

**EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY**

Deadline for comment: **31 January 2022**

Please quote reference: **ED0237**

Send feedback to **Public.Consultation@ird.govt.nz**

**OPERATIONAL STATEMENT**

# **Section 17GB notices – the Commissioner’s power to obtain information for tax policy purposes**

Issued: XX

OS xx/xx

Operational statements set out the Commissioner of Inland Revenue’s view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement outlines the procedures Inland Revenue will follow when issuing notices under s 17GB. These notices require information to be provided for a purpose relating to the development of tax policy.

All legislative references in this Statement are to the Tax Administration Act 1994, unless specified otherwise.

**START DATE - END DATE**

{DD/MM/YYYY – DD/MM/YYYY}

{Phrase}

## Introduction

Section 17GB is one of Inland Revenue's information gathering powers. The purpose of this provision is to allow Inland Revenue to obtain information relating to the development of policy for the improvement or reform of the tax system. In this regard, the power is different to other information gathering powers that Inland Revenue has, and this is reflected in the restrictions on the use of information obtained under this power.

## Summary of approach

1. A notice requiring information to be provided for tax policy purposes will be made in writing and will refer to s 17GB as the legislative authority for the request.
2. The Commissioner's information gathering power for tax policy purposes is subject to legal professional privilege and to the right of non-disclosure for a tax advice document.
3. Information obtained under s 17GB will be held in a manner so that it cannot be used for the purposes excluded by s 17GB and operational steps may be taken to ensure this.
4. The Commissioner is prohibited from using information obtained under this power in proceedings against the person who provided it. Proceedings includes criminal prosecutions and proceedings commenced under Part 8A (for example, civil tax challenges).
5. If there are circumstances where information obtained under s 17GB could be used by other business areas within the department, it would only be where that use would not lead to proceedings against the person who provided the information. Only a delegation holder for s 17GB can decide that information collected under this power can be shared outside of PaRS.
6. Separately to the use of s 17GB for tax policy purposes, the Commissioner may still use her other powers to obtain information for compliance or administration purposes. However, given the restrictions on information obtained under s 17GB, any subsequent request under the Commissioner's other information gathering powers would not be as a direct result of information provided pursuant to s 17GB.

## Application of the statement

7. This operational statement applies from [date].

## Discussion

8. New s 17GB was introduced in December 2020 to clarify that the Commissioner could use her powers to obtain information for tax policy purposes. The provision recognises that having access to information is critical to providing good tax policy advice.
9. Section 17GB reads:

### **Commissioner may require information or production of documents for tax policy development**

- (1) A person must, when notified by the Commissioner that the person is required to provide information under this section, provide any information that the Commissioner considers relevant for a purpose relating to the development of policy for the improvement or reform of the tax system.
- (2) The Commissioner must not use, as evidence in proceedings against a person, information provided by the person in response to a notice under subsection (1).
- (3) Subsection (2) does not apply to any information subsequently obtained by the Commissioner under another section of this Act.

### ***When can the power be used?***

10. A notice may be issued under s 17GB where Inland Revenue staff consider that it is "relevant" for a purpose relating to the development of tax policy. This is similar to the wording of another of the Commissioner's information gathering powers, s 17B, which uses the term "necessary or relevant". The Courts have interpreted s 17B as being expressed in the widest terms.
11. The purpose for which information can be required is also very broad. It can be to improve the evidence base upon which future tax policy decisions can be made. It is possible that the scope of any policy issue may change as information is received and analysed. Further, the issue of a notice under s 17GB should not be taken as implying that any particular policy outcome will result.
12. The obligation to provide "information" in the context of these powers includes an obligation to provide documents. Document means all forms of information storage, including records in electronic form.

13. Where relevant a New Zealand resident will be required to provide information of a non-resident that they directly or indirectly control. Information of a large multinational group can be required from a member of that group.
14. A notice under s 17GB may be issued without first seeking to gather the information voluntarily.

#### ***How will the power be used?***

15. A request for information using this power will be made in writing and will expressly refer to s 17GB as the basis upon which the notice is issued. The notice will also expressly state that the information is being requested for tax policy purposes. In some cases the notice may go further to explain what the policy purpose is and why the information is being sought.
16. When determining the information to be provided, the Commissioner will be mindful of the compliance costs on the person to whom the notice applies, and the reasonableness of the request, having regard to the purpose for which it is sought.
17. Consistent with how the Commissioner exercises her other powers, a reasonable timeframe will be given to respond to a notice issued under s 17GB. This timeframe will take into account the nature and amount of information that is required and the circumstances for which the information is required.
18. Recognising the significance and unique nature of this power, the Commissioner has only authorised senior officials<sup>1</sup> to issue notices under s 17GB.

#### ***Limits to the use of information collected under this power***

19. The Commissioner cannot use information provided by a person in response to a notice issued under s 17GB as evidence in proceedings against them. This includes criminal prosecutions and proceedings commenced under Part 8A (for example, civil tax challenges).
20. Information obtained under s 17GB will be held in a manner so that it cannot be used for the purposes excluded by s 17GB and operational steps may be taken to ensure this.
21. If there are circumstances where information obtained under s 17GB could be used by other business areas within the department, it would only be where that use would not

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<sup>1</sup> At the time of publication these are the Deputy Commissioner – PaRS, Policy Directors and the Chief Tax Counsel.

lead to proceedings against the person who provided the information. Only a delegation holder for s 17GB can decide that information collected under this power can be shared with anyone outside of PaRS.

22. Separately to the use of s 17GB for policy purposes, the Commissioner may still use her other powers to obtain information for compliance or administration purposes. This means that the Commissioner cannot rule out that the same or similar information may be requested from a person who has previously provided that information under s 17GB. However, given the restrictions on information obtained under s 17GB, any subsequent request under the Commissioner's other information gathering powers would not be as a direct result of information provided pursuant to s 17GB.

### ***Usual grounds for non-disclosure apply***

23. The Commissioner's information gathering power under s 17GB is subject to legal professional privilege (s 20) and to the right of non-disclosure for a tax advice document (ss 20B to 20G), in the same way as those limitations apply for s 17B. For further information on these grounds for non-disclosure refer to *OS 13/02 – Section 17 notices*<sup>2</sup> at paragraphs [14], [37] to [38], [46] and [49] to [54], and *OS 18/02 – Non-disclosure right for tax advice documents*.

### ***Privacy considerations***

24. Protecting the privacy of our customers is very important and Inland Revenue has been in discussions with the Office of the Privacy Commissioner as to the best way to manage privacy considerations.
25. There are occasions in which information obtained under this power may be disclosed outside of Inland Revenue. These include where there is a legal obligation to provide the information (for example, where information is required for a Commission of Inquiry, to satisfy New Zealand's international obligations or in respect of an official information request) or where disclosure is permitted by law. Whether information will be provided will require a case-by-case assessment. Decisions about permitted disclosures will only be made by a delegation holder for s 17GB notices.

### ***Consequences of non-compliance***

26. It is an offence not to comply with a s 17GB notice, in the same way as a s 17B notice, and the usual enforcement options are available to Inland Revenue. For further

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<sup>2</sup> The current legislative provision for these notices is s 17B.

information on these, please refer to *OS 13/02 – section 17 notices* at paragraphs [80] to [87].

This Statement was signed on [date].

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**Rob Falk**

National Advisor, Technical Standards, Legal Services