

Guidelines for publishing technical decision summaries

Introduction

1. From mid-2021, certain technical decisions made by the Tax Counsel Office (TCO), Inland Revenue will be published in a summarised form. The published document will be called a technical decision summary or TDS. This document sets out the policy and guidelines concerning the publication of technical decision summaries.

Policy and principles

2. Publishing technical decision summaries will make our advice decisions and processes clearer and more transparent and will help taxpayer compliance. Awareness of our approach on technical issues helps taxpayers and their advisors “get it right from the start” and supports the integrity of the tax system.
3. Technical decision summaries are **summaries** of technical decisions made by the TCO for adjudications (from mid-2021) and private ruling applications (later in 2021, at the earliest for applications received on or after 1 June 2021), subject to certain exclusions discussed in paragraph 6 below.
4. Technical decision summaries will be available on our tax technical website. It will be possible to subscribe for notifications of new items.
5. Each TDS will contain an outline of the factual situation and sufficient detail of the legal analysis (including a summary of alternative arguments and case authorities) to help readers understand why the decision was reached.
6. It is intended that most technical decisions will be summarised and published. For a variety of legal and practical reasons, any technical decisions (or separate issues within a technical decision document) with one or more of the following characteristics will not be published:
 - Where it is not possible to publish the decision in a way that appropriately protects the confidentiality (in terms of both identity and commercially sensitive information) of the relevant taxpayer/customer or another party to the transaction.
 - Where IR has formally decided that the decision should not be followed in other contexts, or our staff have been formally advised not to apply the decision to other taxpayers pending urgent consideration at a national level.
 - Where the decision is subject to a formal escalation within IR, and consequently the Commissioner's position may change.

- Where it has been decided the decision should be the subject of a public statement that will be publicly consulted (for example as a public ruling, interpretation statement, or question we've been asked) and it is not anticipated that the allocation and preparation of the item and its public release will be unduly delayed.
 - Where the issue relates to a particular group of taxpayers/customers or industry, and we intend to engage with that group regarding the issue and its interpretation, and arrangements that would apply if our position changes.
 - Where our Policy group considers the decision to be contrary to the intended tax policy outcomes and intends to consider the matter as a matter of priority and potentially recommend legislative change.
 - Where the nature and implications of a decision mean that the integrity of the tax system and/or certainty for taxpayers or customers requires the Commissioner to engage with the government, or give careful and detailed consideration regarding its implementation and communication (this exclusion from publication would only be used in exceptional circumstances).
 - Where the matter has been referred to our Policy group for immediate legislative clarification or rectification, as it could significantly undermine tax system integrity or government revenue, and there is a serious risk of taxpayer/customer uncertainty or exploitation if it became public knowledge.
 - Where the matter is purely procedural or administrative in nature, not relevant to the technical decision reached, and not likely to be of interest or relevance to taxpayers, customers or advisors. For example, matters concerning the period of a ruling would generally not be published unless it is important to the decision reached.
7. A TDS cannot be relied on by taxpayers, customers or advisors, as it is a summary of an original technical decision (rather than being the decision itself) and is published for information only. To make this clear, a disclaimer will be included on the IR tax technical website **and** on each published document:

Disclaimer – Technical Decision Summary (TDS)

This document is a summary of the original technical decision so it may not contain all the facts or assumptions relevant to that decision.

This document is made available for **information only** and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994).

You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest). For more information refer to the [Technical decision summaries guidelines](#).

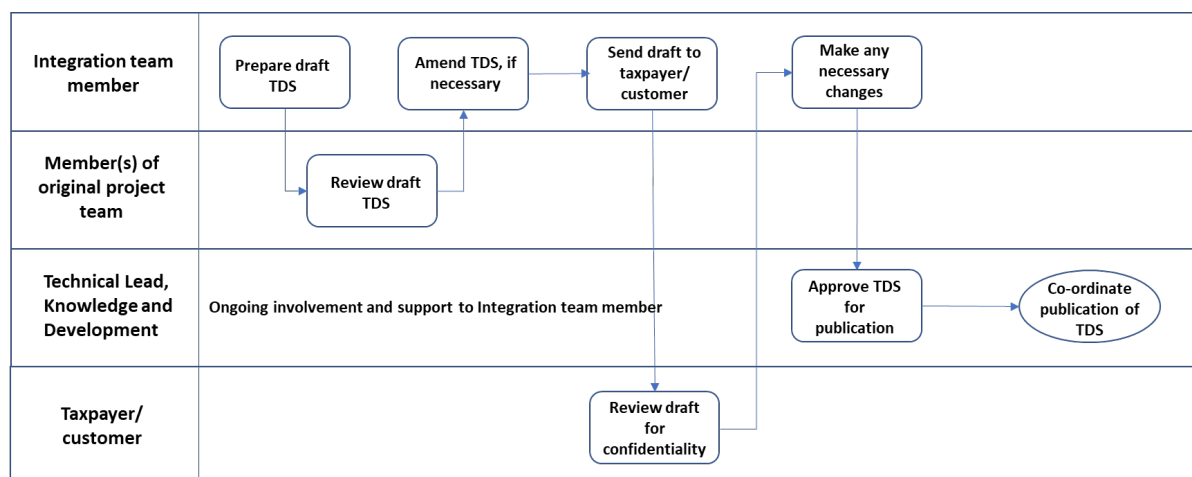
8. Technical decision summaries will not be routinely updated or removed by the Commissioner, as they simply document a decision made at a certain point in time. The Commissioner does not expect to routinely respond to any external comments in relation to a TDS, but this will be considered on a case by case basis. As noted in the disclaimer, older technical decision summaries may no longer reflect the Commissioner's current view of an issue.
9. Where possible we will publish the TDS within three months of the final technical decision being made (for example, when the adjudication report is sent out or the

ruling is finalised). This timeframe allows sufficient time for IR to prepare the TDS and for the relevant taxpayer or customer to review the TDS to ensure it does not breach confidentiality or include commercially sensitive information.

Preparing a technical decision summary

10. The overall objective is to prepare a summary of the original technical decision document(s) that accurately reflects the Commissioner's decision and is suitable for publication. Technical decision summaries will include four main sections.
 - The facts/the arrangement.
 - The issue(s).
 - The decision(s).
 - The reasoning for decision(s).
11. The TDS will contain an outline of the factual situation and sufficient details of the legal analysis (including a summary of alternative arguments and case authorities) to give readers an understanding of the reasons for the technical decision.
12. Creating a TDS involves:
 - removing or replacing information that specifically identifies the taxpayer/customer;
 - removing or replacing information that may enable the identification of any taxpayer/customer. This includes individual facts that in isolation may not identify a taxpayer/customer but which, when combined with other information, may allow the identification of the taxpayer/customer;
 - removing or replacing information that may enable the identification of a third party (other than in very limited situations relating to excepted third parties – see paragraph 22);
 - removing or replacing confidential, commercially sensitive or otherwise sensitive information;
 - summarising or excluding factual detail and additional material, including background/historical material, that is unnecessary or irrelevant to the Commissioner's decision(s) and/or reasoning;
 - summarising the analytical reasoning that forms the basis of the decision; and
 - where relevant, combining analytical parts of multiple reports into a single cohesive document.
13. To arrive at a concise and readable document, the preparer of the summary must decide what material should be excluded, summarised or reduced. The summary document must still be an accurate reflection of the underlying technical decision.
14. Generally, the TDS will be prepared by a staff member or team within TCO who was not involved in making the decision. High level governance of the TDS process will sit with TCO's Public Advice and Guidance function, and the relevant governance committee will be the Public Advice and Guidance Committee.

15. An initial decision concerning whether to withhold any particular technical decision will be made by the person preparing the TDS, who will seek input from the Technical Lead, Knowledge and Development, the relevant Group Leader and/or the Chief Tax Counsel as appropriate.
16. The original project team will review the draft TDS to make sure it accurately reflects the decision made and confidentiality will not be breached by publication. Most technical decision summaries will be between 6 and 25 pages in length, with the longest representing the most complex matters.
17. Once the draft TDS has been prepared and reviewed, it will be sent to the taxpayer/customer or their authorised representative for review (for rulings, this will be the agent on the ruling application). The purpose of this review is not to obtain consent for publication, but to ensure the TDS does not breach confidentiality (that is, to ensure that the taxpayer/customer is unable to be identified) or include any commercially sensitive information. The taxpayer/customer will be expected to provide any comments on confidentiality or sensitivity within one month. If you are concerned that the TDS may still allow you to be identified, contact us within a month of the date of the letter enclosing the TDS summary at Technical.Decision.Summaries@ird.govt.nz. If you don't contact us within the month we will publish the TDS.
18. If any comments are received, the staff member will consider these and amend the TDS to alleviate any confidentiality concerns raised by the taxpayer/customer if required. Any comments or submissions of a technical nature will not be taken into account. Once complete, the TDS is ready for publication.
19. The following diagram summarises the process (once the final technical decision and the decision to publish a TDS has been made):



Specific detailed instructions for preparers of a TDS

20. The preparer of a TDS should follow these actions to achieve a concise document that ensures confidentiality:
 - exclude quotes from disputes documents and correspondence with the taxpayer/agent (unless directly relevant);

- exclude any quotes or extracts of submissions (but ensure that all possible arguments considered in the original document are covered);
- exclude full extracts of contracts, constitutions or other legal documents – include extracts from clauses only when they are directly relevant and necessary;
- exclude tables (unless directly relevant/necessary). This includes tables of figures, dates, discrepancy analyses, filed tax returns, chronologies etc.;
- exclude matters that are not at issue or that are already agreed but have been included in the underlying decision document merely for completeness;
- use bullet points to summarise issues and decisions;
- where the original document has extensive case law analysis, only quote directly relevant cases – the remainder can be listed/referenced with a summary of principles if useful;
- limit quotes from legislation or other published material to the sections/parts that are directly relevant;
- avoid duplicated material (including executive summaries, introductory/concluding paragraphs); and
- exclude 'administrative' only sections (for example, sign offs, 'ability to rule' and discussion of protocols, such as with Crown Law), unless they contain relevant analysis or any alternative arguments considered.

21. The preparer of the TDS must do the following:

- Remove or replace information that specifically identifies the taxpayer, including:
 - names (N.B. When preparing the summary, company names should be replaced with "Company A", not "A Ltd" (as that could be the name of an actual incorporated company));
 - addresses;
 - contact numbers e.g. telephone/email;
 - incorporation dates;
 - issue dates for certificates of title and registration of mortgages;
 - IRD numbers;
 - birth dates; and
 - bank account/credit card details.
- Remove or replace information that may lead to the identification of the taxpayer, such as:
 - extracts from websites;
 - quotes and extracts of contracts, constitutions and other taxpayer-related entity documents that are not in the public domain;
 - titles, positions and status, such as director/doctor or (in the case of a company), whether listed on a particular stock exchange;
 - monetary amounts and currency;

- dates of transactions, if significant;
- geographic locations;
- jurisdiction-specific legislation or treaties;
- specific descriptions of work or business activity or industry involved (if identifying);
- names and identifying details (e.g. relationship) of associates;
- industry specific terms or details;
- types and descriptions of assets, products and projects; and
- unusual features of an arrangement e.g. specific performance conditions.
- Remove or replace information that may enable the identification of a third party. For example:
 - names/identifying details of any counterparty associated with the taxpayer e.g. purchasers, vendors, lenders, borrowers, freighters, retailers, landlords, tenants etc.;
 - names and any other identifying features of practitioners, legal and accounting firms, IR personnel, and IR groups who provided submissions as part of the technical decision making process;
 - verbatim quotes of practitioner or IR submissions;
 - third party verbatim quotes; and
 - IR information received from third party sources.
- Remove or replace confidential/sensitive information, for example:
 - commercially sensitive information;
 - tax advice;
 - information that is legally privileged or otherwise protected (for example under the Official Information Act 1982);
 - information relating to other agency or revenue authority investigations;
 - reference to other IR documents where the same or similar issues have been considered, unless those documents are publicly available; and
 - IR sensitive information e.g. business tools and thresholds.

22. Despite the above, information that identifies an “excepted third party” may be published. This relates to information about a third party that is in the public domain, where the taxpayer/customer's identity cannot be ascertained by identifying the third party and where removing the information may affect the accuracy of the TDS. Categories of information relating to third parties that may be published include the following:

- The names/transactions of public companies where the information has been disclosed in:
 - a prospectus;
 - an annual report;
 - a media release/press conference; or

- a report to a stock exchange (for example, information concerning mergers/acquisitions, share buybacks, share splits).
- The names and products of third parties that provide goods or services to significant numbers of the public, where naming of the third party or their products could not identify the taxpayer. For example:
 - universities and other places of education;
 - clubs and associations with large memberships; or
 - statutory authorities, such as councils and public utilities.
- Where the goods or services provided by a third party are advertised to the public, and the client base is potentially large. In this case the transaction or arrangement must be one that is very common and used by, or available to, large numbers of people or organisations.
- Information which has been previously published in a publicly available IR document, such as a public ruling, determination, product ruling, media release or revenue alert.