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Dr Susan Secker
Acting Policy Manager
Information Sharing Agreement Consultation
Policy Advice Division
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

Email: susan.secker@ird.govt.nz

Dear Dr Secker

Amendments to Targeting Serious Crime – Information Sharing Agreement between Inland Revenue and New Zealand Police

Thank you for your letter of 19 November 2014. Inland Revenue has asked for the Law Society's response to a number of proposed "remedial amendments" to the Information-Sharing Agreement between Inland Revenue and that New Zealand Police that came into force on 26 June 2014 (Agreement).

The Law Society has consulted its Tax Law and Human Rights and Privacy Committees, and its response is set out below.

The Agreement

The Law Society remains opposed to the concept of Inland Revenue (IRD) sharing tax information with the New Zealand Police relating to "serious crimes" (defined as crimes punishable by four or more years' imprisonment), for the reasons set out in its submission of 24 May 2013 ([attached](#)). Those are, in short, that using taxpayer information for non-tax purposes unjustifiably limits taxpayers' fundamental rights and undermines the integrity of the tax system.

To share information as provided for in the Agreement is a fundamental departure from the longstanding position that tax information will be secret except for tax-related disclosure. The IRD's own publication states:¹

Provisions protecting taxpayer confidentiality have been in place for over 130 years, since the introduction of the Property Assessment Act 1879. The Court of Appeal has said that the tax system *...rests on the assurance provided by stringent official secrecy provisions that the tax affairs of taxpayers are solely the concern of the Revenue and the taxpayers and will not be used to embarrass or prejudice them.* [*Knight v Barnett* (1991) 13 NZTC 8014 (CA) at 8,016]

¹ IRD discussion document, *Targeting Serious Crime*, May 2013, Chapter 2, paragraph 2.2.

The Law Society's 2013 submission concluded that the proposed information sharing in many instances would unjustifiably breach taxpayers' fundamental rights against unreasonable search and seizure and the right not to be compelled to be a witness or confess guilt. The Law Society does not consider that the objective of preventing serious crime (although clearly important) justifies the limitation of those rights.

In light of the range of concerns outlined in 2013, the Law Society is surprised (and disappointed) that the information sharing proposals have proceeded essentially unchanged. Your letter of 19 November states that the Agreement has "sought to balance [the] concerns against public policy objectives prioritised by the Government and improving service delivery outcomes for New Zealanders through increased cooperation between agencies". It is clear however that in finalising the Agreement the concerns have not in fact been "balanced" against competing factors, but rather overridden by those other factors. In those circumstances, it is disingenuous to say that it "would be appropriate to include elements of [the Law Society's] submission in any future review of the information sharing agreement's effectiveness."

The "remedial amendments" – proactive sharing by Inland Revenue

In the context of the serious concerns outlined above, the Law Society is perplexed that the IRD is willing to go further than simply responding to a Police request on reasonable grounds, and proactively to *offer* information to the Police.

Another significant concern is that the Agreement appears to apply retroactively to information provided by taxpayers to IRD, before the Agreement came into effect, in the belief that such information could not be shared. The proposed remedial amendments to the Agreement include the statement (at page 9) that "For the avoidance of doubt, *IR may share both current and previous Personal Information, as held by IR, with NZ Police*" (emphasis added).

The personal information to be "proactively" shared is identified in inserted Row 2 of the table on p8 of the Agreement as:

- Information about an individual's associates
- Tax information
- Financial transaction information
- Financial relationship information
- Domestic relationship information
- Information about assets
- Employment information
- Person records
- Social assistance information
- And, in addition, "*any other personal information discovered by IR in the course of carrying out its usual functions and duties (however discovered)*" [emphasis added]

The amendments also provide that the IRD may give Police physical access to the information in hard copy (physical files, hard drives etc), in addition to using the government's Secure Electronic Environment Mail (SEEMAIL). This means that whatever safeguards the secure email environment afforded in relation to the provision and handling of taxpayer information will be bypassed.

It is hard to understand why the IRD would support proactively sharing tax information where that would clearly risk undermining the integrity of the tax system — not least in providing a credible basis to challenge the exercise of the IRD's section 16 – 19 powers.

Recommendations

The Law Society recommends that the IRD give serious consideration to putting some basic parameters around what information will be able to be proactively shared. At a minimum, information gained by compulsion should be excluded.

The Law Society believes the IRD could make a strong case for such limits based on section 6 of the Tax Administration Act and the long recognition in the caselaw that the IRD's information-gathering powers are only justified by the restricted (i.e. tax) purposes to which that information may be put. We also note the courts may take a different approach under section 21 of the New Zealand Bill of Rights Act, to assessing the "reasonableness" of exercises of the IRD's information-gathering powers if that information can be shared for non-tax purposes.

Members of the Law Society's Tax Law and Human Rights and Privacy Committees would welcome the opportunity to meet with Inland Revenue to discuss these concerns and explore potential improvements to the Agreement. Contact can be made in the first instance through the Law Society's Law Reform Manager Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912).

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'C' followed by a horizontal line extending to the right.

Chris Moore
President

Encl: NZLS submission dated 24.5.13