

30 March 2022

Public Consultation  
Inland Revenue Department

By email: [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz)

### **Re: Officials Issues Paper – Tax Administration in a Digital World**

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the officials' issues paper: *Tax administration in a digital world (Issues Paper)*. The Issues Paper is divided into several chapters. The Law Society comments below on specific matters raised in chapters 3 to 6.

#### **Chapter 3: Scene setting – the shift to digital**

##### Digital inclusion

2. The Issues Paper (at paragraph 3.27) states Inland Revenue's view that professional parties have the capability to operate digitally, and therefore there is an expectation that these groups should use digital channels to interact with Inland Revenue.
3. The Law Society does not agree that professional parties should always be expected to use digital channels to interact with Inland Revenue. We accept that a professional party that has regular contact with Inland Revenue on behalf of a client would typically use digital services when interacting with Inland Revenue in respect of that client. However, where a professional party is interacting with Inland Revenue on behalf of a client in respect of a discrete issue, the processes to establish and authorise access to digital channels can be burdensome and may act as a barrier.
4. It is the Law Society's strong view that the development of digital channels should still allow for alternative communication channels, and that the development of digital channels should not act as a barrier to taxpayers requesting professional assistance (including interacting with Inland Revenue) in respect of discrete issues.

#### **Chapter 4: External parties**

##### How Inland Revenue works with external parties

5. The Issues Paper (at paragraph 4.7) states that external parties will connect with Inland Revenue digitally through Inland Revenue's gateway services (gateway services being the web services that allow third parties to integrate their services with Inland Revenue's systems).
6. We reiterate our comments above. The processes to establish and authorise access to digital channels can be burdensome and may act as a barrier to a professional adviser interacting with Inland Revenue on behalf of a client in respect of a discrete issue. The development of digital channels should still allow for alternative communication channels.

## Regulation of external parties

7. The Issues Paper (at paragraph 4.12) proposes a new regulatory framework in respect of external parties and states that the starting point for that framework would be *“all parties involved in the tax system must have an obligation to uphold the integrity of the tax system”*. The Issues Paper does not provide a justification for that starting point nor does it explain how such a general duty would interact with existing obligations (under the Inland Revenue Acts or at general law) imposed on parties involved in the tax system. The Law Society does not agree that such a starting point is necessary or required. We suggest that the rationale and scope of any new regulatory framework be reconsidered.
8. The Issues Paper (at paragraphs 4.13 to 4.16) goes on to specifically consider the role of tax advisors. In particular, the Issues Paper:
  - (a) accepts that tax advisors play an important role in ensuring compliance, providing advice, and acting as a bridge between Inland Revenue and the taxpayer (paragraph 4.14);
  - (b) acknowledges that the majority of tax advisers are members of a professional organisation that imposes educational and ethical standards on them (paragraph 4.15);
  - (c) advances the supposition that for the tax system to work well, tax advisors need to act to support the integrity of the tax system (paragraph 4.14); and
  - (d) states that Inland Revenue is considering whether the regulatory framework should specify requirements for the tax advisor or whether general obligations for all parties to uphold the integrity of the tax system would be sufficient (paragraph 4.16).
9. Some lawyers act as tax advisers. The Lawyers and Conveyancers Act 2006 (LCA) and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules) 2008 provide a comprehensive regulatory framework for lawyers, including the fundamental obligations imposed on every lawyer under section 4 of the LCA. Moreover, lawyers who act as tax advisers already act to support the integrity of the tax system by meeting their obligations to properly advise their clients. We suggest it would be counter-productive to interfere with the obligations owed to clients by introducing a further duty in relation to the tax system as a whole.
10. The Issues Paper does not address how any conflict between existing duties (including fundamental obligations imposed on every lawyer under section 4 of the LCA) and the proposed new duty to uphold the integrity of the tax system would be resolved. For example, a lawyer may represent a client who is accused of tax evasion or may receive information in confidence that indicates potential non-compliance with the Inland Revenue Acts. In those examples, a duty to uphold the integrity of the tax system could be inconsistent with a lawyer’s fundamental obligations to their client and the critical role lawyers play in New Zealand’s legal system.
11. The Law Society does not accept it is necessary or advantageous to impose a further regulatory framework on lawyers who act as tax advisers.

## **Chapter 5: Data**

### Data collection

12. The Issues Paper (at paragraphs 5.3 and 5.4) states that Inland Revenue is reconsidering its approach to the data it collects and accesses. In particular, whether there is data Inland Revenue can “access” rather than “collect”. The Issues Paper (at paragraph 5.5) then states

that the frameworks for data collection and access will continue to emphasise that the provision of required data is compulsory.

13. Inland Revenue has broad information gathering powers. However, those powers are subject to statutory limits. Generally, the process to collect information allows the person from whom the information is being collected to be aware of the request for information and provides an opportunity to test whether the information sought is within the scope of Inland Revenue's information gathering powers.
14. It is important that any frameworks to allow Inland Revenue to "access" rather than "collect" data are controlled by the person to whom the data relates and involve Inland Revenue providing sufficient detail to that person, so they know when and why data is being accessed. This will allow the relevant taxpayer an opportunity to test (either with Inland Revenue or by judicial review) whether such data is within the scope of Inland Revenue's information gathering powers.
15. Digital access to data should not create an environment in which Inland Revenue may seek data without being subject to effective oversight. To the extent that Inland Revenue wishes to obtain or access data without the relevant taxpayer's knowledge, then Inland Revenue should obtain a search warrant (which would then involve court rather than taxpayer oversight).

#### Data sharing with taxpayer consent

16. The Issues Paper (at paragraph 5.11) raises the question of whether Inland Revenue could share data with a non-government third party where the taxpayer consents.
17. The Law Society is concerned there is a risk that taxpayer consent to the release of information by Inland Revenue to third parties (such as commercial providers of credit) could effectively be compelled by the third party. Moreover, the Law Society does not consider that, given its other responsibilities and finite resources, Inland Revenue should be tasked with providing information to third parties to facilitate a taxpayer's private (non-taxation) affairs, even with the free consent of the taxpayer. Taxpayers can easily access certain tax information themselves via online services, if a third party requires such information.
18. If a framework to share data with taxpayer consent is developed, the Law Society suggests that the following matters be included among the issues to be worked through:
  - (a) The importance of any consent being freely given. This requires the taxpayer to understand the scope of the data to be shared and the consequences of sharing that data.
  - (b) The ability of a taxpayer to limit consent to particular types of data (e.g., where a third-party requests access to numerous data sets, the ability of the taxpayer to grant access to only some of those data sets).
  - (c) Whether, in conjunction with its duty to protect the integrity of the tax system, Inland Revenue should be required to approve a list of third parties eligible to access data even where taxpayers have given consent.
  - (d) The ability for the taxpayer to withdraw consent at any time, including requiring the third party to then return or destroy any data shared by Inland Revenue.

#### Sharing statistical (anonymised) data

19. The Issues Paper (at paragraph 5.17) proposes making more statistical (anonymised) data available to wider groups such as iwi or social groups to assist with research and decision making.

20. The Law Society is concerned that the sharing of more statistical (anonymised) data for research purposes creates the risk of politicising Inland Revenue's data collection processes. This risk is heightened where the relevant data is not data that Inland Revenue would collect and retain in the ordinary course of enforcing the Inland Revenue Acts (for example, information obtained under Inland Revenue's new power to collect information for the development of tax policy under section 17GB of the Tax Administration Act 1994). The sharing of such data raises questions about why such data was collected and the justifications for sharing it.
21. If more statistical (anonymised) data is shared, it will be critical that sufficient systems are in place to ensure that such information is not "sensitive revenue information" (as defined in section 16C of the Tax Administration Act 1994). While such anonymised information may not directly identify taxpayers, the Law Society is concerned that as the overall population to which the data relates gets smaller, the anonymised data may (with other information held by the relevant group) be reasonably capable of being used to identify individual taxpayers indirectly.

## **Chapter 6: Simplification**

### How tax laws are written

22. The Issues Paper (at paragraph 6.4) states that a goal in a more digital tax system would be legislation that supports machine learning so that tax and payment calculation can be automated within external party systems. This statement should be read in light of the comment (at paragraph 6.2 of the Issues Paper) that Inland Revenue has an incentive to adopt automated tax processes that do not require human intervention, which would involve eliminating complex judgements from tax law.
23. Tax law involves numerous boundary issues that require complex judgements (e.g., the boundary between capital and revenue). It is not possible to eliminate such complex judgements from New Zealand's tax law without a radical change to New Zealand's tax policy settings.
24. One approach that could be used to simplify the calculation of tax would be the use of safe harbours. For example, if a category of expenditure (say, legal fees) was automatically deductible for a taxpayer carrying on a business if the aggregate expenditure in an income year was less than a specified amount (e.g., \$20,000), then in many cases that safe harbour would allow the calculation of tax using an automated system. It would only be if the taxpayer had legal fees in excess of the safe harbour that human intervention would be required. This approach would allow many taxpayers to rely on automated systems, while recognising that where amounts are material a taxpayer will need to apply greater care and attention to determining the relevant tax treatment.

Nakū noa, nā



Arti Chand  
**Vice President**