
 - administer the student loan scheme in relation to those borrowers.
- 5.2. Clause 73 overrides the secrecy provisions in section 81 of the Tax Administration Act 1994 by including a new exception under section 81(4) to enable Inland Revenue to share information with its Australian counterpart to give effect to the new provisions under the Student Loan Scheme Act 2011.
- 5.3. The amendments proposed for the Student Loan Scheme Act 2011 prescribe what information may be shared and limit who within the ATO is authorised to receive it.
- Inland Revenue can only disclose the information considered necessary to enable the ATO to accurately match individuals against the ATO's taxpayer database, namely: a borrower's name (and any known aliases) and date of birth, their tax file number and last known address and contact details, and any other information the Commissioner considers relevant for the prescribed purposes.
 - Inland Revenue may only provide the prescribed information to an officer, employee, or agent of the ATO or other person authorised by the ATO's chief executive.
 - The ATO will not be required to provide information it does not already have and Inland Revenue will not be able to obtain information it is not already entitled to collect under the applicable New Zealand law.
6. **Ensuring a fair balance between privacy and competing social interests**
- 6.1. In considering this Bill I have had due regard for the protection of important human rights and social interests that might compete with privacy.

- 6.2. Section 14 of the Privacy Act provides that in performing my functions under the Act I must have due regard to a number of specific matters, including to:
- have due regard to the information privacy principles and the general desirability of a free flow of information;
 - recognise the right of government to achieve its objectives efficiently; and
 - take account of international obligations accepted by New Zealand.
- 6.3. The proposed amendments are consistent with the information privacy principles under the Privacy Act 1993, including in particular:
- principle 1 that requires that personal information shall only be collected for a lawful purpose connected with a function or activity of the agency and the collection must be necessary for that purpose;
 - principle 4, that provides that information shall not be collected by an agency by unlawful means, or by means that, in the circumstances of the case intrude to an unreasonable extent upon the personal affairs of the individuals concerned;
 - principles 2(d)(i) and 11(c)(i), which provide for the collection and disclosure of information if the agency concerned believes, on reasonable grounds, that it is necessary to avoid prejudice to the maintenance of the law by a public sector agency; and
 - principles 2(d)(iii) and 11(c)(iii), which provide for the collection and disclosure of personal information if the agency concerned believes, on reasonable grounds, that it is necessary for the protection of the public revenue,
- 6.4. The proposed amendments will support Inland Revenue's current customer engagement initiatives and provide an effective means to collect up-to-date contact information for off-shore borrowers to assist in the efficient recovery of outstanding student loan debt. I consider the provisions are a necessary and proportionate means to implement a bilateral international Arrangement that New Zealand and Australia have entered into to further this objective.
- 6.5. The proposed amendments will also build on and complement other existing arrangements for information matching and sharing between Inland Revenue and other domestic agencies, in particular with:
- the New Zealand Customs Service (involving contact information from the arrival cards of serious defaulters); and
 - the Department of Internal Affairs (involving contact details from passport applications and renewals for overseas-based borrowers).
- 6.6. Conversely, I consider the proposals will have a minimal effect on affected student loan borrowers' individual rights to privacy. Inland Revenue would only disclose to the ATO the information necessary to conduct an effective match against its records and would only collect the information it is already lawfully entitled to collect and that the individuals concerned are already required to provide.

7. The proposed amendments will be reinforced by further safeguards in supporting non-statutory arrangements.

7.1. Implementation of the enabling statutory provisions contained in this Bill will be supported through a service level agreement that is being developed by the two national tax authorities. This service level agreement will govern the operational details of the information exchange and provide for administrative flexibility as it will be able to be reviewed and revised where appropriate, without the need for legislative change. This will help ensure the mechanism remains efficient and fit for purpose while maintaining consistency with privacy laws in both jurisdictions.

7.2. Inland Revenue consulted my Office regularly during the development of the policy proposals leading to this Bill and the draft amendments were refined according to recommendations we made during that process. The service level agreement being developed includes a number of privacy safeguards to prevent the unauthorised use or disclosure of information, address the handling of requests for information and complaints, and provide for ongoing review to ensure it remains fit for purpose.

7.3. Inland Revenue has committed to continuing to work closely with my staff to ensure ongoing consistency with the privacy principles as the arrangements are finalised and during the future implementation of the initiative. I am confident that ongoing consultation with my Office and with staff in the office of my Australian counterpart as arrangements are finalised will provide the oversight necessary to support ongoing compliance with the relevant privacy law in both jurisdictions.

8. Additional matters: Changes relating to Residential Land Withholding Tax

8.1. The Bill includes a number of provisions introducing new requirements for Residential Land Withholding Tax (RLWT) including record-keeping requirements that involve collection and use of personal information.

8.2. As Inland Revenue advised in the Disclosure Statement supporting this Bill, due to time constraints, my Office was informed about the proposed amendments relating to RLWT but we were not formally consulted.

8.3. We note the proposals appear consistent with the existing provisions for resident and other withholding taxes. The Privacy Act 1993 will continue to apply to any information collected by withholding agents and the proposed RLWT changes do not raise any concerns for us from a privacy perspective.

9. Conclusion

9.1. I do not consider any changes are needed to the information sharing provisions contained in the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill. I consider the proposed amendments to the Tax Administration Act and Student Loan Scheme Act as

presented in this Bill will provide an appropriate statutory framework to enable Inland Revenue to work effectively with its Australian counterparts to ensure it can administer the Student Loan Scheme Act efficiently and effectively without unduly affecting the privacy interests of affected overseas-based student loan borrowers.

- 9.2. I do not request to speak to this submission but would be pleased to appear if that would assist the Committee in its deliberations.



John Edwards
Privacy Commissioner