

Submission to the Finance and Expenditure Committee on the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill 149-1

1 Introduction

1.1 The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (the Bill) is an omnibus Bill amending a number of enactments. This submission relates to the information sharing provisions of the Bill that propose amendments to the Income Tax Act 2007 and Tax Administration Act 1997 to:

- implement changes to the disclosure requirements for foreign trusts recommended by the Government Inquiry into Foreign Trust Disclosure Rules (the 'Shewan Report') (clauses 5, 10 and 11)
- enable Inland Revenue to share tax information for significant debts with credit reporting agencies (clauses 95, 103 and 104)
- enable Inland Revenue to share information with the Registrar of Companies to combat serious offences under the Companies Act 1993 (clauses 95, 104)
- implement the G20/OECD standard for the Automatic Exchange of Information in Tax Matters (the AEOI framework) (Part 1, subpart 2, and schedule 1 of the Bill).

1.2 I support the proposed legislative provisions as I consider they represent a proportionate and justified approach to address the policy objectives without unduly affecting the privacy of the individuals involved. However, further work will be required before Inland Revenue can confirm its process for disclosing tax debt information about individuals in business to credit reporters.

1.3 Inland Revenue will also need to develop robust procedures for managing any 'residual information' it collects under the AEOI framework. Both Inland Revenue and financial institutions will also need to clearly communicate their chosen implementation processes to their customers to ensure they are fully informed of the impacts of the changes.

2 Changes to implement the disclosure requirements for foreign trusts

2.1 The Bill proposes amendments to the disclosure requirements for foreign trusts with New Zealand resident trustees. These amendments reflect the recommendations of the Government Inquiry into Foreign Trust Disclosure Rules and are intended to deter offshore parties from using New Zealand-based trusts for illicit purposes.

- 2.2 I was consulted during the Inquiry and I am comfortable that these proposals are appropriately designed to meet the policy objectives while not unduly impacting on the privacy of the individuals concerned.
- 2.3 The personal information implicated by the amendments is relatively restricted and non-intrusive, but is sufficient to enable regulators to make further enquiries if required. The changes proposed are also equitable in that they more closely align the rules for foreign trusts with the existing rules for domestic trusts.
- 3 **Sharing tax information for significant tax debts with approved credit reporting agencies**
- 3.1 Three clauses of the Bill relate to the sharing of unpaid tax debt information to credit reporting agencies to help credit providers better assess the credit worthiness of businesses:
- Clause 95 of the Bill inserts definitions of *approved credit reporting agency* and of *reportable unpaid tax* to the Tax Administration Act 1994 to allow the Commissioner to report some unpaid tax to credit reporting agencies.
 - Clause 103 of the Bill amends the tax secrecy rules in section 81 of the Tax Administration Act 1994 to allow Inland Revenue to disclose to approved credit reporting agencies information about significant tax debts, taking into account factors including the age and size of debt and the likelihood of repayment.
 - Clause 104 of the Bill inserts new section 85N to the Tax Administration Act 1994 to provide an exemption from secrecy for disclosure of unpaid tax information.
- 3.2 The Bill contains a number of safeguards to ensure that tax debt information is only shared with credit reporters where debts are 'significant' and where all endeavours (bar prosecution) have been made to address the debtor's non-compliance. These are:
- The scope of "significant" debt would be statutorily defined.
 - Inland Revenue will need to have made reasonable efforts to resolve the debt prior to disclosure.
 - Inland Revenue will report annually on its use of the provision, including the number of taxpayers affected,
- 3.3 As noted in the regulatory impact statement, Inland Revenue will need to do further work to determine the consistency of this proposal with the Credit Reporting Privacy Code 2004, which regulates credit reporting agencies' use of individual information.

- 3.4 My Office is currently reviewing the Code and my staff will work with Inland Revenue to help identify the best way to implement the policy for individuals in business without unduly affecting their privacy.
- 3.5 In the meantime, it is appropriate that the tax debt disclosure process will only be applied to significant tax debt attached to non-individual taxpayers (e.g. registered companies, corporations, limited liability partnerships etc).
- 4 Information sharing with the Registrar of Companies to help combat certain serious offences under the Companies Act 1993**
- 4.1 Clause 104 of the Bill inserts new section 85M in the Tax Administration Act 1994 to provide an exemption to the tax secrecy rules so Inland Revenue can share with the Registrar of Companies information about certain serious offences under the Companies Act 1993 (those with a maximum sentence of imprisonment of 5 years or more).
- 4.2 To enable the Registrar of Companies to investigate and prosecute company directors and management more easily, Inland Revenue would be able to share information with the Registrar, either proactively or in response to a request, where:
- there is reasonable suspicion (on the part of the initiating agency) that a serious offence has been, is being, or will be committed
 - Inland Revenue considers the information being shared will prevent, detect, aid in the investigation of, or provide evidence of, a serious offence that has been, is being, or will be committed
 - Inland Revenue is satisfied that the information is readily available, it is reasonable and practicable to communicate it, and communication is in the public interest.
- 4.3 Individuals will only be affected directly by these new provisions by virtue of their role as directors or managers of publicly registered companies, and not in their personal capacity. The thresholds for sharing information on the conduct of company directors are consistent with the exceptions provided for under principle 11(e) of the Privacy Act which provides for disclosure where it is considered necessary to avoid prejudice to the maintenance of the law.
- 4.4 I do not object to the amendments proposed as I consider the provision is appropriately defined and will not unduly impact the privacy of affected individuals.

5 Automatic exchange of Financial Account Information in Tax Matters

- 5.1 The Bill proposes amendments to the Tax Administration Act 1997 to implement the G20/OECD standard for *Automatic Exchange of Financial Account Information in Tax Matters* (in short, the Automatic Exchange of Information, or AEOI) in New Zealand.
- 5.2 The Bill proposes incorporating the OECD's Common Reporting Standard (CRS) into New Zealand law to define the due diligence and reporting obligations to be imposed on financial institutions.
- 5.3 I do not consider the implementation of the Common Reporting Standard as provided for in this Bill to be unduly privacy invasive. However, by adopting the 'wider approach' to account reporting, Inland Revenue would collect additional 'residual' information that does not need to be exchanged with AEOI partners.
- 5.4 As the regulatory impact statement notes "this is a delicate matter that involves balancing efficiency benefits for financial institutions against privacy concerns of account holders. For consistency with New Zealand's privacy laws, it is proposed that the potential use of the residual information by Inland Revenue be subject to full transparency". Inland Revenue will need to ensure it has systems in place to account for the receipt of data beyond that needed for AEOI.
- 5.5 Inland Revenue has kept my Office updated regularly as this initiative has been progressed. I understand the agency is currently assessing the potential privacy impacts of adopting the 'wider approach' and my staff will continue to work with them as they finalise their procedures.
- 5.6 Both Inland Revenue and financial institutions will need to communicate clearly to their customers their chosen implementation processes for AEOI to ensure individuals affected by the new reporting procedures are fully informed of the impacts of the changes.

6 Conclusions

- 6.1 I do not seek to speak to this submission but would be pleased to appear before the Committee should the Committee find that helpful in its consideration of this Bill.



John Edwards

Privacy Commissioner