STANDARD PRACTICE STATEMENT

Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori

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SPS 21/02

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement provides guidelines on the retention of business records in electronic format and sets out the Commissioner's practice when considering an application to store business records offshore and when considering an application to keep records in a language other than English or te reo Māori.

START DATE
6/5/2021

REPLACES

- **SPS 13/01**: Retention of business records in electronic format, application to store records offshore and application to keep records in Māori

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Introduction

This Statement provides guidelines on the retention of business records in electronic format and sets out the Commissioner's practice when considering an application to store business records offshore and when considering an application to keep records in a language other than English or te reo Māori.

All legislative references are to the Tax Administration Act 1994 (the "TAA"), unless otherwise stated. The relevant legislative provisions of the Act are set out in the Legislative References page at the back of this Statement.

This Statement also appears in *Tax Information Bulletin* Vol. 33, No. 4 (June 2021).

Application

This Statement applies from 6 May 2021 and replaces SPS 13/01: Retention of business records in electronic format, application to store records offshore and application to keep records in Māori, published in *Tax Information Bulletin* Vol 25, No 3 (April 2013). It applies to customers who are required to keep business and other records under the Inland Revenue Acts and other third parties that hold business records for customers offshore.

Standard practice

Summary

1. This Statement applies to the Commissioner's discretion to allow customers to store information in a digital format and also sets out how the discretion to store business records offshore will be applied. It also confirms that as official languages of New Zealand, customers may keep their records in English or te reo Māori. It also provides guidelines for customers who wish to keep their records in a language other than English or te reo Māori.

2. The TAA and the Goods and Services Tax Act 1985 (GSTA) require customers to keep business and GST records in New Zealand and in either English or te reo Māori. The Commissioner has the discretion to authorise the offshore storage of records or to authorise records being kept in a language other than English or te reo Māori. The TAA allows applications to be made by a third party data storage provider, such as a cloud service provider, to store records offshore for their clients.

3. Records stored electronically, both inside and outside of New Zealand, and either on the customer's own electronic storage system or on an outsourced system, must meet the requirements of the Contract and Commercial Law Act 2017 (CCLA). This provides that the integrity of the information contained in the records is to be maintained and that the information is readily accessible so as to be usable for subsequent reference. Further conditions for legal requirements to retain records under the Inland Revenue Acts are provided in schedule 2, clause 4 of the Contract and Commercial Law (Electronic Transactions) Regulations 2017 (CCLETR).

4. It is the Commissioner's view that the requirements in the CCLA and the conditions in the CCLETR are met if the practices in [26] to [37] of this statement are followed.

5. The Commissioner may authorise a customer to store records offshore or a third party to hold records offshore for multiple customers, if the storage of those records offshore does not impede the Commissioner's compliance activities. In particular, the records stored offshore must remain accessible by the Commissioner. An applicant will be required to demonstrate that the manner in which the records are to be stored offshore will meet the requirements of the CCLA and the CCLETR. Each application will be considered on a case by case basis having regard to the merits of the case, including the compliance history of the applicant.

6. For a third party application, the Commissioner will also consider whether the third party carries on business in, or through, an establishment in New Zealand. The

Commissioner will also take account of the procedure that the third party has for dealing with client data should they cease to hold records for a client.

7. The Commissioner may impose conditions on an authorisation to store records offshore. The need to impose such conditions is determined on a case by case basis.

8. The Commissioner may withdraw an authorisation, either upon request by the party to which the authorisation applies or by giving reasonable notice of the withdrawal.

9. An authorisation given to a third party does not replace a customer's responsibility to meet the record keeping requirements as prescribed in the Inland Revenue Acts. The authorisation merely enables the third party to store the customer's records offshore without the customer being in breach of their obligations.

10. Pursuant to s 17B, the Commissioner can request information from any person, including a third party. Generally, the records of a specific customer will be obtained from that individual customer in the first instance. The Commissioner may request this information from a third party if it is necessary in the particular circumstances of the case.

11. The Commissioner will follow the standard practice for protecting customers' rights to non-disclosure of tax advice documents and documents that are legally privileged when requesting information[1].

12. The Commissioner may authorise records to be kept in a language other than English or te reo Māori. Applications to keep records in other languages will be approved only in limited circumstances where there are compelling reasons to do so. These applications will be considered on the facts of each case.

13. All customers must use certain English phrases specifically required by the GSTA and numbers must be recorded using Arabic numerals. This will be the case even where the Commissioner has agreed to keep records in another language, or whether the customer has elected to keep their records in te reo Māori.

Detailed discussion

Obligation to keep business and other records

14. Section 22 requires a person who carries on a business in New Zealand (including those who do business via the Internet) to keep sufficient business records to enable

[1] Refer to Operating Statement (OS) 18/02 Non-disclosure right for tax advice documents

the Commissioner to readily ascertain the amount of tax payable by the business and all other tax matters relating to that business.

15. Records include, but are not limited to:

- books of accounts that record receipts or payments or income or expenditure;
- vouchers, bank statements, invoices, receipts, and other documents to verify entries in the books of accounts;
- other accounts and documents specifically required to be maintained and kept.

16. Section 22(1) requires that the records to be kept in relation to a business must contain certain information. This includes:

- a record of the assets and liabilities of the business; and
- a record of all entries from day to day of all sums of money received and expended in relation to the business; and
- all records and invoices relating to trading stock or the provision of services, depending on the type of business; and
- charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year.

17. Business records must be retained in English or te reo Māori and at a place in New Zealand (unless the Commissioner has approved otherwise), and they must be retained for the full retention period required by the TAA, currently 7 years unless extended to 10 years by the Commissioner for specific situations.

18. Similar record keeping requirements are contained in s 75 of the GSTA for the retention of records specified in that section for GST purposes.

19. Records may be kept in paper form or electronic form. There must be sufficient detail to ensure a complete audit trail that allows tracing the retained records to and from accounting records and to tax returns.

20. Section 229 of the CCLA provides the option of using technology to store source paper documents by electronic means. The legal requirement to retain a document that is in paper form, is met by retaining an electronic form of the information if:

- the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and
- the information is readily accessible so as to be usable for subsequent reference.

21. Subject to s 231 of the CCLA, s 230 of the same Act sets the standard for retaining information in electronic form. The legal requirement to retain information that is in electronic form is met by retaining the information:

    - in paper or non-electronic form if the form provides a reliable means of assuring the maintenance of the integrity of the information; and
    - the information is readily accessible so as to be usable for subsequent reference.

22. Section 231 of the CCLA provides extra conditions for electronic communications. If a person is required to retain information that is contained in an electronic communication the person must also retain information that can identify the origin, destination, and the time when the electronic communication was sent. This information must be readily accessible and usable for subsequent reference.

23. Schedule 2, clause 4 of the CCLETR provides conditions for legal requirements to retain records under the Inland Revenue Acts:

    - A record that is initially in paper or other non-electronic form may be retained in electronic form if the record is readily able to be produced in paper form and that the paper form is a duplicate image of the original paper or other non- electronic form.
    - If annotations, indexing references or other additional information are included in the electronic form of the record, they must not obscure any of the original information contained in the record and must be distinguishable as additions to the original record.
    - A record that is generated in electronic form and is provided to another person in paper or other non-electronic form may be retained in its electronic form only.
    - If a record is received from a person in both non-electronic form and electronic form, the record may be retained in its electronic form only.

Retention of records in electronic form

24. The main requirements for keeping records in electronic form under the CCLA, whether the records were originally in paper form or in electronic form, are that:

    - the integrity of the information contained in the records is to be maintained; and
    - the information is readily accessible so as to be usable for subsequent reference.

25. The Commissioner considers that the information will meet the requirements of the CCLA and the CCLETR if the practices in [26] to [37] are followed. The same standards

of record keeping practice applies to records stored both inside and outside of New Zealand, and either on the customer's own electronic storage system or on an outsourced system.

Originally in paper form

26. Paper records transferred to electronic form must be copied completely and accurately, for example, the use of imaging to provide information in a format identical in all respects to the source-paper document. A black and white scan of a coloured document is acceptable, unless the colours in the original document are material to understanding the information. The addition of information such as index referencing is also acceptable, provided the additional information does not obscure the original information and the additional information must be distinguishable as additions to the original record.

27. The electronic copy must be readily accessible and capable of being retrieved on legible hard copy (printouts) or supplied in an electronic form able to be read by Inland Revenue staff.

28. Source-paper documents or other non-electronic records from which the complete information is transferred and stored in electronic form, may be destroyed after transfer to the electronic form.

29. As an example, where a customer electronically transmits to the Commissioner information contained in any return in a prescribed form, s 36 of the TAA requires the customer to retain a hard-copy transcript of their information, and for a period of 7 years as required under s 22 of the TAA. The Commissioner considers that the requirement to keep the hard-copy transcript is met if the practices in [26] and [27] are followed.

Originally in electronic form

30. Internal controls must be adequate to ensure that all business transactions executed electronically, including those executed through the internet, are completely and accurately captured.

31. People should be able to demonstrate that their electronic records systems are secure from both unauthorised access and data alterations. This usually involves developing and documenting a security program that:

- establishes controls to ensure that only authorised personnel have access to electronic records;
- provides for backup and recovery of records;

- ensures that personnel are trained to safeguard sensitive or classified electronic records; and
- minimises the risk of unauthorised alteration, addition or erasure.

32. The charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used, must be retained and produced (if required) to Inland Revenue staff.

33. Those who engage in the electronic transfer of tax invoices, credit notes or debit notes must retain electronic records that have an adequate level of detail to meet the requirements of the GSTA. This may require the customer to keep other records such as the underlying contracts, price lists, price changes, and product code descriptions.

34. Where tax invoices are held in an electronic format there is no requirement to also hold a copy of the invoice in either paper or.pdf format provided that the required details of the invoice are readily accessible so as to be useable for subsequent reference.

Emails

35. An email that contains information required to be kept by the Inland Revenue Acts may be regarded as a record. Where emails are considered to be records s 231 of the CCLA requires the origin, destination and time of electronic communications to be retained and accessible so it can be used for subsequent references.

Backup

36. Backup and recovery procedures must be sufficient to ensure the availability of electronic records for the required record retention period.

Hardware/software changes

37. In the event of hardware/software changes:

- facilities for retrieving electronic records that have been stored on the former system must be retained; or
- the electronic records must be converted to a compatible system and both sets of files retained complete with documentation showing the method of transfer and controls in place to ensure the transfer was complete and accurate.

The Commissioner's discretion to authorise offshore record keeping

38. Section 22(2BA)(b) requires a customer to keep their business records in New Zealand, unless the Commissioner has authorised under s 22(8) that the records may be kept offshore. This applies to business records in both paper form and electronic form.

39. Authorisation may be given to an individual customer to hold their own records offshore or to a person (a third party) to hold records for multiple clients offshore.

40. An individual customer who wants to store their business records offshore should apply to the Commissioner for authorisation to do so before sending their records outside of New Zealand.

41. A third party may include a cloud service provider or other data storage providers that hold records for multiple customers.

42. It may be necessary for a tax agent to make a third party application if that tax agent is storing their clients' records for their clients outside New Zealand, i.e., where the clients of the tax agent have outsourced the storage of records to the tax agent and the clients are not holding their own records.

43. If either a backup of the business records is retained in New Zealand, or if the records to be stored offshore are merely a backup of the records held in New Zealand, the Commissioner considers that the requirement to store the records in New Zealand is satisfied and an authorisation is not necessary. This applies to both individual customers and to third parties.

44. If an authorisation is granted to a third party the individual customers for whom the third party holds records for would not need a separate authorisation from the Commissioner.

45. However, third party applications should be sent to the Business Lifecycle Manager, Significant Enterprises at:

    Inland Revenue
    5 Osterley Way Manakau
    PO Box 76198
    Manakau City 2241

46. Individual applications may be made through MyIR, telephone or in writing to your local Inland Revenue office.

The Commissioner's Consideration

47. The Commissioner may agree to a customer storing their business records offshore where the Commissioner is satisfied that the offshore storage would not impede compliance activities. In particular, the information stored offshore remains accessible by the Commissioner.

48. There are inherent risks to accessing information stored offshore as New Zealand laws may not apply to information that is physically stored in another jurisdiction (electronically or otherwise). The Commissioner must rely on the cooperation of customers or third parties to access information stored offshore. Furthermore, the Commissioner's access could be jeopardised if the third party who is providing the storage services has no presence in New Zealand.

49. Therefore, in order to ensure the records held offshore by a third party remain accessible, the Commissioner will have regard to the following when considering an application by a third party:

- whether the third party has a place of business in New Zealand or carries on its business through an establishment in New Zealand; and
- how the clients' data will be dealt with should the third party no longer hold records for clients or for a particular client (for example, the contractual relationship ends between a client and the third party or the third party ceases to exist).

50. Each application will be considered on the merits of the case and may include the compliance history of the applicant.

51. In terms of an authorisation to a third party, s 22(8)(b) provides that in addition to the Commissioner authorising the third party to hold records for customers outside New Zealand, the Commissioner also has the discretion to require the records to be kept in a particular form and to be accessible in a way approved by the Commissioner. The need to impose such terms on an authorisation to a third party will depend on the circumstances of the third party and will be considered on a case by case basis.

52. An application to store records offshore should address the above factors. If the storage of records offshore is by electronic means, the applicant may be required to provide information that demonstrates the manner in which the records are to be stored will meet the requirements of the CCLA and CCLETR as discussed in [24] to [37] above. The information supplied in support of the application may include the following:

- documentation that describes the operation of the systems in which the records are stored;
- explanation as to how the records are stored offshore and how they can be accessed by the Commissioner should it be required;
- standard terms and conditions for services of data storage provided by the third party to their customers;
- any Code of Practice disclosure statements applicable to a third party. For example, the New Zealand code of practice for cloud computing which a New Zealand-based cloud provider can voluntarily adhere to. Certain information about the cloud provider and its services are disclosed under the code of practice.

53. The standard timeframe for processing third party applications is three months, dependent on the timely receipt of any further information requested.

Conditions of an authorisation

54. The Commissioner may impose conditions on an authorisation to store records offshore, as provided for in s 22(9).

55. All authorisations to store records offshore would be subject to the customer or third party providing an undertaking that the records would be provided to the Commissioner on request, in a usable format, and at no cost to Inland Revenue in obtaining the information. The undertaking would also require assurance that the records be provided in a timely manner and that extra time to respond to requests on the basis that the records are offshore would not be sought.

56. In order to ensure the information stored offshore continues to be accessible, the Commissioner may impose additional conditions that are considered necessary and reasonable in the circumstances of the case. As an example, to ensure that the Commissioner's access to information is not compromised where the relationship between the customer and a third party ends, a reasonable condition may be imposed by the Commissioner on the third party. This condition could be that at the end of the service agreement between the client and the third party, the third party will return the data to their client either in:

- a format that is meaningful to the client; or
- a format that can be readily exported into a meaningful format that the client can understand and can be used for subsequent reference.

57. Conditions may be varied as circumstances of the customer or the third party applicant change.

Withdrawal of authorisation

58. No period of validity would be prescribed on an authorisation. However, the Commissioner may withdraw an authorisation, either upon request by the customer or the third party to which the authorisation applies or by giving reasonable notice of the withdrawal. Circumstances where an authorisation may be withdrawn include:

- non-compliance to the conditions of an authorisation or to an information request;
- the customer or third party no longer keeps records offshore.

Public notice of an authorisation or withdrawal

59. A public notice of an authorisation given to a third party or the withdrawal of that authorisation will be published on Inland Revenue's website. A list of authorised third party providers[2] can also be found on the IRD Tax Technical website.

Customer has ultimate obligation

60. An authorisation given to a third party does not replace a customer's responsibility to meet the record keeping requirements as per the Inland Revenue Acts. The authorisation merely enables a customer to store records offshore without being in breach of their obligation to hold those records in New Zealand. A customer still has the responsibility to ensure that their records, whether stored in New Zealand or offshore (or both), are sufficient to satisfy their record keeping requirements.

61. Further, an authorisation to a third party should not be relied upon as an approval of the third party as a service provider in general. The individual customer should carry out their own assessment of the third party to ensure that they are satisfied that services offered meet the customer's business needs. The authorisation provided by the Commissioner merely relates to the offshore storage of records.

Providing information to Inland Revenue

62. The Commissioner can request information from any person pursuant to s 17B. Any person, when required under s 17B, must produce for inspection any documents that the Commissioner considers necessary or relevant for a purpose under an Inland Revenue Act. The failure to produce information that is in the person's knowledge, possession or control when requested, is an offence under the TAA.

[2] https://www.taxtechnical.ird.govt.nz/general-articles/third-party-providers-approved-to-store-taxpayer-electronic-records-offshore

63. A third party may be required to provide information that is in their possession when requested under s 17B. The request may include any logs of entries, alterations and deletions of transactions that a third party may keep.

64. Generally, a s 17B request will be made to the customer in the first instance. On occasion, the Commissioner may request this information from a third party. Factors that may influence the Commissioner's decision to request information from a third party include whether the documents required may be at risk, and where there has been non-compliance or non-cooperation with previous requests for information.

65. Section 17B notices (including those issued to a third party other than the customer) will be issued following the practice set out in OS 13/02 Section 17[3] notices (or any subsequent replacements of that OS). Also refer to SPS 10/02 Imaging of electronic storage media for the Commissioner's standard practice for imaging of electronic information when exercising the information gathering powers now contained in s17 B.

66. Inland Revenue has officers that specialise in downloading electronically stored information. The preferred media for receiving electronic information is on CD, DVD or USB drive. However, other mutually agreeable transfer methods may be negotiated as required.

67. Electronic information supplied to Inland Revenue should be in a tab or comma delimited or fixed record length format, in EBCDIC or ASCII. It should be encrypted or password protected with the password/passphrase or any other information required to access the information supplied to Inland Revenue separately. The electronic information should be copied to media, not a proprietary back up. Documentation should be supplied with the media showing the record layout, record length, and number of records.

Assistance to Inland Revenue Officers

68. Where necessary, adequate viewing and printing facilities should be made available free of charge to Inland Revenue officers. If requested, persons must locate selected records that have been stored and print any items selected, free of charge to Inland Revenue.

69. Someone must be available to explain the operation of their computer system to Inland Revenue officers. This is the case whether the system is owned and operated by the person or outsourced to a third party.

[3] Section 17B was previously s 17 until amended by the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019.

Non-disclosure of tax advice document and legal privilege

70. Sections 20 to 20G provide customers with the right to non-disclosure of documents that are tax advice documents or documents that are legally privileged. The Commissioner will follow the standard practice for protecting these customer rights when requesting information.

71. There is a possibility that information relating to a particular customer obtained from a third party may contain documents that may be subject to these non-disclosure rights. Where a request for information is made to a person other than the customer pursuant to s 17B, the recipient of the request may contact the customer to confirm whether the customer wishes to claim non-disclosure right for tax advice documents or legal privilege over documents required to be disclosed. This is outlined in OS 13/02 Section 17[4] notices.

72. The Commissioner will attempt to deal with the claim of legal privilege or tax advice status of information with the person making the claim. If the claim of legal privilege or the non-disclosure of tax advice documents cannot be resolved between the Commissioner and the person making the claim, the Commissioner may apply to a District Court Judge for orders under s 20(5) as to whether the claim for legal privilege is valid or under s 20G as to whether the document is a tax advice document.

73. Refer to OS 18/02 Non-disclosure right for tax advice documents (or any subsequent replacements of that OS) for more information on what constitutes tax advice documents and the process for claiming non-disclosure right for these documents.

The Commissioner's discretion to authorise records being kept in a language other than English or te reo Māori

74. Sections 22, 26 (records to be kept for resident withholding tax purposes) and s 32 (records of specified charitable, benevolent, philanthropic, or cultural bodies) and s 75 of the GSTA require customers to keep sufficient records in the English or te reo Māori languages to enable the Commissioner to readily ascertain the customer's liability to tax.

75. The reason for the requirement to keep records in English or te reo Māori is that these are New Zealand's two official written languages. However, Inland Revenue recognises that the choice of language for business dealings is not a matter for the Commissioner

[4] Section 17B was previously s 17 until amended by the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019.

to determine. It may be reasonable for a person whose business is conducted in a language other than English or te reo Māori (alternative language) to have Inland Revenue accommodate their language preference.

76. Each of ss 22, 26 and 32 and s 75 of the GSTA provides discretion to the Commissioner to allow records to be kept in an alternative language, following an application. Therefore, those customers who wish to keep their records in an alternative language must apply to the Commissioner to do so.

77. The tax law obligations of other parties, such as the recipient of a tax invoice, must also be considered. When base records, such as invoices and receipts, are maintained in an alternative language there may be some inconvenience to other persons. GST tax invoices and debit and credit notes raise a specific issue. They are necessary for ascertaining the tax liability of the issuer and of that other party. Therefore, they are records covered by s 75(3) of the GSTA that must be maintained in English, unless the Commissioner gives permission to use another language.

78. There are explicit requirements under ss 24, 24BA and 25 of the GSTA for specific English phrases to be used in a GST tax invoice or debit and credit notes. These phrases are:

- tax invoice;
- copy only – on copy of lost tax invoice, credit or debit note;
- buyer created tax invoice – IRD approved;
- modified tax invoice – IRD approved; and
- credit note or debit note – on credit or debit notes.

79. There is no discretion to allow the use of expressions in an alternative language to satisfy the requirements imposed in ss 24, 24BA and 25 of the GSTA.

The Commissioner's standard practice

80. A person may apply to keep records (i.e., invoices, receipts, cash books, and journals) in an alternative language for tax purposes. The application should specify which records the customer wishes to keep in an alternative language.

81. A customer may seek approval to keep only some of their records in an alternative language. In addition, where approval to keep certain records in an alternative language has been obtained, there is nothing to stop a person continuing to keep all or some of those records in English or te reo Māori. This would extend to having an individual document completed partly in an alternative language and partly in English or te reo Māori.

The Commissioner's Consideration

82. The Commissioner will generally approve applications to keep records in an alternative language where a case can be demonstrated, provided that:

- the customer complies with the requirements of ss 24, 24BA and 25 of the GSTA; and
- numbers are recorded using Arabic numerals (i.e., 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9) in order to accommodate the needs of other parties.

83. In any case, the customer's records must be sufficient to allow the Commissioner to readily ascertain the customer's tax liabilities.

84. The approval is not a relaxation in the standard of record keeping as required by the Inland Revenue Acts. Nor does the approval necessarily mean Inland Revenue will communicate with customers in that alternative language.

Impact on other parties

85. A recipient of a record that has been completed in an alternative language, such as an invoice or receipt that will be used by that other party to ascertain their tax liability, does not need to also apply for approval to keep records in an alternative language. The balance of commercial convenience between buyers and sellers will determine what language is used in any particular case.

Returns not to be completed in alternative language

86. The law is silent on the language to be used in completing any returns that a person may be required to provide to the Commissioner. The Commissioner will accept returns in the prescribed format, completed in either the English or te reo Māori language with numbers entered using Arabic numerals.

This Standard Practice Statement is signed on 6 May 2021.

Rob Falk
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Legislative references

Tax Administration Act 1994

Section 22 Keeping of business and other records

Contract and Commercial Law Act 2017

Section 229 Legal requirement to retain document or information that is in paper or other non-electronic form

Section 231 Extra conditions for electronic communications

Contract and Commercial Law (Electronic Transactions) Regulations 2017

Schedule 2 Prescribed conditions in order to meet legal requirements by electronic means