Tax Working Group
Te Awheawhe Tāke

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The advice represents the preliminary views of the Secretariat and does not necessarily represent the views of the Group or the Government.

Coversheet: **Tax transparency**

Background Paper for Session 14 of the Tax Working Group
20 July 2018

Purpose of discussion

This background paper is for the Group's information. It:

- discusses the application of the tax secrecy rules in the Tax Administration Act 1994 and how they affect Inland Revenue's ability to release information;
- includes information about the Government's proposed changes to narrow the ambit of the tax secrecy rule, shifting the emphasis from preventing the disclosure of information that Inland Revenue holds to preventing the disclosure of information that relates to taxpayers and their affairs, which will enable Inland Revenue to release more information;
- notes a number of different tax transparency measures and approaches taken in comparable and non-comparable tax administrations like Australia, the United Kingdom, Finland, Norway and Sweden;
- notes recent work that considered there should not be a requirement for multinationals to publicise their country-by-country reports; and
- acknowledges submissions made to the Group on the topic of tax transparency.

Key points for discussion

- There is a balance between tax secrecy and tax transparency. Tax secrecy is seen as important in protecting the confidentiality rights of taxpayers, and tax transparency is argued as a means of increasing compliance and public awareness of the tax system. Does New Zealand have the balance between tax secrecy and tax transparency right? And are there areas where this could be improved?
- Should New Zealand should consider adopting some of the different approaches to tax transparency taken in Australia and the United Kingdom and if so, why?
- Is there any further information or advice that the Group would like?

Recommended actions

We recommend that you:

a **note** that the Government's proposed changes to narrow the ambit of the tax secrecy rule will enable Inland Revenue to share more information than it can under the current rules, including statistical information that wouldn't result in the identification of a person.

b **note** that several submitters commented that they would like greater access to statistical information.

c **indicate** what, if anything, the Group would like to say about tax transparency in its interim report.

Tax transparency

Background Paper for Session 14
of the Tax Working Group

July 2018

Prepared by the Inland Revenue Department and the Treasury

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Executive Summary

New Zealand's current tax secrecy rules prevent Inland Revenue from releasing most information it holds or obtains in connection with its functions.

The Government has recently introduced a Bill[1] which proposes to shift the emphasis of the current secrecy rule from protecting information held by Inland Revenue to protecting information about taxpayers and their affairs.

The Government's proposed changes will better align the tax secrecy rule in New Zealand with the tax secrecy rules in similar tax administration systems. This will enable Inland Revenue to release more information than it currently can, and will increase transparency in the New Zealand tax system.

This paper discusses a number of different tax transparency measures implemented by Australia and the United Kingdom which are aimed at increasing compliance, improving public understanding and awareness of the tax system and ensuring data is accessible for researchers. It also notes that the approach to confidentiality in Scandinavian countries differs quite substantially from the New Zealand model, and that a shift toward a more Scandinavian model would probably not be embraced here.

The paper also notes that while there is some evidence to suggest that the transparency measures implemented in other countries have been effective in increasing the availability of information, and in some instances in improving compliance, there appears to be little evidence to suggest that releasing more information alone assists with discouraging the use of aggressive tax avoidance practices, better informed public debate and an increased public awareness of the tax system.

[1] The Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill was introduced into Parliament on 28 June 2018.

1. Introduction

1. The Group has asked for information to assist its consideration of different approaches to the transparency of information in the New Zealand tax system.

2. This paper:

   - outlines the current tax secrecy rules that apply to Inland Revenue and how they prevent the disclosure of certain types of information held or obtained by Inland Revenue;
   - provides information about the Government's recent proposed changes to narrow the ambit of the current tax secrecy rule which is intended to both make it easier for Inland Revenue to release information, and enable more information to be released;
   - notes a number of different approaches and measures to tax transparency taken in comparable tax jurisdictions, such as Australia and the United Kingdom. It also briefly discusses the approach to tax transparency in jurisdictions which have a different attitude to confidentiality than New Zealand, for example in Finland, Norway and Sweden; and
   - acknowledges the approach taken by other countries in response to recommendations that CbC reports (or elements of CbC reports) should be publicly accessible.

3. A number of submitters to the Group commented on tax transparency. Most submissions discussed the desire for more statistical information from Inland Revenue and one discussed the use of tax transparency to encourage better compliance with New Zealand's tax rules. These submissions are discussed toward the end of the paper.

2. Background

4. The concept of tax secrecy refers to measures in tax legislation that restrict the tax administration from disclosing information it holds or obtains as part of performing or exercising its functions. The inverse regime, where there is no requirement to keep information confidential can be described as tax transparency.

5. Inland Revenue is perhaps unique among government agencies in the quantity and overall breadth of information it holds. It collects and holds information on virtually all New Zealanders, and most corporate and other entities, such as trusts and partnerships. Because of Inland Revenue's involvement in the administration of some social policy schemes[2], it also holds information about its social policy customers. In some cases the information can be sensitive, both in individual and commercial contexts.

6. For most public sector agencies the primary rules governing collection and disclosure of information are found in the Privacy Act 1993 and the Official Information Act 1982. For Inland Revenue, however, the primary rules are contained in Part 4 of the Tax Administration Act 1994.

7. The rules in Part 4 of the Tax Administration Act 1994 generally prohibit the disclosure of any information obtained or held by Inland Revenue unless the disclosure is necessary for "carrying into effect" the Inland Revenue Acts[3]. The current secrecy rule and the Government's proposed changes to it are discussed in greater detail later in the paper.

[2] Inland Revenue is involved in the administration of a number of social policy schemes including child support, KiwiSaver, Working for Families tax credits and the student loan scheme.

[3] The "Inland Revenue Acts" refers to legislation which Inland Revenue is responsible for administering and includes non-tax-specific Acts, for example the Child Support Act 1991, the KiwiSaver Act 2006 and the Student Loan Scheme Act 2011.

3. The importance of tax secrecy and reasons for greater transparency of information

8. The efficient and effective administration of the tax system depends on taxpayers disclosing often significant amounts of information to tax authorities.

9. Information is provided by both individuals, corporates and other entities such as partnerships and trusts, and may be about themselves or about others. For example, employers provide information about both their own affairs and about their employees (to the extent that they are required to by tax legislation).

10. The types of information collected by Inland Revenue covers a considerable range, including identity and contact information, income details, for social policy customers information about relationships and household income, and for businesses detailed commercial information.

11. The need for information and the broad powers Inland Revenue is granted to obtain it are seen as balanced by the existing strict rule of confidentiality. This has been recognised by one court[4], in considering a challenge to Inland Revenue's information-gathering powers, where the court noted that the "stringent secrecy obligations" imposed on Inland Revenue reflected a "legislative balancing of the public interest affecting privacy on the one hand and in the ascertaining of liability for tax on the other".

Reasons for confidentiality rules in the tax system

12. Confidentiality rules can be summarised as facilitating the efficient and effective administration of the tax system in three main ways:

    - encouraging people to provide information with the confidence it will be used and protected appropriately;
    - acting as a balance for the broad information collection powers of Inland Revenue[5], which in turn helps promote compliance and general tax administration; and
    - acting to protect taxpayer confidentiality[6].

Arguments for greater transparency in the tax system

13. In contrast, the main arguments for greater transparency of information in the tax system are:

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[4] See *New Zealand Stock Exchange v Commissioner of Inland Revenue* [1990] 3 NZLR 333 (CA).

[5] Inland Revenue has a range of different information collection powers that are provided for in the Tax Administration Act 1994, see sections 16 to 19.

[6] The right of taxpayers to have their information kept confidential is recognised in the definition of "integrity of the tax system" in section 6 of the Tax Administration Act 1994, which imposes a responsibility on Ministers and officials to protect the integrity of the tax system.

- that it could increase compliance with the tax system. For example, if certain specific taxpayer information was publicised, it could discourage under-reporting of income;
- greater visibility and improving understanding of the tax system; and
- that it will assist researchers by making more data available.

14. The argument that greater transparency in the tax system could increase compliance is partially based on the idea that if the affairs of taxpayers are publicised, it could discourage the use of aggressive tax avoidance practices and foster an environment where there is greater awareness and public debate of the tax system. This argument is also advanced by jurisdictions that require corporations to publicise certain information about their tax affairs and examples of approaches taken in this regard are discussed later in this paper.

15. It should also be noted that with respect to statistical data, Inland Revenue currently provides a considerable amount of information to Statistics NZ that goes on to form part of the Integrated Data Infrastructure and Longitudinal Business Dataset. This information is accessible by researchers[7] but access to these datasets is tightly controlled because of requirements in the Statistics Act 1975, Privacy Act 1993 and the Tax Administration Act 1994.

What sort of information might be made more transparent?

16. Inland Revenue holds a wide range of information, including, for example:

- information about debt collection policies;
- information about new and proposed tax and some social policies;
- taxpayer-specific information, including information about a person's student loan, KiwiSaver, Working for Families tax credits and child support entitlements and obligations;
- Inland Revenue employee training information;
- commercial and procurement information;
- finance and planning information ;
- information technology;
- analysis and statistics;
- publicly available information;
- Inland Revenue employee information; and
- information obtained and held by Inland Revenue that does not relate to Inland Revenue legislation.

17. Of the information above only Inland Revenue employee information and information obtained by Inland Revenue which is not in relation to the Inland Revenue Acts are considered not covered by the current ambit of the tax secrecy rule in the Tax Administration Act 1994.

[7] Data is able to be accessed for approved research projects that are in the public interest.

18. This means that unless an exception to tax secrecy applies the information cannot be disclosed by Inland Revenue. There are a number of exceptions that may apply to these types of information in some circumstances but the rules can be complex and disclosure is still discretionary.

19. Under the proposed changes to the tax secrecy rule, the coverage will be limited to information that would (or could) identify a taxpayer, or is otherwise sensitive information that relates to a taxpayer.

20. The change would mean that when Inland Revenue considers a request for information it holds, more emphasis will be given to the principles of the Official Information Act 1982[8]. This would more closely align the approach Inland Revenue must take when it receives a request for information with the approach taken by most other government agencies[9], and in particular Statistics NZ. This also means that most of the information in the list above would not generally be covered by tax secrecy and could potentially be released following consideration of the Official Information Act.

[8] It is also proposed that Inland Revenue would have the ability to withhold information that if released could compromise the integrity of the tax system, including Inland Revenue's ability to perform its functions.

[9] There are parallels between the confidentiality provisions in the Statistics Act 1975 and the proposed tax secrecy rules for the Tax Administration Act 1994. For example when considering whether information held by Statistics New Zealand should be released by the Government Statistician, it must not be published in a way that could lead to disclosing details about a specific individual, household or business. The same approach would apply to Inland Revenue when considering whether it is possible to release information that could result in the identification of a taxpayer.

4. New Zealand's tax secrecy rules

21. The current tax secrecy rule requires Inland Revenue officers to maintain and assist in maintaining the secrecy of all matters relating to the Inland Revenue Acts. Information cannot be disclosed except for the purposes of "carrying into effect" the Inland Revenue Acts[10]. A number of exceptions to the general secrecy rule also enable Inland Revenue to share information that would otherwise be protected with other agencies.

22. Because the scope of the secrecy rule in the Tax Administration Act 1994 is currently so broad, a lot of information held by Inland Revenue that is not specific to taxpayers is covered by the rule. This means that often information cannot be released, even though it wouldn't result in breaching confidentiality rights of taxpayers if it were released. The tax secrecy rules apply even in circumstances where it is arguable that there could be benefit in the information being readily accessible in the public domain.

23. The current secrecy rules can lead to tensions between:

    - confidentiality rights of taxpayers and wider government objectives, including the more efficient operation of government and the provision of services that can be achieved through increased cross-government information sharing; and
    - of particular relevance to the tax transparency question, confidentiality and the Official Information Act's principle of open access to information held by government agencies.

24. It should be noted that Inland Revenue already shares a significant amount of information with other agencies using a number of exceptions to the tax secrecy rule in the Tax Administration Act 1994. Such exceptions generally exist where the reason(s) for sharing information about taxpayers are considered to outweigh a taxpayer's right to confidentiality. An example of where Inland Revenue will share specific taxpayer information is to enable the Accident Compensation Corporation (ACC) calculate levies payable by self-employed persons and employers[11].

Proposed changes to the New Zealand rules

25. The Government has recently introduced a Bill which proposes narrowing the scope of the current tax secrecy rule in the Tax Administration Act 1994 to more closely align them with comparable tax administrations such as Australia and Canada. The emphasis in these jurisdictions is on protecting information that would (or could)

[10] See section 81 of the Tax Administration Act 1994.

[11] Levies for self-employed persons are calculated with reference to a self-employed person's taxable income, and levies for employers are calculated with reference to the amount of wages paid. Inland Revenue obtains this information for tax administration purposes, and it would be inefficient, cumbersome and potentially problematic for a person to have to provide the same information to both Inland Revenue and the ACC separately.

result in the identification of taxpayers rather than focusing on all information held by the tax administration.

26. The changes will make the process for releasing statistical and aggregated information simpler and Inland Revenue is already exploring providing a wider range of data via websites such as data.govt.nz.

27. Inland Revenue will also be able to release more information that does not specifically relate to taxpayers and their affairs. This includes information outlined in paragraph 16.

28. There are no immediate changes to how Inland Revenue will share information with other agencies. The Bill proposes that Inland Revenue will have more flexibility to share information within a regulatory framework, building on existing legislative provisions.

29. As previously noted, it is also proposed that Inland Revenue would be able to withhold information that could compromise the integrity of the tax system if released. For example, the release of information in relation to audit techniques and strategies could affect Inland Revenue's ability to collect tax and so would not have to be released under the new rule.

5. Different measures taken in other jurisdictions

30. This part of the paper will discuss recent measures taken by Australia and the United Kingdom. Both have recently implemented tax transparency measures to discourage the use of aggressive tax avoidance practices, and encourage greater public debate and awareness of their respective tax systems.

31. When looking at international comparisons of transparency, care should be taken to recognise the scale of the New Zealand market compared to those jurisdictions, which makes it much easier to identify particular taxpayers operating in industries where there are limited participants.

Australia

32. Australia's tax secrecy rule provides that the disclosure of information about the tax affairs of a particular entity is prohibited, except in certain specified circumstances. The exceptions are designed having regard to the principle that disclosure of information should be permitted only if the public benefit derived from the disclosure outweighs the entity's right to privacy[12].

33. Such exceptions generally enable Australia's tax administration to share information with other government agencies, for the more efficient functioning of government.

34. Australia's tax secrecy rule is similar to New Zealand's in that it imposes a general obligation on taxation officers to maintain secrecy, but at the same time it contains a number of exceptions which enable information to be shared if the benefits which arise as a result of sharing information outweigh the entity's right to confidentiality.

35. Where Australia's tax secrecy rule does differ from New Zealand's is that the focus of the rule is on the affairs of taxpayers, rather than all information held by the tax administration as is the case in with New Zealand's current rules. Though as previously noted, the Government's proposed changes to New Zealand's tax secrecy rule will more closely align the New Zealand rule with the Australian one.

36. Australia has implemented a number of different measures which encourage, or sometimes even require, large entities to make publicly accessible certain information about their tax affairs. These are discussed below.

Report of corporate entities' tax information

37. In June 2013 Australia passed legislation that imposes a requirement on the Australian Taxation Office (ATO) to produce an annual report containing certain information obtained from the tax returns of corporate tax entities that return a total income of $100 million or more for an income year.

38. When the change was introduced the Australian Government commented that:

[12] See section 355-1 of the Australian Taxation Administration Act 1953

5.5 The apparent ease with which some large corporate and multinational entities can shift taxable profits and erode a country's tax base is a shared concern for the Group of Twenty (G20) and most Organisation for the Economic Co-operation and Development countries.

5.6 The first objective of these amendments is to discourage large corporate tax entities from engaging in aggressive tax avoidance practices.

5.7 The second objective of these amendments is to provide more information to inform public debate about tax policy, particularly in relation to the corporate tax system.

5.8 The third objective is to enable better public disclosure of aggregate tax revenue collections, even when the identity of particular taxpayers (other than natural persons) could potentially be deduced. This may arise, for example, where the number of taxpayers paying tax under a particular published head of revenue is small, so one taxpayer may be able to deduce information about another from an aggregate figure.

...

Source: Explanatory Memorandum, Tax Laws Amendment (2013 Measures No. 2) Bill 2013, page 76

39. The following information must be published in the report: the corporate entity's name and ABN[13], total income, taxable income and tax payable (Australian Taxation Office, 2017).The information is taken directly from the tax returns which are submitted to the Australian Tax Office so only contain information which is relevant for the purposes of assessing tax liabilities in Australia.

40. From the commentary above it is clear that the Australian Government considers that the move to require the ATO to publish this information is consistent with the arguments advanced for making certain information held by tax authorities available to the public.

41. The most recent report[14] (available for the 2015-16 year) contains the information outlined in paragraph 37 for just over 2,000 corporate entities (Australian Taxation Office, 2018a). In this respect the measure appears to be successful against the objectives outlined in paragraphs 5.7 and 5.8 from the Explanatory Memorandum. It is difficult to understand whether the measure has discouraged large corporate tax entities from engaging in aggressive tax avoidance practices.

[13] Australian Business Number, which is a unique identifier similar to an IRD number.

[14] The report is entitled *Report of entity tax information* and is available via the ATO's website.

42. It is also worth noting that the numbers released can easily be misinterpreted. It is not necessarily an indicator of tax avoidance where a report shows a company with high revenues and low amounts of tax paid. Tax is levied on taxable income which could legitimately be reduced through the use of things like tax losses.

Voluntary tax transparency code

43. The Board of Taxation in Australia developed a voluntary tax transparency code (TTC) as part of the 2016-17 Federal Budget. The TTC is a set of principles and minimum standards to guide medium and large businesses on the public disclosure of tax information.

44. The TTC has been designed to encourage greater transparency within the corporate sector, particularly multinationals, and to enhance the community's understanding of the corporate sector's compliance with Australia's tax laws (Australian Taxation Office, 2018b).

45. Under the TTC, companies (including entities treated as companies for Australian tax purposes) that are medium or large businesses are encouraged to publish specific information in relation to their tax affairs.

46. For the purposes of the TTC, a "medium business" is a business with aggregated "TTC Australian turnover[15]" of at least AU$100 million but less than AU$500 million. A "large business" is one that has aggregated "TTC Australian turnover" of AU$500 million or more. The definitions are relevant for the purposes of determining what information must be disclosed to be compliant with the TTC.

47. In order to comply with the requirements of the TTC both medium and large businesses are required to publicly disclose the following information:

    - a reconciliation of accounting profit to tax expense and to income tax paid or income tax payable;
    - identification of material temporary and non-temporary differences; and
    - accounting effective company tax rates for Australian and global operations (pursuant to AASB[16] guidance).

48. In addition, large businesses are also required to produce the following:

    - their approach to tax strategy and governance;
    - their tax contribution summary for corporate taxes paid; and
    - information about international related party dealings.

49. The number of entities that have chosen to adopt the TTC are still relatively low.

Number of entities that have chosen to adopt the TTC at the time of writing this paper

[15] The rules for calculating "TTC Australian turnover" are outlined at 5.1 of the Tax Transparency Code. The term broadly encompasses turnover that relates to an entity's activities in Australia.

[16] Australian Accounting Standards Board

Year	Number
2015-16	58
2016-17	51
2017-18	38 (year in progress)

50. The number of entities that have adopted the TTC is significantly lower than the number of entities who have information reported annually by the ATO in the *Report of entity tax information* (discussed from paragraph 37). In its report to the Australian Senate, the Economics References Committee (2018) noted its disappointment that very few companies have chosen to comply with the code. The take-up rate was noted as less than one per cent of all medium and large groups.

Australia's approach to publishing statistical information

51. The ATO produces an annual publication[17] which provides a comprehensive statistical summary of information that taxpayers report to the ATO (Australian Taxation Office, 2017).

52. Information is sourced from the income tax returns of all entities, including individuals, as well as annual returns for fringe benefit tax, GST, business activity statements (BASs) and instalment activity statements (IASs), schedules for rental properties, capital gains tax and international dealings, superannuation member contribution statements and other information reported to the ATO in relation to excise, the Pay As You Go (PAYG) system and charitable institutions. The publication also provides data on the time-based cost of compliance and industry benchmarks in the form of financial and activity statement ratios (Australian Taxation Office, 2017).

53. Beyond statistical information from tax returns and information submitted to the ATO, it also publishes statistical information in relation to tax disputes settled by the Commissioner of Taxation[18].

54. The ATO includes in its annual report statistical information in relation to the ATO's settlements each year. The report includes the number of settlements, settlement amounts and settlement amounts by market segments.

55. A report from the Australian National Audit Office noted that the ATO, as compared to other international authorities, has the highest level of transparency when reporting settlements and this is considered a positive aspect of the tax administration system in Australia (Blissenden, 2018).

[17] Entitled "Taxation Statistics"

[18] The Commissioner of Taxation in Australia has the power to settle tax disputes similar to those the Commissioner of Inland Revenue in New Zealand has.

The United Kingdom

56. The United Kingdom (UK) have confidentiality rules that prohibit HM Revenue and Customs (HMRC) officials from disclosing information which is held by HMRC in connection with a function of HMRC. The UK's confidentiality rules are more closely aligned with New Zealand's in the sense that the focus is not on protecting taxpayer confidentiality, but instead is on protecting information that relates to a "function of the Revenue and Customs"[19].

57. The rules are subject to a public interest disclosure rule and a rule regarding disclosure to prosecuting authorities. Disclosure is also permitted for functions of HMRC, for civil criminal proceedings (relating to revenue or customs), on the order of a court, and with the consent of the taxpayer concerned.

58. Revenue or customs information that specifies the person's identity or would allow their identity to be deduced is exempt from disclosure under the Freedom of Information Act 2000. Otherwise, information protected by the secrecy rule is not exempt from the provisions of the Freedom of Information Act. To this end, the existing UK protections are comparable to the proposed changes for New Zealand's tax secrecy rules.

59. The UK has implemented various tax transparency measures which are also targeted at large corporate taxpayers.

Requirement to publish a tax strategy

60. The UK introduced a legislative requirement in the Finance Act 2016 that requires very large businesses to publish a tax strategy in relation to UK taxation.

61. The policy objective of the change is noted by HMRC (2015) as:

> *The publication of tax strategies will ensure greater transparency around a business's approach to tax to HMRC, shareholders and consumers. And board level oversight of those strategies will embed tax strategy in existing corporate governance processes. Taken together this should drive behaviour change around tax planning and therefore enhance tax compliance.*

62. Under the law large multinational groups (with at least €750 million of global turnover) or UK companies, partnerships and permanent establishments with significant turnover (over £200 million) or assets (over £2 billion) are required to publish their UK tax strategy on their website.

63. A tax strategy is only required to give information in relation to UK taxation. Details of the amounts of UK tax paid or commercially sensitive content is not required (though a qualifying business is not prevented from including it).

[19] See section 18 of the Commissioners for Revenue and Customs Act 2005.

64. A tax strategy must set out the following:

- the entity's approach to risk management and governance arrangements in relation to UK taxation;
- its attitude to tax planning in relation to UK taxation;
- the level of risk it's willing to accept in relation to UK taxation;
- its approach towards its dealings with HMRC; and
- a statement that the entity regards the publication as complying with its duty under the Finance Act 2016.

65. There are penalties starting at £7,500[20] for failing to comply with the requirement to publish a tax strategy, or if the tax strategy does not meet the requirements outlined above.

66. At the time of writing this paper there does not appear to be information from either HMRC or HM Treasury that discusses how successful this measure has been against the stated policy objective.

Code of Practice on Taxation for Banks

67. The UK introduced a Code of Practice on Taxation for Banks in 2009. The purpose of the code is to "encourage banks [subject to UK laws] to follow the letter as well as the spirit of the law in relation to tax planning" (HM Revenue & Customs, 2013).

68. The Code was strengthened in 2013 when a law change was made requiring HMRC to publish an annual report on the operation of the Code[21].

69. The Code sets out that banks should

- adopt adequate governance to control the types of transactions they enter into;
- not undertake tax planning that aims to achieve a tax result that is contrary to the intentions of Parliament;
- comply fully with all their tax obligations; and
- maintain a transparent relationship with HMRC.

70. The most recent report on the Code notes that 314[22] banks had adopted the Code as at 31 March 2017. HMRC (2017) also believes the Code is having a positive impact on banks' behaviours and notes that:

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[20] The penalty is £7,500 for a failure that continues for up to six months, with a £7,500 penalty chargeable for every month that the failure continues after the initial six month period.

[21] The annual report lists banks which have adopted the Code, identifies any bank that has not adopted the Code and can identify any bank that is found to be in breach of its Code commitments. Also included in the report is material covering the work HMRC has done to monitor Code compliance and how HMRC addresses concerns when they arise around the code.

[22] HMRC expects the population of banks to be 319 as at 31 March 2017. Of the five banks that had not committed to the Code, two of them began to adopt the code since 31 March 2017.

- none of the banks which had adopted the Code by 31 March 2017 had been determined to be in breach of the Code;
- no bank disclosed any schemes under the Disclosure of Tax Avoidance Scheme regime in the period of the report;
- HMRC has continued to make progress in resolving longstanding enquiries into legacy bank tax avoidance risks, reducing the tax under consideration for these risks from £625 million at 31 March 2016 to £402 million at 31 March 2017;
- the annual survey which asks HMRC's Customer Relationship Managers (CRMs) about their banks' behaviour in relation to the Code, continues to show that most banks who had engaged in avoidance activity prior to adopting the Code now have governance and behaviours which are Code-compliant; and
- the annual survey recorded a reduction in the number of cases where CRMs had initial concerns over a bank's behaviour in relation to any of the Code commitments.

The approach taken in Sweden, Norway and Finland

71. According to a number of studies, Nordic countries (and the Netherlands) are the countries in the world with the greatest transparency within the public administration (Nergelius, 2017). The approach to confidentiality in Nordic countries generally differs quite substantially from the approach taken in New Zealand and other similar countries.

72. In Sweden, the main rule as it relates to secrecy in a tax administration context is that full secrecy applies for all the work within the tax authority that relates to establishing the taxes to be paid by individuals and companies[23], while the tax decisions themselves are normally public[24] (Nergelius, 2017). This means that it is possible for the public to access tax return information about individuals, but it is generally not possible to access the information that relates to establishing an individual's tax position.

73. It is relatively common for the Swedish press to publish lists of taxpayers' incomes so that the public can see "who had the highest income raise last year" or access other such taxpayer information (Nergelius, 2017) that would be strictly confidential in countries like New Zealand[25].

74. Similarly, in Norway, tax return information about most entities (including individuals over the age of 17) is also made publicly available. This has been the case since at least the mid-1800s, and since 2001 the information has been available

[23] Chapter 27, Article 1 of Sweden's Public Access to Information and Secrecy Act

[24] Chapter 27, Article 6 of Sweden's Public Access to Information and Secrecy Act

[25] See Principle 11 in section 6 of the Privacy Act 1993 which provides for the limits on disclosure of personal information.

electronically (Devos & Zackrisson, 2015). Only "total earnings", "total assets" and "tax paid" are available. The sources of income are not available to the public.

75. A change to the rules was introduced in 2014 which requires the Norwegian tax department to notify a person where their information is being accessed by someone[26]. Since this rule was introduced the number of requests has fallen considerably. The Norwegian media is exempt from this disclosure requirement and, like the Swedish media, also often publish details about the "top ten" earners in the country (The Guardian, 2016).

76. The approach taken in Norway in particular is generally seen as having a positive effect on taxpayer compliance (Devos & Zackrisson, 2015).

77. Transparency in the Finnish system is also considered as generally having a positive effect on compliance rates. Boutique publications publish guides on everyone who earns ~€40,000, and in a country where there are only five million people and very few foreigners, it is highly likely that many tax evaders would be known or identified (Devos & Zackrisson, 2015).

78. The approach taken in these countries is enabled by a considerably different societal attitude than that which exists in New Zealand. In a 2018 Privacy Survey conducted by the Office of the Privacy Commissioner in New Zealand, two thirds of respondents declared their concern about individual privacy and over half said they were more concerned about issues with their individual privacy now than they have been in the last few years (Office of the Privacy Commissioner, 2018).

Country-by-Country reporting

79. One of the Base Erosion and Profit Shifting (BEPS) measures recommended by the Organisation for Economic Co-operation and Development (OECD) was to require large multinational groups to provide a Country-by-Country (CbC) report containing certain high-level information on the groups' global activities to tax authorities who would then exchange this information with each other.

80. Recently enacted legislation[27] codifies the requirement for large multinational corporations to provide this report to Inland Revenue in New Zealand.

81. The information provided by the CbC report to Inland Revenue is subject to the general tax secrecy rule in the Tax Administration Act 1994. It will, however, be shared with other tax authorities under the *Multilateral Competent Authority on the Exchange of CbC Reports* and through a bilateral agreement with the United States. These agreements require the information to be protected so it is only available to tax authorities.

[26] According to the article an email notification is sent to the person whose information is being accessed.

[27] The Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018 made amendments to the Ta x Administration Act which now contains a requirement for large multinational corporations to provide this report to Inland Revenue.

The European Commission's proposed tax transparency rules for multinationals

82. In 2016 the European Commission proposed a Directive which would require large multinational companies to publish key information on where they make their profits and where they pay their tax in the European Union (EU) on a CbC basis.

83. Multinationals that operate outside of the EU would also have to provide tax-related information for tax jurisdictions that do not have tax good governance, and for the rest of the globe they will have to provide aggregated data (European Commission, 2016a).

84. The Directive builds on the OECD's BEPS work, but takes one of the recommendations a step further by requiring the public disclosure of CbC reports.

85. The Directive requires any multinational group with operations in the EU would have to publicise, for all their entities in the EU, the taxes paid, taxes due, profit before tax, turnover, number of employees, nature of activities and accumulated earnings. The information would need to be broken down CbC and published both through a local registry and on the company's website(s).

86. It is noted by the European Commission (2016) that the measure would require multinationals to publicly demonstrate that they pay tax where they operate[28] and would assist in fostering corporate responsibility to contribute to welfare through taxes.

87. The European Commission also considers that the Directive would result in better informed democratic debate on the income tax system, leading to fairer income tax measures in the European Union.

88. EY (2017) noted in a Global Tax Alert that despite the Directive passing its first reading in the European Parliament, some member states [of the EU] have already expressed their concerns with going beyond the OECD recommendations [in relation to BEPS]. EY also commented that the timing of next steps in the legislative procedure are difficult to predict**.**

89. Similar reporting requirements have been introduced for the banking, logging and extractive industries. The evidence of CbC report publishing by banks since it came into force in the EU in 2015 is that CbC reporting is a useful tool for enabling the assessment of whether taxes are being paid where profits are being generated (European Commission, 2016b).

[28] The European Commission (2016) notes that without public scrutiny on income tax, some multinational companies engage in aggressive tax planning which leads to unfair competition with companies that do pay their fair share of taxes.

Australia and New Zealand approach to requiring publication of CbC reports

90. In their submission to the Finance and Expenditure Committee on the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, Oxfam submitted that multinational companies that are required to provide CbC reports to Inland Revenue should also be required to publicise the contents of the reports.

91. Inland Revenue disagreed that there should be a legislative requirement for CbC reports to be publicised and outlined the reasons in its Officials' Report to the Finance and Expenditure Committee:

    - the reports can contain commercially sensitive information;
    - the raw information can be easily misinterpreted. For example, a multinational may have reported a low amount of tax paid in a country due to commercial reasons that are unrelated to BEPS such as costs related to a new investment or the use of tax losses from prior years;
    - CbC reporting is a multilateral measure and the multilateral agreement for sharing the information requires the information to be protected so it is only available to tax authorities. Any changes to this requirement would be best achieved through changes to this multilateral agreement;
    - New Zealand could only require New Zealand-headquartered large multinationals to publish their reports. This represents only about 20 of the approximately 6,000 large multinationals in the world so there would only be a small gain in overall transparency, but New Zealand-headquartered multinationals could be disadvantaged by revealing commercial information that their competitors do not need to reveal.

    Source: Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, p 204

92. The topic of requiring publication of CbC reports was also recently discussed in Australia.

93. Australia's Economics References Committee in its report to the Australian Senate on Corporate tax avoidance (Part III) also recommended that excerpts of CbC reports be made publicly available free of charge. The Committee considered that at a minimum, high level data on how much revenue is collected and tax is paid in jurisdictions that the firm operates in and the number of employees should be publicly accessible (Economic References Committee, 2018).

94. The Australian Government did not support the recommendation as is evidenced in the report, also noting that the OECD's BEPS recommendation on CbC reports explicitly states that jurisdictions should enforce legal protections of the confidentiality of the information reported.

95. We note that the OECD plan to review the CbC reporting initiative in 2020 and public reporting may be considered then.

6. Submissions to the Group on tax transparency

96. A number of submissions were made to the Group on the topic of tax transparency.

97. The submissions can broadly be grouped into two separate themes:

- the availability of statistical information from Inland Revenue; and
- the use of tax transparency as a means of reducing aggressive tax avoidance arrangements in the context of multinationals.

98. Another submission requested that Inland Revenue make its government department strategy available as part of its annual report.

99. In relation to the availability of statistical information from Inland Revenue, we note that the Inland Revenue currently publishes statistical information on its website and also shares a significant amount of information with Statistics New Zealand.

100. The recent changes proposed by the Government in relation to the secrecy rule discussed in this paper will make the process for releasing statistical and aggregated information simpler, and Inland Revenue is already exploring providing a wider range of data via websites such as data.govt.nz.

101. There has been limited evidence to suggest that the use of a tax transparency measure is effective in discouraging aggressive tax avoidance practices. Except for in Scandinavian countries, where the general attitude to confidentiality is substantially different from the attitude in New Zealand, it does not appear that releasing tax return information alone is entirely useful because data can easily be misinterpreted.

102. It appears arguable that better results are achieved in requiring something similar to a "Code of Practice", which publicly codifies a taxpayer's commitment to "follow the letter as well as the spirit of the law" with respect to the tax planning, such as the approach taken in the UK. It is unclear that similar measures are necessary in New Zealand though.

103. We also note that Inland Revenue publishes its government department strategy on its website currently and progress is included in the annual report[29].

[29] The information is available at http://www.ird.govt.nz/aboutir/reports/business-plan/business-plan-index.html

7. Conclusion

104. New Zealand's existing tax secrecy rule prevents Inland Revenue from being able to release a lot of information which would not result in the confidentiality rights of taxpayers being breached if released.

105. The Government's proposed change to the tax secrecy rule will enable Inland Revenue to release more information by shifting the emphasis from protecting information that Inland Revenue holds, to refining the protection to information that relates to taxpayers and their affairs. This will more closely align New Zealand's general tax secrecy rule with the Australian rule.

106. Different approaches to tax transparency have been implemented in recent years in Australia and the United Kingdom.

107. Australia's voluntary tax transparency code could be regarded as ineffective due to the low number of companies that comply with it. Australia also publicises certain information from the income tax returns of large corporates in an attempt to discourage tax avoidance. Because the numbers can be easily misinterpreted, it is not clear whether this is an effective tool.

108. In the United Kingdom, the emphasis of the different tax transparency measures appear to be less focused on the release of data, and instead are focused on ensuring there is transparency in respect of the approach to tax. HMRC seem to consider that this is successful in facilitating constructive relationships between HMRC and areas where tax avoidance appears to be of concern, such as large corporates and the banking industry.

109. The general approach to confidentiality in Scandinavian countries is significantly different from what is expected in New Zealand. Given the increasing concern with confidentiality in New Zealand it seems clear that the Scandinavian model where tax return information is publicly accessible would not be positively embraced here.

110. We also note that the proposed changes to the secrecy rule will make it easier for Inland Revenue to release more statistical and aggregated information and that Inland Revenue is currently exploring providing a wider range of data to websites such as data.govt.nz. This will make more information available for researchers.

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