



## Tax administration transformation proposals released

### Snapshot

Inland Revenue's Business Transformation rolls on. The latest **proposals**:

- Support Inland Revenue's information sharing with other Government agencies and narrow taxpayer confidentiality rules so they do not apply to non-taxpayer specific information.
- Outline rules for collection of third-party data, including for Inland Revenue's risk profiling and audit purposes, and transparency about its collection.
- Aim to reduce the cost of getting Inland Revenue "certainty", particularly for SMEs, in relation to binding rulings and expand the scope of the rulings regime.
- Explicitly recognise the role of various intermediaries in the tax system.
- Extend Inland Revenue's administrative powers, including the "care" and "management" discretion and allow greater use of regulations to effect change.

The proposals have wide impact and should not be ignored. Submissions are due by 24 February 2017.

**The proposals are to provide legislative support for Inland Revenue's Business Transformation**

**When evaluating the proposals, you should consider:**

- **are they necessary? Will they make Inland Revenue's administration of the tax system better?**
- **what will be the direct impact on my business?**

### Contact us

**John Cantin**  
Partner, Tax  
T: +64 4 816 4518  
E: [jfcantin@kpmg.co.nz](mailto:jfcantin@kpmg.co.nz)

**Darshana Elwela**  
National Tax Director  
T: +64 9 367 5940  
E: [delwela@kpmg.co.nz](mailto:delwela@kpmg.co.nz)

## What is being proposed?

### Taxpayer information and confidentiality

The Government's "Better Public Services" objective includes improving use of information by Government agencies to optimise service delivery, across a range of areas. The Government is proposing:

- To narrow the coverage of the taxpayer secrecy rule to information that would identify a taxpayer. Inland Revenue would still be able to withhold non-taxpayer specific information in certain cases. There would also be exceptions to the new narrower secrecy rule.
- A new legislative framework for information sharing, including greater use of regulations. Principles governing when information sharing is appropriate, and greater transparency on how information will be shared, are proposed.
- To allow information sharing if a taxpayer consents and to clarify taxpayer secrecy obligations and penalties for those who receive information from Inland Revenue.

### Information collection

The Government considers that while current data collection standards are appropriate, and should remain, new rules are needed:

- For repeat access to the same data and to govern the use of bulk external data sets by Inland Revenue, including for its risk analysis and audit activities.
- To clarify that information gathered for one purpose can also be used by Inland Revenue for other purposes.

### Getting it right from the start

Business Transformation will capture information directly from business systems, require greater withholding at source, and result in increased tax return pre-population. This means that assessment will move from judgement to systems. To help, the Government is proposing to:

- Prioritise Inland Revenue's up-front advice capability by:
  - Reducing the fee for obtaining a binding ruling (for SMEs at least).
  - Allowing a binding ruling on transactions post assessment.
  - Allowing rulings on a taxpayer's "purpose" and without the need for a specific "arrangement" in some matters.
  - Clarifying the relationship between rulings and determinations and the role of assumptions and conditions in rulings.
- Allow self-amending of minor errors with an approach based on the significance of the error to the particular taxpayer.

The Government is also considering potential changes to the various penalties rules to better reflect the harm caused.

### Role of intermediaries

Business Transformation is expected to result in improved services for intermediaries in the tax system via digital channels. The Government is correspondingly proposing to:

- Expand who is able to use these enhanced services by extending the "tax agent" definition. (For example, it will be extended to bookkeepers, payroll intermediaries, tax pooling providers and others who act on behalf of taxpayers for a fee.) The tax agent terminology is to be updated accordingly.

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**John Cantin**  
Partner, Tax  
T: +64 4 816 4518  
E: jfcantin@kpmg.co.nz

**Darshana Elwela**  
National Tax Director  
T: +64 9 367 5940  
E: delwela@kpmg.co.nz

- The integrity rules and standards that apply to current tax agents would apply to these intermediaries. The extension of time arrangements would only be available to those that file income tax returns.
- Give Inland Revenue the power to refuse to list an intermediary, or to de-list them, if this is necessary to preserve the integrity of the tax system.
- Similarly, give Inland Revenue the power to refuse a person access to another's tax affairs as a "nominated person", on tax integrity grounds.

#### Role of the Commissioner and the tax administration framework

- Greater administrative flexibility for Inland Revenue in administering the tax system, including the use of the "care" and "management" discretion to:
  - Address minor legislative gaps.
  - Deal pragmatically with legislative issues, where the cost of compliance is disproportionate to the objective of the provision.
  - Deal with gaps due to a specific legislative rule being difficult to formulate.
  - Apply well-established/long standing practice, which subsequently turns out to be inconsistent with a purposive interpretation of legislation, until the law can be amended or the practice is changed.
  - Deal with unfairness where the result creates inequity for a broad group of taxpayers.

Specific safeguards are proposed to ensure consistency and transparency of application of the care and management discretion.

- Making greater use of regulations in a tax administration context – e.g. to allow for a more tailored approach to different types of taxpayers.
- A more responsive Tax Administration Act, including adopting a hierarchical approach to legislative drafting and greater use of principles, where appropriate.

#### Why should you care?

Business Transformation represents a step change in how Inland Revenue will interact with your business and advisors. The groundwork is already being laid. These tax administration legislative proposals will support the wider operational changes to how Inland Revenue will collect, process and share tax (and potentially some non-tax) information in future. This will, therefore, affect all businesses.

#### Our (initial) view

This latest discussion document fleshes out and firms up a number of earlier proposals (refer our previous [taxmail](#) and [submission](#) on these). It also contains some additional thinking about the role of different intermediaries in the tax system, how to provide certainty, and data collection and sharing in an increasingly digital world.

The proposals on taxpayer confidentiality and external data collection need to be viewed through the lens that the Government expects efficiency "dividends" not just from Inland Revenue, but across various agencies from better use of information. The current secrecy rules, which were developed in a pre-digital world, are seen as overly restrictive.

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**John Cantin**  
Partner, Tax  
T: +64 4 816 4518  
E: [jfcantin@kpmg.co.nz](mailto:jfcantin@kpmg.co.nz)

**Darshana Elwela**  
National Tax Director  
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E: [delwela@kpmg.co.nz](mailto:delwela@kpmg.co.nz)

The concern for some will be whether this is a slippery slope to eroding the core objective of taxpayer confidentiality – to promote voluntary compliance by ensuring the integrity of the tax system (and perceptions of that integrity). The proposals attempt to address this concern by making clear that there will be appropriate safe guards. We welcome the proposal to apply the same secrecy standards and sanctions to other agencies that receive information from Inland Revenue.

We support the changes to modernise the tax rulings regime, and to extend its reach to smaller businesses. A number of these changes, such as post-assessment rulings and ruling on a taxpayer's "purpose" are pragmatic and, in our view, well past due. Given the focus on having a "fence at the top of the cliff" (rather than an ambulance at the bottom), other avenues for getting Inland Revenue's view on a transaction or issue – such as indicative (i.e. non-binding) views – need to remain and should be more widely promoted.

Similarly, we broadly welcome the proposals to expand the Commissioner's care and management discretion to address minor legislative gaps/deficiencies and ensure equitable outcomes. In our experience, the current operation of this discretion is limited due to an overly restrictive interpretation by the Commissioner. The concern will be consistency of application by the Commissioner's officers. The proposal to have a clear framework and greater transparency will help with this.

What is likely to generate the greatest debate is the proposal to use regulations to assist Inland Revenue's administration of the tax system. Regulations can simplify the legislation. It allows the detail to be worked through at a practical level. However, a framework for a tax regulation making power and the role of determinations is important and necessary.

The recent [Supplementary Order Paper](#) to the August 2016 Tax Bill to allow certain regulations for Business Transformation provides a useful case study. The regulation making power was considered too wide. The Finance and Expenditure Committee, in its [report back on that Bill](#), recommended limiting its scope.

## Base Erosion and Profit Shifting ("BEPS") Cabinet Paper

The Government has released a BEPS [Cabinet Paper](#). It confirms previously announced Government intentions to consult in early 2017 on:

- Measures to prevent the avoidance of a NZ Permanent Establishment ("PE"). While an Australian (or UK-styled) Diverted Profits Tax is not preferred by Officials, it has not been ruled out and some features may yet be adopted.
- Shifting the burden of proof from Inland Revenue to taxpayers, on transfer pricing ("TP") matters.
- Changes to tax treaties to prevent PE and TP avoidance and address specific BEPS issues for NZ. (The former is under the OECD BEPS recommendations.)

2017 looks to be another busy year, from a BEPS tax policy perspective.

### For further information

#### John Cantin

Partner, Tax  
Wellington  
Phone: +64 4 816 4518  
Email: [jfcantin@kpmg.co.nz](mailto:jfcantin@kpmg.co.nz)

#### Darshana Elwela

National Tax Director  
Auckland  
Phone: +64 9 367 5940  
Email: [delwela@kpmg.co.nz](mailto:delwela@kpmg.co.nz)

[kpmg.com/nz](http://kpmg.com/nz)

[twitter.com/KPMGNZ](https://twitter.com/KPMGNZ)

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