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TAX INFORMATION Bulletin

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IN SUMMARY

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NEW LEGISLATION

This section of the TIB covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council. These commentaries are first published on the Tax Policy website shortly after any new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes.

Public Act 2025 No 26: Taxation (Budget Measures) Act 2025

Issued: June 2025

The commentary articles provide an explanation of the changes made by the Taxation (Budget Measures) Act 2025. The Act introduces Investment Boost, along with changes to KiwiSaver, Working for Families, and Best Start.

Investment Boost: Deduction for new investment assets

Sections CC 15, DI 1, DI 2, DI 3, DI 4, DI 5, DI 6, EE 48, YA 1, and schedule 21B part A clauses 1 and 2 of the Income Tax Act 2007

Summary of amendments

These amendments give effect to the Government's "Investment Boost" policy, which creates a deduction for new investment assets. The deduction is equal to 20% of the new investment asset's cost.

Effective date

The amendments take effect for new investment assets that are depreciable property (or an improvement to depreciable property) if the asset is first available for use on or after 22 May 2025. For other new investment assets, the amendment takes effect for expenditure incurred on or after 22 May 2025.

Background

The objective of Investment Boost is to encourage capital investment and raise productivity in New Zealand. Investment Boost is a partial expensing regime and has similarities to other forms of accelerated depreciation. For new investment assets that are depreciable property, the amendments allow a deduction of 20% of the cost of the asset in the income year the asset is first available for use.

New investment assets include all depreciable property except dwellings and fixed life intangible property (FLIP).[1] They include most improvements to depreciable property even if the underlying asset does not itself qualify for Investment Boost (for example, because the improvements improve an asset that was available for use before 22 May 2022). New investment assets also include a number of assets that are allowed depreciation-like deductions.

New investment assets that are depreciable property must first be available for use on or after 22 May 2025. New investment assets must not have previously been used in New Zealand for any purpose, other than as trading stock.

The deduction reduces the base from which future depreciation deductions are taken. The amount a person could deduct in the income year the asset is acquired will generally be:

- 20% of the cost of the asset, plus
- the amount of the usual depreciation deduction (or depreciation-like deduction) that would otherwise apply but calculated as if the cost of the asset were reduced by 20%.

For depreciable property, the deduction is recoverable if the asset is disposed of above its adjusted tax value.

For new investment assets that are not depreciable property, the deduction is only available for expenditure incurred in acquiring the asset on or after 22 May 2025.

1 Intangible property where the property's useful economic life is equal to its legal life.

Key features

The key features of the amendments are:

- Businesses are eligible for a deduction of 20% of the cost of a new investment asset. Any additional depreciation deductions are then quantified as if the cost of the asset were reduced by 20%.
- New investment assets that are depreciable property must be used (or available for use) for the first time on or after 22 May 2025. For new investment assets that are not depreciable property, the deduction is only available for expenditure incurred on or after 22 May 2025 in acquiring the asset. New investment assets must not have previously been used in New Zealand for any purpose, other than as trading stock.
- New investment assets include:
  - all depreciable property except dwellings (ie, most residential buildings) and FLIP
  - improvements to depreciable property, including existing depreciable property (other than to dwellings and FLIP)
  - primary sector land improvements
  - assets acquired as petroleum development expenditure and mineral mining development expenditure (except rights, permits or privileges).
- New investment assets include assets (such as certain commercial and industrial buildings) that have a depreciation rate of 0% set in legislation.
- The deduction for new investment assets reduces an asset's adjusted tax value. Some or all of the deduction may be recoverable if the asset is disposed of (or deemed to be disposed of) and the consideration is more than the asset's adjusted tax value. Deductions for primary sector land improvements are not recoverable.
- Assets used partly for business may be eligible for Investment Boost, but the deduction must be apportioned. A special rule has been developed to support revenue integrity when new investment assets are only partly used for business. This rule ensures that some of the deduction is clawed back when a mixed-use asset undergoes a significant reduction in business use.
- Taxpayers may elect to take the deduction by returning income in the year the asset is first available for use (or when expenditure has been incurred if not depreciable property).

Detailed analysis

The following sections discuss new investment assets that are depreciable property. New investment assets that are not depreciable property are discussed later. Their treatment is similar to depreciable property but there are several important differences.

New investment assets that are depreciable property

Eligibility for 20% deduction of cost in income year asset first available for use

The owner of a new investment asset that is depreciable property may take a deduction of 20% of the cost of acquiring the asset in the income year for which a person is first entitled to claim a deduction for an amount of depreciation loss on the asset. The link to depreciation loss means that the asset would have otherwise been depreciated under the standard rules in the absence of the Investment Boost deduction. It means that:

- the taxpayer has chosen to treat the asset as depreciable property (and not elected to treat the asset as non-depreciable)
- the asset might reasonably be expected to decline in value while it is used or available for use in deriving income.

The 20% deduction reduces the cost base used for quantifying the depreciation loss that the owner could deduct in any given year. This includes when the owner elects to use straight-line (SL), diminishing value (DV), and other spreading methods outlined in subpart EE of the Income Tax Act 2007 (ITA).

One difference between the deduction for new investment assets and depreciation loss is that the entire 20% deduction for new investment assets can be claimed in the income year the asset is first used or available for use, even if that is near the end of the income year. In contrast, depreciation deductions are pro-rated to the number of months in the income year that the asset is used or available for use.

The amount a person can deduct in the income year the asset is first available for use will generally be:

- 20% of the cost of the asset, plus
- the amount of the usual depreciation deduction that would otherwise apply but calculated as if the cost of the asset were reduced by 20%.

Example 1: Investment Boost and depreciable property

ABC company purchases a new investment asset for $10,000 on 1 October 2025. The new investment asset has a depreciation rate of 10% (DV). The asset is used for six months in the income year ended 31 March 2026. The amount ABC company can deduct in the 2025–26 income year is:

- 20% x $10,000 = $2,000, plus
- 10% x ($10,000 - $2,000) x 6/12 = $400.

The total deductions for the new investment asset in the 2025–26 income year is $2,400.

The usual rules in section DB 2 of the ITA apply for GST input credits.

First available for use on or after 22 May 2025

To be eligible for the deduction, an asset that is depreciable property must first be used or available for use on or after 22 May 2025. Assets already owned by a taxpayer that only become available for use on or after 22 May 2025 may be eligible for Investment Boost.

Example 2: Investment Boost and acquisition date

Dharmesh owns a building business. He acquires the following assets for his business in the income year ended 31 March 2026:

- a brand-new van that is available for use from 6 July
- a carport for work vehicles – Dharmesh begins constructing the carport on 1 January 2025, but it is only available for use from 6 July 2025, and
- a brand-new drop saw purchased on 8 May 2025 – Dharmesh started using the drop saw on the day he purchased it.

Dharmesh may be able to take an Investment Boost deduction for the van and the carport. He cannot take a deduction for the drop saw.

No previous use in New Zealand other than as trading stock

The policy aims to encourage capital investment in a cost-effective way by targeting capital stock that is new to New Zealand. Assets that have previously been used in New Zealand are not eligible for the deduction. An asset has been used in New Zealand if it was used previously by another business in New Zealand or has been used for some non-business purpose (for example, a private vehicle used by an individual). The exception is when the asset has only been used as trading stock. For example, a business will generally be able to claim Investment Boost on an imported vehicle if that vehicle had only sat in a sales yard while in New Zealand.

Secondhand assets imported from overseas could be new investment assets. Assets that are created or constructed in New Zealand (including from secondhand materials) could also be new investment assets.

Used or available for use in New Zealand

Assets also need to be used or available for use in New Zealand. Assets used overseas by a New Zealand business are not eligible for the deduction. This restriction reflects the policy intent to increase capital stock in New Zealand.

Depreciable property except dwellings and FLIP

New investment assets include all depreciable property except dwellings and FLIP. Capital improvements to depreciable property (other than to dwellings and FLIP) are included in the definition of new investment assets. This includes improvements to existing depreciable property.

Buildings

New investment assets include most commercial and industrial buildings. A building is not eligible for Investment Boost if the building is a dwelling. A dwelling includes appurtenances such as garages, decks and fences. The definition of dwelling excludes hotels, motels, hospitals, and certain other commercial-scale providers of accommodation. The policy intention is that assets configured as a residence or abode are not eligible for Investment Boost, even if they are used for a commercial purpose. Buildings used to provide short-stay accommodation are not eligible for Investment Boost unless the building falls into one of the exceptions in paragraph (b) of the definition of "dwelling" in section YA 1 of the ITA. Paragraph (ab) of the definition is not relevant to Investment Boost.

For a mixed-use building, owners may take a deduction only for the part of a building that is not a dwelling. If part of a building is configured as a residence or abode but is being used for commercial purposes, it is still a dwelling and is not eligible for Investment Boost.[2]

Example 3: Mixed-use building

Ella owns a newly constructed three-storey building with mixed residential and commercial use, which she acquired and is available for use on 1 April 2026. The ground floor is a surf wear store, the middle floor is a carpark, and the top floor is rented out as long-term accommodation. The top floor is configured as a residence so is a dwelling, the bottom floor is not. If the carpark in the building serviced the accommodation, it could be an appurtenance to a dwelling. In this scenario, the carpark is a separate unit and primarily serves the surf wear store, rather than being used by the accommodation, and is consequently not an appurtenance to a dwelling.

The cost of the building was $1.8 million. The Investment Boost deduction prior to apportionment is $360,000. Following standard principles for apportionment, Ella calculates that she can claim two thirds of the Investment Boost deduction.

FLIP

FLIP is intangible property where the property's useful economic life is equal to its legal life. These assets have been excluded for integrity reasons.

Improvements

An improvement to depreciable property may qualify for Investment Boost in its own right, even if the asset it is improving is not itself eligible for Investment Boost (for example, because the asset being improved was used before 22 May 2025).

Example 4: Capital improvement

Fiona upgrades the engine of her truck to a more powerful and fuel-efficient model during the month of July 2025. Installation of the engine is complete, and it is available for use from 1 August 2025. Fiona may be able to claim 20% of the cost of acquiring the engine as an Investment Boost deduction. Because the engine is an improvement of the truck, the cost of the engine and its installation, net of the Investment Boost deduction, is treated under section EE 37 as if it is a separate item of depreciable property in the year the improvement is carried out. For following income years, Fiona has the option of continuing to depreciate the improvement as a separate item or add the adjusted tax value of the improvement to the truck's adjusted tax value.

Deduction recoverable if asset disposed of above adjusted tax value

For depreciable property, the deduction is treated like an additional depreciation loss. If an asset is sold above its adjusted tax value, there will be depreciation recovery income. The amount of depreciation recovery income can be no more than the total deductions claimed on the asset (including the Investment Boost deduction).

2 Note that this test is different from the test used for building depreciation, which allowed depreciation on the entire building if the predominant use of the building was not residential.

Example 5: Depreciation recovery income

Assume the same facts as Example 1, where a new investment asset is purchased for $10,000. ABC company sells the new investment asset during the 2026–27 income year for $9,000. The asset has an adjusted tax value of $7,600 because the company has claimed $2,400 of deductions.

Depreciation recovery income is the lesser of the gain ($1,400) and the deductions ($2,400). Therefore, $1,400 is recognised as income in the year of sale.

Under the current law, there are a few situations where a new person is deemed to have claimed the depreciation claimed by the original owner (for example, transfers between consolidated group members). When an asset is disposed of, the depreciation deductions of the original owner are relevant to the amount of depreciation recovery income. The Investment Boost deduction is treated in the same way. In certain situations, depreciation recovery income will include the inherited Investment Boost deduction.

General permission determines apportionment for mixed-use assets

New investment assets that are only partly used for business purposes could be eligible for the deduction. The deduction needs to be apportioned to the extent the asset is used for business purposes. If there is a change in use of an asset that received the deduction, then there could be recovery income.

Example 6: Mixed-use assets

Libby purchases a car for use during the 2025–26 income year. She determines that over the next 90 days that half the milage can be attributed to her taxi business and half the milage can be attributed to personal use. Only half of the expenses associated with running the car would be deductible expenses. Libby intends to use the car in a similar way for the next several years. Libby would like to take the Investment Boost deduction. She considers that the apportionment used for expenses in the first 90 days is a reasonable basis for apportioning the Investment Boost deduction. She reduces the cost base of the car by 20% and claims half of the 20% amount as an Investment Boost deduction.

Changes to business-use portion of asset

If a new investment asset is used wholly for the purposes of deriving assessable income, then the owner may claim the entire Investment Boost deduction. If there is a subsequent change in use, then there is a deemed disposal, and the Investment Boost deduction could be clawed back if the adjusted tax value is lower than the asset's market value.

An integrity rule has been developed for mixed-use assets that undergo a change in use over time to ensure taxpayers are not unfairly benefiting from Investment Boost. Investment Boost is a one-off deduction and cannot easily be apportioned on a year-by-year basis in the same way as usual depreciation deductions. Instead, when there is reduction in business use of 25% or more, the taxpayer must return some of the Investment Boost deduction as income.

Example 7: Integrity rule for mixed-use assets

Thomas buys a new yacht for $100,000 that he begins using in the 2025–26 income year. He reduces the base used for determining depreciation by $20,000. He determines that 90% business use is a reasonable basis for apportionment. He claims $18,000 as an Investment Boost deduction, which is 90% of $20,000. In the 2026–27 income year, he only uses the yacht 40% of the time for business. This is a reduction in business use from 90% to 40%. Had Thomas taken the Investment Boost deduction using the apportionment in the 2026–27 income year, he would have been entitled to claim just $8,000. Thomas must return income of $10,000 ($18,000 – $8,000) in the 2026–27 income year. The asset's adjusted tax value is increased by $10,000 accordingly.

Taxpayers elect to take deduction by returning income

Taxpayers may elect to take the deduction by including the deduction in a return of income in the year that they acquire the asset. If the owner does not take the deduction for an asset, they can depreciate the full value of the asset under the standard depreciation rules (including to elect to treat the asset as non-depreciable).

Capital contribution and grant amounts

In some situations, when a taxpayer receives a capital contribution or government grant, the Investment Boost deduction is determined net of this amount.

Example 8: Contributions

XYZ company purchases a new investment asset for $10,000. The company receives a capital contribution of $1,000. Rather than recognise the capital contribution as income, the company chooses to reduce the cost of the asset by the amount of the capital contribution.

The Investment Boost deduction is: 20% x ($10,000 – $1,000) = $1,800.

Depreciation deductions would be quantified from a starting base of $7,200 ($10,000 – $1,000 – $1,800).

Deduction eligible expenditure for research and development tax credit

The deduction for a new investment asset is an eligible amount for the purposes of the Research and Development Tax Incentive. The deduction is effectively treated as a depreciation loss for determining the amount of credit in the year the asset has a depreciation loss.

Example 9: Research and Development Tax Incentive

Suppose the asset purchased in Example 1 is used exclusively for performing eligible R&D. The R&D tax credit may be claimed on both the depreciation deduction of $400 and the Investment Boost deduction of $2,000 in the 2025–26 income year.

New investment assets that are not depreciable property

For new investment assets that are not depreciable property, but are allowed depreciation-like deductions, the new investment asset deduction similarly reduces the value used for quantifying the deduction the asset is otherwise entitled to. The following sections discuss assets that are eligible for Investment Boost and are not depreciable property. It discusses when the rules differ from the rules outlined above.

Primary sector land improvements

There are special rules for deducting capital expenditure incurred in acquiring primary sector land improvements. These include improvements to farmland, planting of listed horticultural plants, improvements to aquacultural business and improvements to forestry land. Deductions for these assets are found in sections DO 4, DO 5, DO 12, and DP 3 of the ITA respectively.

For these assets, the Investment Boost deduction is only available for expenditure incurred on or after 22 May 2025 in acquiring a new investment asset. This means that if expenditure crosses over the application date, only part of the expenditure is eligible for the Investment Boost deduction.

Example 10: New investment assets that are not depreciable property

Tony constructs a consented access road on their farmland. Tony begins constructing the road in February 2025 and completes the road in August 2025. Their income year ends 31 October 2025.

The percentage of diminished value allowed as deduction for constructing the road is 5%.

$20,000 of expenditure was incurred in constructing the road before 22 May 2025, and $15,000 of expenditure was incurred on or after this date.

The Investment Boost deduction is: 20% x $15,000 = $3,000.

The basis from which future diminished value deductions is taken is $32,000 ($20,000 + $12,000).

The diminished value deduction in the income year ended 31 October 2025 is: $1,600 (5% x $32,000).

The Investment Boost deduction is not recoverable for primary sector land improvements. This mirrors the treatment of these assets under the existing amortisation rules.

Petroleum development expenditure and mineral mining development expenditure

Petroleum and mining development expenditure are included as new investment assets to ensure that most mining assets are eligible for the deduction. Costs of petroleum mining assets and the mining development expenditure can be spread in accordance with special rules. The provision allows a deduction for 20% of the cost in the year that the expenditure is incurred prior to applying the special spreading rules. Because mining assets are held on revenue account no specific recovery income applies.

Consistent with the policy to exclude FLIP, petroleum and mining privileges, permit and rights are not eligible for the deduction.

Reforms to KiwiSaver scheme settings

Sections MK 1, MK 2, MK 2B, MK 3, MK 4, and YA 1 of the Income Tax Act 2007

Sections 4, 22, 64, 101C, 101D, 101S, 244, Part 3 subpart 3B, and schedule 1 of the KiwiSaver Act 2006

Section 68C of the Tax Administration Act 1994

Summary of amendments

The amendments increase the rate of employer and employee KiwiSaver contributions. The matching rate for the KiwiSaver government contribution (or "tax credit") is reduced from 50% to 25% up to a new annual maximum of $260.72. Eligibility for the government contribution is restricted to those with an annual taxable income of $180,000 or less with effect from 1 July 2025 but is also extended to those aged 16 and 17 years. Eligibility for compulsory employer contributions is also extended to those aged 16 and 17 years. The amendments also introduce the ability for KiwiSaver members to take a temporary rate reduction, which will allow them to continue contributing at a rate of 3% if they wish.

Effective date

The amendments are effective from the following dates:

- 1 July 2025:
  - eligibility for the KiwiSaver government contribution is extended to those aged 16 and 17 (section MK 2(10(a) of the Income Tax Act 2007 (ITA))
  - a taxable income threshold for eligibility for the KiwiSaver government contribution is introduced (sections MK 1, MK 2, MK 2B, MK 3 and YA 1 of the ITA; section 68C of the Tax Administration Act 1994 (TAA))
  - the KiwiSaver government contribution is halved (section MK 4 of the ITA)
  - limited protection for non-compliance with financial markets legislation is provided (section 244 of the KiwiSaver Act 2006).
- 1 February 2026:
  - KiwiSaver members can apply for a temporary rate reduction to 3% to take effect from 1 April 2026 (sections 4, 22, 64(1)(b), Part 3 subpart 3B, and schedule 1 of the KiwiSaver Act).
- 1 April 2026:
  - eligibility for compulsory employer KiwiSaver contributions is extended to those aged 16 and 17 (section 101C of the KiwiSaver Act)
  - the rate of employee and employer KiwiSaver contributions is increased to 3.5% (sections 64(1)(a) and (2), and 101D(4) of the KiwiSaver Act).
- 1 April 2028:
  - the rate of employee and employer KiwiSaver contributions is increased to 4% (sections 64(1)(a) and (ab), 64(2), and 101D(4)(b) of the KiwiSaver Act).

Background

The employee contribution rate was generally 3% for employees who did not provide notice to their employer of an alternative rate. The lowest contribution rate an employee could choose was also 3%. The compulsory employer contribution rate was 3%. This was the rate an employer had to contribute at, providing their employee met requirements set out in section 101C of the KiwiSaver Act. One of these requirements was that an employee is aged 18 to 64.

KiwiSaver members were eligible for a government contribution in the form of a tax credit to their KiwiSaver account. The government contribution was 50 cents per dollar a member contributes each year, up to a maximum available amount of $521.43. Eligibility for the government contribution was restricted to members aged 18 to 64.

Key features

The key features of the amendments are:

- The employee and employer contribution rates increase from 3% to 3.5% on 1 April 2026. These rates are then further increased from 3.5% to 4% on 1 April 2028.
- Eligibility criteria for the employer contribution includes those aged 16 and 17 from 1 April 2026.
- From 1 February 2026, KiwiSaver members can apply for a temporary rate reduction. This enables them to adopt a contribution rate of 3% on or after 1 April 2026. Employers can match this reduced rate when it applies.
- Eligibility criteria for the government contribution includes those aged 16 and 17 from 1 July 2025.
- Eligibility criteria for the government contribution requires a KiwiSaver member to have taxable income of $180,000 or less for the relevant tax year, with effect from the tax credit year beginning on 1 July 2025.
- The matching rate for the government contribution reduces to 25% of a member's total KiwiSaver contributions for the year, up to a maximum government contribution of $260.72, with effect from the tax credit year beginning on 1 July 2025.

Detailed analysis

Different reporting periods

Different annual calendars govern the determination of taxable income and eligibility for the government contribution. In most cases, a member's taxable income period runs from 1 April to 31 March of the following year. Eligibility for the government contribution, however, is determined according to the value of a KiwiSaver member's contributions over the tax credit year, which runs from 1 July to 30 June of the following year.

The effective dates of the amendments have been designed to align with the beginning of their relevant calendars. Amendments affecting KiwiSaver contribution rates take effect on 1 April in a given year, while amendments affecting eligibility for, and the amount of, the government contribution take effect from 1 July.

Contribution rates

The amendments increase the employer and employee KiwiSaver contribution rates from 3% to 3.5% with effect from 1 April 2026, followed by a further increase in employer and employee contribution rates from 3.5% to 4% from 1 April 2028.

Extension of eligibility for employer contributions to 16- and 17-year-olds

The amendments also extend eligibility for employer contributions to those aged 16 and 17. Under former KiwiSaver settings, employers were only required to contribute to their employees' KiwiSaver accounts when their employees were aged 18 to 64. Under the changes, employers are required to contribute to the KiwiSaver accounts of their employees aged 16 and 17 with effect from 1 April 2026.

Temporary rate reduction

The amendments include the ability for members to take a temporary rate reduction and continue contributing at a rate of 3% of their income. This recognises that some members may not be immediately able to increase their KiwiSaver contributions or may wish to save in other ways outside KiwiSaver. Members will be able to apply for a rate reduction from 1 February 2026 (that is, in advance of the contribution rate increases coming into effect). There will be no limit on the number of rate reductions a member can receive.

Process for obtaining temporary rate reduction

Members will be able to apply to Inland Revenue for a rate reduction and continue contributing to their accounts at the current minimum rate of 3% for a period of between 92 days and 12 months. The minimum period of 92 days is designed to avoid creating undue compliance costs for employers.

Employers and KiwiSaver members will be notified by the Commissioner that the KiwiSaver member's rate reduction had been granted and the date the rate reduction will end. The employer will be required to make deductions at the rate of 3% with effect from the next payment of salary or wages that the employer calculates.

A rate reduction to 3% will be available to KiwiSaver members with effect from 1 April 2026, the date the contribution rates increase to 3.5%. However, the provision allowing members to apply for a rate reduction comes into force on 1 February 2026. This allows time for those members who wish to remain at a contribution rate of 3% from 1 April 2026 to apply and secure a rate reduction before the increases to contribution rates take effect.

Notification of rate reduction ending

Before a member's rate reduction is due to end, the Commissioner will notify the KiwiSaver member that the end date of the rate reduction is approaching. Once the rate reduction had ended, the Commissioner will notify the member's employer, requiring the member's employer to increase the member's contribution rate to the new default rate (unless an alternative higher rate is chosen by the member). The employer will be required to apply the increased contribution rate to the next payment of salary or wages.

Revocation of rate reduction

A member will be able to revoke (ie, discontinue) a rate reduction by notifying their employer that they wish the employer to cease making deductions at the 3% rate and instead make deductions at either the new default rate or a chosen higher rate. Because frequent rate reductions would create undue compliance costs for employers, a member will only be able to revoke a rate reduction after 92 days had passed (unless otherwise agreed with their employer).

Members will be able to apply for a further temporary rate reduction when their current rate reduction is due to expire, and there will be no limit to the number of rate reductions a member could be granted by the Commissioner.

Refund of contributions when starting new employment

The amendments also recognise that members may change employment while subject to a rate reduction. When a member changes employer but is unable to provide notice of the current rate reduction to their new employer immediately, the amendments allow the employer, once evidence has been provided, to refund the difference between the amount of the contributions deducted and the amount that would have been deducted had the rate reduction been applied from the start of the new employment. Alternatively, if the funds have transferred to the Commissioner and are no longer held by the employer, the funds may be returned to the member by the Commissioner.

Government contribution

Extension of eligibility for government contribution to those aged 16 and 17

The amendments also extend eligibility for the government contribution to those aged 16 and 17. Under former KiwiSaver settings, only those aged 18 to 64 were eligible for the government contribution. The changes extend the existing eligibility threshold to those aged 16 and 17 with effect from 1 July 2025.

Income testing a KiwiSaver member's eligibility for government contribution

The amendments limit eligibility to the government contribution to those with taxable income of $180,000 or less per annum. This means that KiwiSaver members who have taxable income of $180,001 or more are no longer eligible for the government contribution.

The assessment of a KiwiSaver member's eligibility for the government contribution (or "tax credit") occurs with reference to the person's taxable income for the corresponding tax year, which is defined as either:

- *Case 1*: the tax year (the current year) that ends during the tax credit year if the member:
  - has filed their tax return for that tax year on or before the end of the tax credit year, or
  - is not required to file a tax return for that tax year, or
- *Case 2*: in any other case, the tax year preceding the current year.

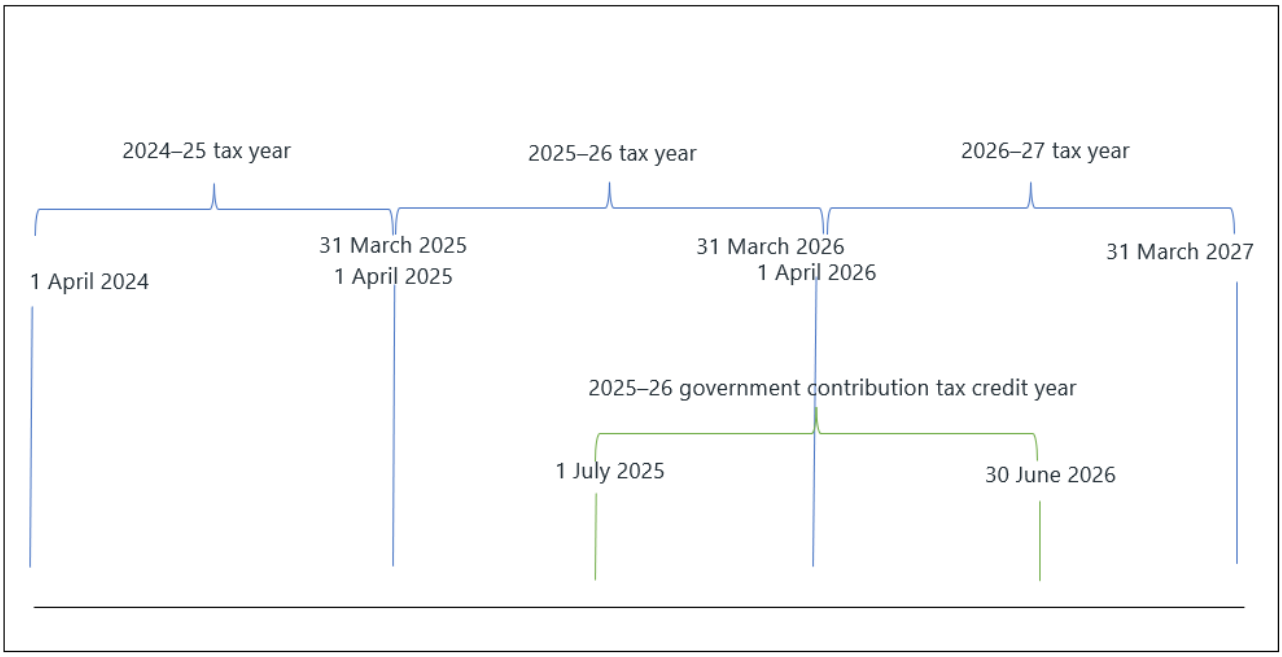
How income testing would operate

Taxpayers falling within Case 1 above will have their eligibility for the tax credit associated with the 1 July 2025 to 30 June 2026 tax credit year determined according to their return of income for the 1 April 2025 to 31 March 2026 tax year. This includes members whose income is automatically determined as part of the annual income assessment process and members who file an IR3 tax return on or before 30 June 2026. It also includes members who are not required to file a return for that tax year.

Taxpayers who fall within Case 2 above will have their eligibility for the tax credit assessed based on their taxable income in the preceding tax year, 1 April 2024 to 31 March 2025. Members whose eligibility for the tax credit will be assessed in this way include those who:

- *File their tax returns after 30 June 2026*: Under existing settings, taxpayers' returns for the 1 April 2025 to 31 March 2026 tax year are not required to be filed until at least 7 July 2026. Because this is after the end of the 1 July 2025 to 30 June 2026 tax credit year, these members' eligibility would be assessed according to the 1 April 2024 to 31 March 2025 tax year.
- *Have an extension of time to file their tax returns (for example, due to having a tax agent)*: Some KiwiSaver members may also have additional time to file their income tax returns, particularly if they have a tax agent. Members with an extension of time will not be required to file their income tax return for the 1 April 2025 to 31 March 2026 tax year until 31 March 2027. Accordingly, these members' eligibility for the tax credit will also be assessed according to the 1 April 2024 to 31 March 2025 tax year.

Figure 1: Interaction between tax year and government contribution year



Example 11: Will's eligibility for government contribution

Will is an employee of BenCo and a KiwiSaver member. In the government contribution year 1 July 2025 to 30 June 2026, Will contributes more than $1,042.86 into his KiwiSaver account to receive the new maximum amount of the government contribution of $260.72.

In the tax year 1 April 2025 to 31 March 2026, Will has a taxable income of $175,000. As Will only has reportable income, he receives a pre-populated account from the Commissioner for the tax year. Will's account is finalised on 20 June 2026, and he therefore falls within Case 1 above. His eligibility for the government contribution will be assessed based on his taxable income for the 1 April 2025 to 31 March 2026 tax year. Because his income for that year is beneath the $180,000 or less threshold, Will is eligible for the government contribution for the 1 July 2025 to 30 June 2026 government contribution year.

Example 12: Kelvin's eligibility for government contribution

Kelvin is a small business owner who uses a tax agent to assist him in completing his tax returns. He has an extension of time to file his tax return for the tax year 1 April 2025 to 31 March 2026 until 31 March 2027 and so does not file his return for that year before 30 June 2026.

Therefore, Kelvin's eligibility for the government contribution for the period 1 July 2025 to 30 June 2026 will be assessed according to the previous tax year, that is, the 1 April 2024 to 31 March 2025 tax year (as in Case 2 above).

Kelvin files his return for the 1 April 2024 to 31 March 2025 tax year on 14 March 2026. Because he had taxable income of $178,000 for the 1 April 2024 to 31 March 2025 tax year, he will be eligible for the government contribution.

The Commissioner must be satisfied that the member's taxable income for the tax year is $180,000 or less. This means that when a member has an outstanding return for the relevant tax year, the Commissioner will be unable to assess their eligibility for the government contribution. A member's eligibility will be assessed once the Commissioner has received sufficient information to establish the member's taxable income for the tax year.

Payment of government contribution

Under former settings, the Commissioner was required to pay the government contribution to a member's KiwiSaver fund provider within 30 working days of the provider filing a claim. This setting is amended to require the Commissioner to pay the government contribution to the fund provider within 30 working days of the Commissioner being satisfied that the member meets the income eligibility requirement discussed above.

Reduction in maximum government contribution

The proposals halve the government contribution from 50 cents per dollar a member contributes each year to 25 cents per dollar, reducing the maximum government contribution from $521.43 to $260.72. This amendment takes effect from 1 July 2025.

Protection for non-compliance for KiwiSaver providers

The amendments also include a limited protection for non-compliance with financial markets legislation when the non-compliance results from the provisions in the Taxation (Budget Measures) Act 2025 containing the changes discussed above. This recognises that KiwiSaver providers may require time to comply with the proposals and update their product disclosure statements to reflect the changes to contribution rates and eligibility for the government contribution.

Under the amendments, non-compliance relating to the relevant provisions would be ignored provided it did not continue on or after 1 November 2025 or, if it related to a disclosure document under the Financial Markets Conduct Act 2013, on or after 1 January 2026.

Working for Families abatement: Threshold and rate changes

Section MD 13 and schedule 31 of the Income Tax Act 2007

Summary of amendments

The changes increase the abatement threshold for the family tax credit and the in-work tax credit (the Working for Families abatement threshold) by $2,200 to $44,900, and increase the Working for Families abatement rate by 0.5 percentage points from 27% to 27.5%. The first income band in schedule 31 of the Income Tax Act 2007 is also adjusted to align with the new abatement threshold.

Effective date

The amendments take effect on 1 April 2026, applying for the 2026–27 and later tax years.

Background

The Working for Families abatement threshold is currently set at $42,700 and the abatement rate is 27%. There is no requirement to regularly increase the abatement threshold, and it has not changed since 2018. The abatement rate was last amended in 2022, when it was increased from 25% to 27%.

Due to the combined effect of wage growth over time and the Working for Families abatement threshold remaining at the same level it was set at in 2018, Working for Families has become increasingly targeted at lower-income families and more families are receiving less than full entitlements. As a result, Working for Families is becoming less effective in assisting low- to middle-income families with rising household living costs.

The schedule 31 income bands provide Working for Families recipients with a buffer against overpayments and debt resulting from annual income estimations that are too low. Because recipients are most at risk of debt when their entitlements start abating, the first schedule 31 income band starts at the Working for Families abatement threshold (currently, $42,700).

Key features

The key features of the changes are:

- Working for Families abatement threshold is increased by $2,200 from $42,700 to $44,900
- Working for Families abatement rate is increased by 0.5 percentage points, from 27% to 27.5%
- schedule 31 income bands are changed to start at $44,900.

Best Start tax credit

Section MG 3 of the Income Tax Act 2007

Sections 80KB and 80KV of the Tax Administration Act 1994

Summary of amendments

The amendments will income test the first year of the Best Start tax credit (BSTC) in line with the second and third years of the payment. In line with this change, Best Start applicants and recipients will also be required to provide family scheme income information to determine their entitlements, even if their child is less than 1 year old.

Effective date

Income testing the first year of the BSTC applies for children born on or after 1 April 2026.

All Best Start applicants and recipients will be required to provide family scheme income information for the 2026–27 and later tax years, regardless of when the child was born.

Background

Best Start helps families with the cost of raising children, ensuring children get the best start in life. Families with children aged 0 to 3 years old are eligible for the BSTC. The base rate is $73 per week or $3,838 per year. Prior to these amendments, the payment was universally available to all families with children aged 0 to 1 year old, regardless of the level of income they earned. However, the BSTC cannot be received at the same time as paid parental leave.

The BSTC was then targeted at low- to middle-income families in the second and third years of the child's life. This targeting was achieved through income testing, so that entitlements reduced by 21 cents for every dollar a family earned over $79,000 a year.

Best Start applicants and recipients with children aged 1 to 3 years old were required to provide family scheme income information to determine their entitlements (at the time of application and at the time they filed an annual income tax return, if they were required to file one). This requirement did not apply for families if their only child would be less than 1 year old on the last day of the tax year, and they did not receive other Working for Families tax credits. This was due to universal entitlement to Best Start for the first year of a child's life.

If a child turned 1 year old during the tax year (or on the last day of the tax year), family scheme income needed to be provided because Best Start would be income tested for the day(s) of that year when that child was 1 year old.

Key features

The key features of the changes are:

- Entitlements for the first year of the BSTC are reduced by 21 cents for every dollar a family earns over $79,000, in line with how the second and third years of the payment are currently abated.
- Families receiving the first year of the BSTC will be income tested in respect of children born on or after 1 April 2026.
- Families receiving the first year of the BSTC in respect of children born before 1 April 2026 will receive BSTC entitlements unabated. This is regardless of whether they apply before or after 1 April 2026.
- For tax years before the 2026–27 tax year:
  - Best Start applicants will be required to provide family scheme income information for a tax year, unless their only dependent child is less than 1 year old on the last day of that tax year.
  - Best Start recipients will be required to include family scheme income information for a tax year if they are required to file an annual income return, unless their only dependent child is less than 1 year old on the last day of that tax year.
- For the 2026–27 and later tax years:
  - All Best Start applicants will be required to provide family scheme income information at the time of application.
  - All Best Start recipients will be required to include family scheme income information if they are required to file an annual income tax return.

Example 13: When is a family required to provide family scheme income information for Best Start purposes?

Ella and Libby receive universal Best Start entitlements for their child Jacob, who was born 1 October 2025. Because Jacob will be less than 1 year old on 31 March 2026 (the end of the 2025–26 tax year), Ella and Libby do not need to provide family scheme income for the 2025–26 tax year. However, because Jacob will turn 1 year old on 1 October 2026 (and therefore be 1 year old at the end of the 2026–27 tax year), family scheme income will need to be provided for the 2026–27 tax year.

OPERATIONAL STATEMENTS

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.

OS 25/04: The Commissioner of Inland Revenue's search powers

Issued: 27 June 2025

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 operational statement outlines the procedures the Commissioner of Inland Revenue will generally follow when exercising the Commissioner's search powers under ss 17, 17C and 17D of the Tax Administration Act 1994 and the Search and Surveillance Act 2012.

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

START DATE 27 June 2025

REPLACES

- **OS 13/01**: The Commissioner of Inland Revenue's search powers

Introduction

1. This statement outlines how the Commissioner of Inland Revenue (the Commissioner) will exercise one of the Commissioner's information gathering powers: the search powers under ss 17, 17C and 17D of the Tax Administration Act 1994 (TAA) and the Search and Surveillance Act 2012 (SSA). The statement aims to provide taxpayers and their advisors with information about what to expect when the Commissioner uses these powers, and the Commissioner's expectations of taxpayers.
2. This statement is supplemented by **SPS 10/02: Imaging of electronic storage media**, **SPS 16/03: Notification of pending audit or investigation**, **SPS 19/02: Voluntary Disclosures**, **SPS 21/02: Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori**, and **OS 18/02: Non-disclosure right for tax advice documents**, and is to be read in conjunction with those statements.

Summary

3. Under s 17 of the TAA and in accordance with Part 4 of the SSA the Commissioner may access any property or documents. This is for the purpose of inspecting any documents, property, process or matter which are considered necessary or relevant for the purposes and principles in ss 16 and 16B and/or is likely to provide information that would otherwise be required for the purposes of the Inland Revenue Acts and any function lawfully conferred on the Commissioner.
4. These search powers will be exercised by authorised Inland Revenue officers. An authorised Inland Revenue officer will have been delegated authority to exercise the powers in ss 17, 17C and 17D.
5. The purpose of these powers is to provide the Commissioner with the necessary powers to enable:
   - the collection of all taxes or duties imposed by the Inland Revenue Acts:
   - the carrying into effect of any of the Inland Revenue Acts:
   - the carrying out of functions lawfully conferred on the Commissioner.[1]

1 Section 16(a).

6. Section 17C supports these powers of access by enabling the Commissioner to:
   - take an extract from the document:
   - make a copy of the document:
   - remove the document from the place to make a copy:
   - remove the document from the place and retain it for a full and complete inspection.
7. Section 17(1) is a warrantless power of entry. This means that, except for private dwellings, the Commissioner does not need to obtain a warrant to access the property or documents. Documents include electronically stored information.
8. In order to enter a private dwelling, the Commissioner must obtain either:
   - the consent of the occupier; or
   - a warrant issued under s 17D.[2]
9. The Commissioner can remove documents for copying, and these must be returned as soon as practicable.[3] The Commissioner can also remove and retain documents for a full and complete inspection but in these cases the Commissioner needs the consent of the occupier or a warrant issued under s 17D.[4]
10. Warrants can be obtained from an issuing officer. An issuing officer is a District Court Judge, a Judge of the High Court or an issuing officer who has been authorised by the Attorney-General. The Attorney-General may authorise any Justice of Peace, Community Magistrate, Registrar or Deputy-Registrar or any other person to act as an issuing officer.[5]
11. The Commissioner will use these search powers consistent with the legislation and will adopt a responsible practice that recognises the intrusive nature of these powers. The SSA, the New Zealand Bill of Rights Act 1990 (NZBORA) and the TAA provide a statutory framework and principles for exercising the Commissioner's search powers. These are supplemented by these guidelines and the Commissioner's own internal checks and guidance to ensure the powers are exercised in a way that is appropriate to the circumstances.
12. Parts of the SSA apply to the Commissioner's search powers, as well as setting out requirements for the Commissioner and taxpayers to follow. The SSA also sets out the process by which warrants are obtained.
13. This statement provides taxpayers and their advisors with information about what to expect when the Commissioner exercises the search powers, including information on the processes the Commissioner will follow in relation to legal privilege (s 20) and non-disclosure rights (ss 20B to 20G). This statement also provides information on what the legislation requires of taxpayers and their advisors.
14. The Commissioner's search powers will generally be exercised when, in the Commissioner's opinion, other means of obtaining information are inappropriate or inadequate. Other information gathering powers do not have to be used before the Commissioner exercises the s 17 search powers, and these search powers can be exercised in conjunction with those other information gathering powers.
15. Occupiers of land, or a building, or a place accessed by the Commissioner under s 17 are required to:
   - provide all reasonable facilities and assistance for the effective exercise of the powers under ss 17 and 17C; and
   - to answer all proper questions relating to the effective exercise of the powers under s 17.[6]
16. The Commissioner can use reasonable force, including the services of a locksmith, where necessary to open property, such as locked doors and cabinets.[7]
17. When documents are removed, owners of a document may inspect and may obtain a copy of the document at the premises to which the documents are taken.[8]

2 Section 17(2).
3 Section 17C(2).
4 Section 17C(3).
5 Section 17D(6) and ss 3 and 108 of the SSA.
6 Section 17(3).
7 Section 110(c), 113(2)(b) and 131(3) of the SSA. See also Mathew Downs (ed) *Adams on Criminal Law - Rights and Powers* (online ed, Thomson Reuters) at SS110.07.
8 Section 17C(5).

18. Where practicable, Inland Revenue officers will follow a standard process in relation to the protections in s 20 (legal privilege) and ss 20B to 20G (non-disclosure right).[9]
19. Occupiers and other people who take steps to destroy documents or who fail to assist as required under s 17, or otherwise obstruct the Commissioner, could be liable to prosecution under the TAA and SSA. The penalties for such offences range from fines to sentences of imprisonment.[10]
20. The Commissioner considers the powers provided in ss 17 and 17C to be essential to Inland Revenue's compliance functions and duties under the Revenue Acts. These powers will be exercised responsibly, preserving legal privilege and non-disclosure rights of taxpayers (and others), and in compliance with the NZBORA where applicable.

Search and Surveillance Act 2012

21. The purpose of the SSA is to facilitate the monitoring of compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values.[11]
22. The powers in the TAA are supplemented by various provisions of the SSA. These include clarifications to the Commissioner's powers, requirements for the Commissioner and taxpayers to follow, and the process by which warrants are obtained.
23. Not all of the provisions in the SSA apply to the Commissioner.[12]
24. The SSA took effect on the TAA from 1 September 2013.[13]

Definitions

25. The Commissioner's search powers in the TAA were rewritten with effect from 18 March 2019. The rewrite was designed to make the information collection provisions in the TAA clearer and more navigable. Subpart 3A, ss 16 to 17K (the new law) are the previous ss 16 to 19, 21 and 21BA (the old law) of the TAA in rewritten form and are intended to have the same effect.[14] The case law on the old law is, therefore, still applicable to the new law.
26. The Commissioner considers that the principle in *Woodgate Ltd v Commissioner of Inland Revenue* [2023] NZHC 1132 that s 17B has the same effect and is not intended to change the nature of the Commissioner's information gathering powers applies to the whole of Subpart 3A:

> [49] It is clear from the former s 17(1) that the current s 17B is not substantially different in effect. Additionally, the Taxation (Annual Rates for 2018—19, Modernising Tax Administration, and Remedial Matters) Act 2019 does not appear to have been intended to change the nature of the Commissioner's information gathering powers, but rather to generally (as an omnibus bill), simplify, improve, and modernise the tax system

27. Where a previous judgment, its reasoning or another publication refers to a predecessor section, this statement will refer to the new section unless otherwise specified.

9 See [186] below.
10 See [128] to [131] below. See also s 143H of the TAA and s 178 of the SSA.
11 Section 5 of the SSA.
12 Section 17D(5) and the schedule to the SSA.
13 See the Search and Surveillance Act Commencement Order 2013.
14 Section 227F.

Computer system

28. Section 3 of the SSA defines this as follows:

> **computer system**—
>
> (a) means –
>
> (i) a computer; or
>
> (ii) 2 or more interconnected computers; or
>
> (iii) any communication links between computers or to remote terminals or another device; or
>
> (iv) 2 or more interconnected computers combined with any communication links between computers to remote terminals or any other device; and
>
> (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software or communication facilities, and stored data

Document

29. Section 3 of the TAA defines this as follows:

> **document** means—
>
> (a) a thing that is used to hold, in or on the thing and in any form, items of information:
>
> (b) an item of information held in or on a thing referred to in paragraph (a):
>
> (c) device associated with a thing referred to in paragraph (a) and required for the expression, in any form, of an item of information held in or on the thing

Enforcement officer

30. Section 3 of the SSA defines this as follows:

> **enforcement officer** means—
>
> (a) a constable; or
>
> (b) any person authorised by an enactment specified in column 2 of the Schedule, or by any other enactment that expressly applies any provision in Part 4, to exercise a power of entry, search, inspection, examination, or seizure

31. Inland Revenue officers whom the Commissioner has authorised to exercise the powers under ss 17 and 17C fall within this definition of "enforcement officer."

Full and complete inspection

32. Section 3 of the TAA defines this as follows:

> **full and complete inspection—**
>
> (a) includes use as evidence in court proceedings:
>
> (b) does not include removal to make copies under sections 17C and 17D

Inland Revenue officer in charge

33. This term is not defined in the TAA. The Inland Revenue officer in charge is the officer who has charge of the search. They will identify themselves to the occupier(s) and will be the primary contact point for the occupier(s) and any advisors. This person is authorised to exercise the powers under ss 17 and 17C of the TAA and the applicable provisions of the SSA. They will hold an authority card which can be shown to occupiers and their advisors as confirmation of their authority as the officer in charge.

Necessary or relevant

34. This term is not defined in the TAA. "Necessary or relevant" for the purposes of s 17 means necessary or relevant for the purposes and principles set out in ss 16 and 16B. The "only statutory criteria" is that the "Commissioner must consider it necessary or relevant for his statutory purposes" and the proposed search must not "otherwise breach s 21 of the New Zealand Bill of Rights on the grounds of unreasonableness".[15]

15 See *Tauber v Commissioner of Inland Revenue* (2011) NZTC 20-071 (HC) and [2012] NZCA 411. See also *Avowal Administrative Attorneys Limited v The District Court at North Shore* [2010] NZCA 183.

35. The purposes set out in s 16 include:

    (a) to provide the Commissioner with the necessary powers to enable -

        (i) the collection of all taxes and duties imposed by the Inland Revenue Acts:

        (ii) the carrying into effect of any of the Inland Revenue Acts:

        (iii) the carrying out of functions lawfully conferred on the Commissioner.

    (b) to enable the collection by the Commissioner of revenue information, including the power to –

        (i) gain access to property or documents; and

        (ii) remove documents to make copies; and

        (iii) to require a person or entity to produce documents or to provide or allow access to information to the Commissioner:

36. The principles set out in section 16B include:

    (1) The collection of revenue information may be made for 1 or more of the following purposes:

        (a) to protect the integrity of the tax system:

        (b) to carry into effect the revenue laws:

        (c) to carry out or support a function lawfully conferred on the Commissioner:

        (d) to encourage compliance with the revenue laws:

        (e) for any other function lawfully conferred on the Commissioner.

    (2) In collecting revenue information, the Commissioner may access property or documents only if taking that action is—

        (a) necessary or relevant for one of the purposes noted in section 16B(1); and

        (b) considered likely to provide the information required.

Occupier

37. The term occupier is not defined in the TAA or the SSA. For the purposes of ss 17 and 17C, the term is given a wide meaning. It includes all persons entitled to be on the property, including employees, tenants and family members, and is not restricted to the owner or lease holder. This may or may not include the taxpayer under investigation.

38. The Inland Revenue officer in charge will take reasonable measures to satisfy themselves that the occupier they are dealing with has lawful occupation of the place and is the appropriate person to deal with and may also require other occupiers to provide assistance or answer proper questions.

39. A person under 14 years of age may not be treated as an occupier.[16]

Private dwelling

40. Section 17(5) of the TAA defines this as follows:

    private dwelling means a building or part of a building occupied as residential accommodation, and includes—

    (a) a garage, shed, and other building used in connection with the private dwelling; and

    (b) any business premises that are, or are within, a private dwelling.

41. A private dwelling includes a prison cell.[17]

Proper questions

42. This term is not defined in the TAA. For the purposes of s 17(3)(b), proper questions are those relating to the effective exercise of powers under s 17. This does not include investigative questions. See [107] to [125] for a discussion of how proper questions will be managed.

16 See s 131(6)(a) and s 95(1) of the SSA. However, a person under 14 years of age who is found driving a vehicle with no passenger of or over the age of 14 years can consent to the search of the vehicle; see s 95(2) of the SSA.

17 *Re Commissioner of Inland Revenue (application for a search warrant)* (2005) 22 NZTC 19,123 (DC).

Property or documents

43. Section 17(5) of the TAA defines, for ss 16, 16B, 17 and 17D, "property or documents" as follows:

> **property or documents** includes—
>
> (a) all lands, buildings, places, or other premises:
>
> (b) a document, whether in the custody or under the control of a public officer, or a body corporate, or any other person

44. In the Commissioner's view a vehicle is included in the definition of "property".

Reasonable facilities and assistance

45. This term is not defined in the TAA. For the purposes of s 17(3)(a), the provision of reasonable facilities and assistance means such assistance as the Inland Revenue officer in charge of the search considers necessary for the effective exercise of the search powers. This is reinforced by the SSA, and examples include unlocking cabinets, providing access to bathroom and kitchen facilities, the provision of electricity or internet access, and remaining outside specified areas when required to do so (see [96] to [106] and [126] to [127]).

Search power

46. Section 3 of the SSA defines this as follows:

> **search power**, in relation to any provision in this Act, means—
>
> (a) every search warrant issued under this Act or an enactment set out in column 2 of the Schedule to which that provision is applied; and
>
> (b) every power, conferred under this Act or an enactment set out in column 2 of the Schedule to which that provision is applied, to enter and search, or enter and inspect or examine (without warrant) any place, vehicle, or other thing, or to search a person

47. The power in section 17, including the power to access private dwellings under warrant, is a search power for the purposes of the SSA.[18]

Operational Practice

Overview

48. This section sets out the operational practice Inland Revenue officers will follow when exercising search powers and what the legislation requires of taxpayers, owners and occupiers, and their advisors.

49. This section covers the following matters:

- When Inland Revenue will use s 17.
- Warrants.
- Entry, Identification and Advice of Rights:
  - Entry.
  - Identification and notices.
  - Remote access search.
  - Advice of rights.
- Exercising search powers (including taxpayers' obligations):
  - Access.
  - Search.
  - Assistants.
  - Reasonable facilities and assistance.
  - Proper questions.
  - Power to exclude.
  - Obstruction and other offending.

18 Schedule of the SSA.

    - Other Inland Revenue activities.
    - Electronically stored information.
    - Removal of documents.
- Legal advisors, tax agents and support persons.
- Legal privilege and the non-disclosure right.
    - Legal privilege.
    - Tax advice document.
    - Legal privilege and non-disclosure right process.
- After the search:
    - Access to documents;
    - Return of documents.
- Offences.

When Inland Revenue will use s 17

50. The efficient and effective use of information gathering powers such as those provided in ss 17 and 17C are necessary for the Commissioner to obtain information to verify various tax liabilities, to deter and detect offending, and to assist in tax collection.
51. The Commissioner may use s 17 where it is considered appropriate in the context of the particular investigation, and where it is reasonable. This includes, but is not limited to, cases where, in the Commissioner's opinion, there is a risk or history of non-compliance and/or a lack of co-operation, where it is likely that documents may be at risk, or likely that the case involves revenue offending (eg, tax crimes, including fraud and evasion). Section 17 may also be used to address problems of aggressive tax planning and tax avoidance.
52. It is not necessary for the Commissioner to use other avenues to obtain the information or other powers, such as s 17B, before exercising the powers in ss 17 and 17C.
53. The Commissioner recognises the intrusive nature of the exercise of s 17, and the need to use s 17 in a way that recognises the importance of the rights and entitlements affirmed in other enactments, including the NZBORA, the Privacy Act 2020 and the Evidence Act 2006, while ensuring the effectiveness of the Commissioner's investigative tools. The Inland Revenue officer in charge will explain clearly to occupiers what their rights and obligations are (see [70] to [85]).

Warrants

54. Section 17(1) is a warrantless power of entry. This means the Commissioner does not need to obtain a warrant to access all lands, buildings (except for private dwellings), places or other premises, and all documents (whether in the custody or under the control of a public officer, a body corporate, or any other person).
55. In order to access a private dwelling, the Commissioner must obtain either:
    - the consent of an occupier; or
    - a warrant issued under s 17D.
56. As a private dwelling includes a prison cell or business premises that are, or are within, a private dwelling[19], the consent of the occupier or a warrant issued under s 17D must be obtained by the Commissioner to access them.
57. If the Commissioner knows the access is to be of a private dwelling, the Commissioner's usual practice is to apply for a warrant (rather than seeking the consent of the occupier). This provides occupiers with judicial oversight, helping balance their privacy rights against law enforcement needs. If part of a search area is found to contain a private dwelling, and if a private dwelling warrant is not already held, the officer in charge will seek either the occupier's consent or a warrant before searching that area.

19 See [40] above.

58. The Commissioner can remove documents, including electronically stored information, to make a copy or to retain the documents for a full and complete inspection. To remove documents from any place, for inspection, the Commissioner must obtain either:
    - the consent of an occupier; or
    - a warrant issued under s 17D.
59. The Commissioner does not require the consent of an occupier or a warrant to remove documents for copying under section 17C(1)(c). Copying of documents, including the imaging of electronically stored information, can occur either on-site or elsewhere.
60. Although s 17C(1)(d) provides that documents can be removed and retained for a full and complete inspection with the occupier's consent, the Commissioner will generally obtain warrants for the removal of documents for a full and complete inspection. In most cases, having a warrant to remove the documents will reduce the amount of time Inland Revenue officers will be present at the premises.
61. Subpart 3 of Part 4 of the SSA sets out the process by which warrants are to be obtained. An application for a warrant is required to contain a description of the items or other evidential material believed to be in the place, vehicle or other thing that are sought by the Commissioner.[20] However, the warrant does not need to contain a description of what may be seized.[21]
62. The Commissioner is able to seize other items that are in plain view during a search when the Commissioner has reasonable grounds to believe that they could have seized the items under either a search warrant or a search power.[22]
63. Warrant applications are made without notice to the occupier and may include confidential information. The Commissioner will comply with the Official Information Act 1982, the Privacy Act 2020, the Criminal Disclosure Act 2008 and with any Court order to disclose information. Where a request for information in a warrant application is received, the Commissioner will particularly consider:
    - the tax confidentiality rules in the TAA:
    - s 6(c) of the Official Information Act 1982, s 53(c) of the Privacy Act 2020 and s 16(a) of the Criminal Disclosure Act 2008 which provide that a reason for withholding information is if disclosure is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
64. While s 100(3) of the SSA provides that an issuing officer may allow an application for a search warrant to be made orally (eg, by telephone call), the Commissioner will generally seek warrants by written application.

Entry, Identification and Advice of Rights

Entry

65. Section 17(1) provides the Commissioner with wide powers of access to any property or documents. Property or documents is widely defined in s 17(5) and includes all lands, buildings, places or other premises. This includes motor vehicles, business premises, warehouses, and private dwellings (which require a court warrant to access). This is reflected in s 110 of the SSA.
66. Inland Revenue officers exercising search or seizure powers are able to use force in respect of any property (eg, to open doors and access cabinets) that is reasonable for the purposes of carrying out the search.[23] These powers to use reasonable force do not authorise the use of force against persons.

20 Section 98(1)(e) of the SSA.

21 Section 103(4)(g) of the SSA, which requires a warrant to contain a description of what may be seized, is excluded by s 17D(5) of the TAA from applying to s 17D.

22 Section 123 of the SSA.

23 Sections 110(c), 113(2)(b) and 131(3) of the SSA.

67. An example of reasonable force is the use of a locksmith to gain entry if no one is present or if the occupier refuses entry. The use of non-Inland Revenue officers, such as locksmiths[24], is authorised by provisions in the TAA and SSA which permit Inland Revenue officers to bring along such assistants as they consider necessary (see [90] to [95]). Where locksmiths or other means of reasonable force are used to gain entry, and new locks and/or keys are required, the Inland Revenue officer in charge will attempt to contact the property owner and provide them with the new keys.
68. The Inland Revenue officer in charge will accompany all assistants when they first enter the place to be searched and will supervise any assistant (that is not a Police constable) as is reasonable in the circumstances.[25]
69. Any Inland Revenue officer who has been delegated the s 17 powers is not an "assistant" under the SSA. In practice any such officer will be accompanied by the officer in charge upon first entry and will be subject to such supervision by the officer in charge as is reasonable in the circumstances.

Identification and notices

70. Before initial entry into or onto the place or vehicle or other thing to be searched under s 17 or a warrant, the Inland Revenue officer in charge of the search will:
    - Announce their intention to enter and search the place, vehicle or other thing under s 17 or a warrant, whichever is applicable.[26]
    - Identify themselves by name or by unique identifier.[27]
    - Produce evidence of their identity.[28]
    - Produce the warrant, if any, before or on initial entry.[29] The Inland Revenue officer in charge will provide the occupier of the place or person in charge of the vehicle or other thing with a copy of the search warrant if there is one.[30]
    - Produce the evidence of identity and the warrant whenever subsequently reasonably required to do so.[31]
    - Where the search is not being carried out under a warrant and it is reasonably practicable in the circumstances to do so, provide the occupier of the place or person in charge of the vehicle or other thing with a written notice setting out:
        - that the search is taking place under s 17;[32]and
        - the reason for the search.[33] This will be in general terms describing the nature of the investigation but not setting out specific detail.
        - If there is more than one occupier present, it will be sufficient to provide the information to only one occupier.[34]
71. The Inland Revenue officer in charge will also identify themself to the occupier as the main contact person for the occupier and any advisor during the search of the premises.

24 See *R v BW* DC Tauranga CRI-2011-070-003626, 26 June 2012, [2012] TXHNZ 53 (DC) for an example where the Court upheld an entry where a locksmith was used, the lock on the front door could not be opened to gain entry and a police detective gained entry through an unlocked window.

25 Sections 113(3), (4) and (5) of the SSA

26 Section 131(1)(a)(i) of the SSA.

27 Section 131(1)(a)(ii) of the SSA.

28 Section 131(1)(a)(iii) of the SSA and s 17D(4).

29 Section 17D(4).

30 Section 131(1)(b)(i) of the SSA.

31 Section 17D(4).

32 Section 131(1)(b)(v)(A) of the SSA.

33 Section 131(1)(b)(v)(B) of the SSA.

34 *Erasmus v R* [2017] NZCA 222.

72. If the occupier of a place is not present during the search, or no person is in charge of the vehicle or other thing, the Inland Revenue officer in charge will leave the following in a prominent position on completion of the search:
    - A copy of the search warrant (where the search was carried out under a search warrant).[35]
    - A notice setting out:[36]
        - The date and time of the start and finish of the search.
        - The name or unique identifier of the Inland Revenue officer in charge of the search.
        - Where the search was exercised without a warrant, that it took place under s 17 and the reason for the search.
        - The address and contact details of the Inland Revenue officer to whom enquiries should be made. This may not necessarily be the Inland Revenue officer in charge of the search.
        - If nothing was seized, the fact that nothing was seized.
        - If anything was seized, the fact that seizure occurred.
        - If anything were seized, and where an inventory is not provided at the time, a statement that an inventory will be provided to the occupier no later than seven days after the seizure.
        - If documents were seized, the information set out in [153] to the extent applicable.
73. Where it is not reasonably practicable to take the steps set out in [72], the Inland Revenue officer in charge will provide this information to the occupier of the place or owner of the vehicle or other thing no later than seven days after the search.[37]
74. By taking the above steps, the Inland Revenue officer in charge of the search will have met the identification and notice requirements of TAA and the SSA. However, in the following circumstances, the Inland Revenue officer in charge is permitted to elect not to carry out some of these requirements:
    - Where the only persons present during the search are under the age of 14, the Inland Revenue officer in charge will not provide the information in [70] and [72]. They are not occupiers or in charge of a vehicle or other thing, except in very limited circumstances in relation to vehicles.[38]
    - Where the Inland Revenue officer in charge has reasonable grounds to believe any person present during the search is not the occupier of the place or is not the person in charge of the vehicle or other thing being searched, the Inland Revenue officer in charge will not provide that person with the information in [70] and [72].[39]
    - Where the Inland Revenue officer in charge has reasonable grounds to believe that no person is lawfully present in or on the place, vehicle or other thing to be searched, they can elect not to carry out [70].[40]
    - Where the Inland Revenue officer in charge has reasonable grounds to believe that compliance with the first three bullet points in [70] would:
        - endanger the safety of any person; or
        - prejudice the successful exercise of the entry and search power; or
        - prejudice ongoing investigations

      they may elect to not carry out those bullet points.[41]
    - Section 131(2)(b) of the SSA (ie, fourth bullet point in [74]) does not authorise the Commissioner to dispense with the obligation to provide a copy of the search warrant or the enactment and reason for the warrantless search.[42]

35 Section 131(4)(a) of the SSA.
36 Section 131(5) of the SSA.
37 Section 131(4)(b) of the SSA
38 Section 131(6)(a)(i) of the SSA
39 Section 131(6)(a)(ii) of the SSA.
40 Section 131(2)(a) of the SSA.
41 Section 131(2)(b) of the SSA.
42 *McPherson v R* [2021] NZCA 249 at [23].

Postponement of Obligation to Leave Copy of Warrant

75. The Inland Revenue officer in charge may apply to a Judge for a postponement of the obligation to comply with [72] and [73] (to leave a copy of the warrant, if any, and a notice, either at completion of the search or no later than seven days after the search if no occupier/person in charge of vehicle or thing is present) on the grounds that compliance would:
    - endanger the safety of any person; or
    - prejudice ongoing investigations.[43]
76. If there is a search warrant, an application to postpone may be made at the time of the initial application for the warrant or until the expiry of seven days after the warrant is finally executed.[44]
77. If there is no search warrant, an application to postpone may be made until the expiry of seven days after the search power is exercised.[45]
78. The Judge may postpone for a specified period not exceeding 12 months if the Judge is satisfied there are reasonable grounds for believing that compliance would endanger the safety of any person or would prejudice ongoing investigations.[46]

Remote access search

79. The Commissioner is able to undertake remote access searches under s 17(1). See [29] for the definition of "document".
80. A remote access search is defined in s 3 of the SSA as follows:

> **Remote access search** means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search.

81. While the Commissioner does not exercise a remote access search power under the SSA but instead conducts remote access searches pursuant to his power under s 17(1), the definition in the SSA is what the Commissioner means by remote access search for the purpose of this statement.
82. An officer conducting a remote access search under s 17(1) will perform the search in a manner that is consistent with the principles described in this statement.

Advice of rights

83. The Commissioner's use of s 17 is subject to the right to be secure against unreasonable search and seizure.[47]
84. Although a person who is on a property when the Commissioner accesses the property is not detained or arrested, to ensure the search powers in the TAA and the SSA are exercised consistently with the protections in the NZBORA, the Inland Revenue officer in charge of the search will provide the occupier with the following:
    - Advice of the occupier's ability to consult and instruct a lawyer.
    - An explanation of the occupier's obligation to provide reasonable facilities and assistance and to answer proper questions.
    - An explanation of the privilege against self-incrimination under s 60 of the Evidence Act 2006 where proper questions are being asked that may also constitute investigative questions; refer to [107] to [125] for more information on proper questions and investigative questions.
    - A general explanation of the processes that will be undertaken on-site.
85. The Inland Revenue officer in charge of the search will provide the occupier with a written copy of the information in [84].

43 Section 134 of the SSA.
44 Section 134(2)(a) of the SSA.
45 Section 134(2)(b) of the SSA.
46 Section 134(3) of the SSA.
47 Section 21 of the NZBORA.

Exercising search powers (including taxpayers' obligations)

Access

86. Access will be undertaken at a time the Commissioner considers will balance causing minimal disruption to the occupier with the purpose of the search and the operational needs of the investigation.

87. Where no one is present at the premises being searched, Inland Revenue officers are able to use reasonable force to gain access. This includes forced entry or engaging the services of a locksmith to enter the premises, and disarming alarms.

Search

88. The power of access in s 17 includes the power to search for items covered by that section.

89. Occupiers are required to provide Inland Revenue staff with reasonable facilities and assistance in carrying out the search.[48] The Commissioner considers this includes emptying their pockets if asked to do so, handing over documents and devices such as cellphones or USB drives, and allowing the Inland Revenue officers to search inside items such as handbags, briefcases and backpacks. It also includes providing login and password details to officers to allow them to access devices, accounts or platforms holding relevant information.

Assistants

90. Section 17(4) authorises a person whose presence at a place is considered by the Commissioner to be necessary for the effective exercise of the powers under s 17 to accompany the Commissioner to a place. Section 113(4) of the SSA sets out the Commissioner's obligations in relation to those assistants; see [68]. Examples of assistants include digital or other computer forensic experts, locksmiths, Police constables, dog control officers, interpreters, landlords and local council staff.

91. Where an assistant is not an Inland Revenue officer who has been delegated the s 17 powers or a Police constable, the Inland Revenue officer in charge will accompany that assistant when they first enter the place to be searched and provide such supervision as is reasonably necessary.[49] Where the assistant is a Police constable, these requirements do not apply.[50]

92. Assistants have all of the powers given to them under s 113(2) of the SSA. The powers include, for example, a locksmith using reasonable force in respect of any property,[51] or someone using reasonable measures to access a computer system or other data storage device.[52]

93. Every assistant is subject to the control of the Inland Revenue officer in charge.[53]

94. If a Police constable is an assistant, they are able to, without direction or supervision by the Inland Revenue officer in charge, exercise any power ordinarily exercisable by that constable.[54] This includes any power in relation to any obstruction of entry or the search and seizure by occupiers.

95. Where the Commissioner has engaged the services of assistants who are not Inland Revenue officers to assist in the exercise of s 17, they will be required to have first signed a certificate of confidentiality under s 18B(2). This includes a Police constable.

Reasonable facilities and assistance

96. The Commissioner's search of premises may require some degree of assistance from occupiers of those premises, including unlocking doors and providing electricity. Section 17(3)(a) requires occupiers to provide reasonable facilities and assistance to the Commissioner.

97. Refer to [84] for further information as to what occupiers will be told.

98. The obligations to provide assistance and answer proper questions under s 17(3) do not amount to a detention within the meaning of s 23 of the NZBORA. However, occupiers will be treated with humanity and respect for the inherent dignity of the person.

48 Section 17(3)(a).
49 Section 113(4) of the SSA.
50 Section 113(5) of the SSA.
51 Section 113(2)(b) of the SSA.
52 Section 113(2)(h) of the SSA.
53 Section 113(1) of the SSA.
54 Section 113(3) of the SSA.

99. Section 17 does not contain a power to detain people and the Commissioner will ensure that, wherever assistance with a search is required, such assistance will be required in a manner that does not infringe s 22 of NZBORA (the right not to be arbitrarily arrested or detained).[55]

100. The Inland Revenue officer in charge will ask the occupiers to provide assistance at an early stage. Wherever possible, the Inland Revenue officer in charge will avoid keeping occupiers longer than is necessary for them to assist during the course of the search.

101. When requiring assistance from occupiers, Inland Revenue will take into account the following factors:

- who is the occupier and their role in relation to the premises (see [37]);
- the compliance cost to the occupier;
- the need for the occupier to also meet the needs of their business during the search (where the search occurs during that business' working hours); and
- the purpose for which the search powers are being exercised.

102. Although generally the Commissioner will not require internet access as assistance from the occupier, if it is required the Commissioner will also consider the Commissioner's own internet availability at the premises (eg, availability of cellphone data coverage) and the internet plan available at the premises (eg, whether there is an unlimited data plan).

103. Where the occupier is required to provide assistance, the Inland Revenue officer in charge will inform them of the reason for this, and that they have the right to refrain from making any incriminating statements (unless it is a proper question within the parameters discussed in [107] to [125]).

104. The SSA also imposes additional obligations on a "specified person" to provide access information and other information or assistance that is reasonable and necessary to allow access to data held in a computer system or other data storage device or internet sites.[56] A specified person is not required to give any information tending to incriminate them.[57]

105. A "specified person" is:

- a user of a computer system or other data storage device or an internet site who has relevant knowledge of that system, device, or site; or
- a person who provides an internet service or maintains an internet site and who holds access information.[58]

106. A specified person may be a person that is not an occupier.

Proper questions

107. When the search power in s 17 is being exercised, the occupier must answer all "proper questions" as, and in the manner, required by the Commissioner.[59]

108. There is an important distinction between:

- proper questions, and
- investigative questions.

109. *Proper questions* are those relating to the effective exercise of powers under s 17. They are questions to facilitate access to property or documents for the purpose of inspecting a document, property, process, or matter. What is a proper question will depend on the context. They might, for example, include questions about how to access and locate documents or where a process takes place.

110. *Investigative questions* are those that are directed at obtaining evidence of offending or of the taking of any underlying tax position. Questions of this kind are not concerned with facilitating the search. Investigative questions may be put to the occupier separately, such as in a voluntary interview or an inquiry under ss 17I or 17J.

55 See *Tauber v Commissioner of Inland Revenue* (2011) NZTC 20-071 (HC) as an example where, although his vehicle was blocked from leaving until it had been searched, Mr Tauber was free to leave the property and so he was not arbitrarily detained.

56 Section 130 of the SSA.

57 Section 130(2) of the SSA.

58 Section 130(5) of the SSA.

59 Section 17(3)(b).

111. During a search the focus will be on proper questions. However, there may sometimes be overlap between proper questions and investigate questions. That is, a proper question may sometimes elicit a response that, in addition to answering the proper question, appears to answer investigation questions. For example, a discussion about the documents, property, processes or other matters contained on the premises may overlap with the substantive investigation.
112. The distinction between proper questions and investigate questions is important because if an occupier refuses to answer a proper question, or leaves without answering it, this could ultimately give rise to a prosecution for obstruction; see [128] to [131].
113. Investigative questions should form part of a voluntary interview and importantly the privilege against self-incrimination may also apply.
114. The Inland Revenue officer will ensure an occupier understands that they are required to answer the proper questions but investigative questions are different and privilege against self-incrimination may apply.

Privilege against self-incrimination

115. Section 60 of the Evidence Act 2006 provides a privilege against self-incrimination where a person is required to provide specific information by a person exercising a statutory power or duty. This privilege is recognised in s 130(2) of the SSA, when a person is otherwise required to provide access or other information for computer systems. Section 60(3) of the Evidence Act 2006 restricts this privilege when an enactment removes it either expressly or by necessary implication. Section 17(3)(b) removes the privilege in relation to "proper questions."
116. What this means in practice is that Inland Revenue officers may ask *proper questions* relating to the effective exercise of the search powers in s 17 and the occupier is compelled to answer them. An occupier is not compelled to answer any *investigative questions*.[60] However, a person may choose to answer any such questions if asked.
117. Where there is an overlap between proper and investigative question, the Inland Revenue officer will explain that the occupier has a right under s 60 of the Evidence Act 2006 not to answer the question if the answer is likely to incriminate them under New Zealand law for an offence punishable by a fine or imprisonment. The Inland Revenue officer will explain the same if an investigative question is asked.
118. If an occupier is unsure what information they are compelled to provide in response to proper questions, having a lawyer present can assist.
119. Where privilege against self-incrimination does apply, s 60 of the Evidence Act 2006 provides a privilege against self-incrimination if the information would be "likely to incriminate" the person, whereas s 130(2) of the SSA provides a person is not required to give any information "tending to incriminate" the person. These tests have the same application, namely where the potential for incrimination is "real and appreciable" and not "merely imaginary and fanciful".[61]
120. The privilege only applies to information that would be likely to incriminate the person under New Zealand law for an offence punishable by a fine or imprisonment. It does not apply to information that may be relevant to liability for shortfall or other civil penalties under the TAA; these are not offences punishable by a fine or imprisonment.
121. The privilege also only relates to information asked of the person; it therefore does not extend to documents.[62] The privilege against self-incrimination does not extend to providing passwords or other access information to access data.[63]
122. For completeness, subpart 5 (Privilege and confidentiality) of Part 4 (General provisions in relation to search, surveillance, and inspection powers) of the SSA are excluded from searches under the TAA; see s 17D(5) of the TAA and the schedule of the SSA, both of which exclude s 130(4) of the SSA applying to ss 17, 17C(1)(d), (3), (5), (6) and 17D.

Process for answering questions

123. As proper questions relate to the effective exercise of powers under s 17, generally the Commissioner's practice is to require oral answers to these questions during the search. However, the occupier can be asked to provide answers to proper questions in any manner required by the Commissioner.[64] This could include being asked to provide answers in writing.

60 This is consistent with the common law right to silence and s 28 of the NZBORA.
61 *Singh v R* [2010] NZSC 161 and *Williams v Jones* HC Auckland CIV-2003-404-006565, 16 November 2005.
62 Section 51(3) of the Evidence Act 2006.
63 *R v Spark* [2008] NZCA 561.
64 Section 17(3)(b).

124. If a voluntary interview or inquiry is considered necessary, generally this will be arranged for a date after the search has been completed. Ensuring that any investigative interview/inquiry is conducted separately from the search will allow the taxpayer time to discuss their circumstances with an advisor and to obtain advice.

125. Doing so may also allow time for the taxpayer to make a post-notification voluntary disclosure under s 141G(1)(b). Notification for the purposes of the voluntary disclosure regime may be provided at the time of the search (if notification has not already been provided before this). However, whether or not the Commissioner has started the audit or investigation (per the criteria in s 141G(5)) will depend on the facts of each case. Refer to **SPS 19/02: Voluntary disclosures** and **SPS 16/03: Notification of a pending audit or investigation**. The form for making voluntary disclosures is the **IR281 – Voluntary disclosure**.

Power to exclude

126. Under s 116 of the SSA, the Inland Revenue officer in charge can secure the place, vehicle or other thing being searched. Where the officer in charge has reasonable grounds to believe any person will obstruct or hinder any exercise of any power under s 116(1) of the SSA, the officer in charge can exclude any person from the place, vehicle or thing, or from any area within the place. The officer can also give any reasonable direction to any person.

127. In practice, this means that any person present may be required to:

- remain outside a specified area;
- keep away from other occupiers or Inland Revenue officers or people assisting; or
- leave the premises.

Obstruction and other offending

128. A person who obstructs the Commissioner or an Inland Revenue officer acting in the lawful discharge of the duties or exercise of their powers under a tax law commits an offence.[65] A search is the exercise of a power under a tax law and, accordingly, obstructing the Commissioner or an Inland Revenue officer in the exercise of that search power may be an offence.

129. Obstruction may include failing to provide reasonable facilities and assistance, failing to answer proper questions, or hiding or destroying documents (including electronically stored information).

130. Failing to remain outside a specified area, keep away from others or leave the premises when excluded under s 116 of the SSA may constitute an offence of obstruction under s 143H.

131. A taxpayer obstructing the Commissioner may also result in an increased shortfall penalty payable by the taxpayer.[66] The person may also have committed an offence under s 117(e) of the Crimes Act 1961.

Other Inland Revenue activities

132. The Inland Revenue officer in charge or their assistants may also do the following in the course of exercising the Commissioner's search powers under the TAA and SSA:

- Take photographs, sound and video recordings, and drawings of the place, vehicle or other thing being searched, and of any thing found in or on that place, vehicle or other thing, if the Inland Revenue officer in charge has reasonable grounds to believe this may be relevant to the purposes of the entry and search.[67]
- Record discussions with anyone present (but not children under 14 years of age).[68]
- Where an interpreter is being used, the discussion will generally be electronically recorded to provide an accurate record for both the occupier and the Commissioner.

65 Section 143H(1).

66 Section 141K.

67 Section s 110(j) of the SSA.

68 Although the Commissioner considers that asking and answering "proper questions" is not an interview, meaning SPS 12/01 *Tape recording Inland Revenue interviews* does not directly apply, as an occupier is required to answer proper questions, the substance of SPS 12/01 will be applied.

- Question other occupiers who are present (eg, employees, tenants, family members, but not children under 14 years of age). Although a person of or over 14 years of age but under 18 years of age may be asked questions or recorded, the Inland Revenue officer in charge will make any decision about this, taking into consideration the age and understanding of the person. Any discussion will be in a manner and in language that is appropriate based on their age and level of understanding.
- Take a record of any cash or other valuables found during the search. This includes counting and photographing the items, because such assets could be representative of undeclared income. These items will generally not be seized by Inland Revenue.

133. Re-entry of the place, vehicle or thing depends on whether it is a warrant or warrantless search:
    - A warrant may be executed only once, unless the warrant provides for it to be executed more than once.[69] A warrant is executed when the Inland Revenue officer in charge leaves the place, vehicle or other thing being searched and does not return within 4 hours.[70]
    - For a warrantless search, the Commissioner considers that as long as the Inland Revenue officer in charge returns to the place, vehicle or other thing within 4 hours of leaving the place, it is a continuation of the original warrantless search and not a new warrantless search.

Electronically stored information

134. Refer to the following Standard Practice Statements for information on:
    - **SPS 21/02**: Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori for guidelines on retaining business records in electronic format.
    - **SPS 10/02**: Imaging of electronic storage media for the Commissioner's practice when taking an image of electronic storage media.
135. The Inland Revenue officer in charge or any assistant, may access, preview and image/clone electronically stored information. In particular, the Inland Revenue officer in charge or any assistant may:
    - use any reasonable measure to access computer systems or other data storage devices, whether located (in whole or in part) at the place, vehicle or thing being searched if any intangible material that is the subject of the search may be in that computer system or other device; or
    - if any intangible material accessed is the subject of the search, or may otherwise be lawfully seized, copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination).[71]
136. Inland Revenue has a unit of specialist computer forensic staff. Wherever possible, the Commissioner will use staff from this unit to carry out the access, searching and copying of electronically stored information.
137. An example where it might not be possible to use Inland Revenue's specialist computer forensic unit could be where the size of the search operation means there are not enough staff in this unit to attend at every site. The Commissioner, if removing electronic storage devices and delivering them to Inland Revenue's specialist computer forensic unit for custody and imaging, could either contract in external specialists or use Inland Revenue officers. In such cases, a clear chain of custody over the electronic storage device will be maintained, and claims of legal privilege and the non-disclosure right (under ss 20 and 20B to 20G) can be made as described in this statement (see [184] to [189] below).

Removal of documents

138. The provisions of Part 4 of the SSA do not provide stand-alone search powers. They specify how substantive powers provided elsewhere (such as the TAA) are to be carried out, and the obligations and restrictions that govern the exercise of those powers.

69 Sections 103(3)(c) and 103(4)(j) of the SSA.

70 Section 106 of the SSA.

71 Sections 110(h) and (i) and 113(2)(h) and (i) of the SSA. See also *Avowal Administrative Attorneys Limited v The District Court at North Shore* [2010] NZCA 183, [2010] 3 NZLR 661.

139. There is a cross-over or duplication of the provisions of the TAA and the SSA, both of which allow the copying and removal of documents found during a search. Both Acts apply and the Commissioner is able to exercise the copy/removal powers under either or both the TAA and SSA. The exercise of powers under one Act does not prevent the Commissioner exercising the powers available under the other Act.

140. In relation to a document accessed under s 17, s 17C(1) provides that the Commissioner (through the Inland Revenue officer in charge) may do one or more of the following:

- take an extract from the document:
- make a copy of the document:
- remove the document from the place to make a copy:
- remove the document from the place and retain it for a full and complete inspection. The consent of an occupier or a warrant issued under s 17D to remove a document is required for a full and complete inspection.[72]

141. Section 110 of the SSA provides that the Inland Revenue officer in charge may:

- seize anything that is the subject of the search or anything else that may be lawfully seized:[73]
- copy any document, or part of any document, that may be lawfully seized:[74]
- copy any intangible material on a computer system or other data storage device, including by means of previewing, cloning, or other forensic methods either before or after removal for examination.[75]

142. Section 123 of the SSA also provides for the seizure of items found in carrying out the search or as a result of observations at the place or in or on the vehicle; see [62] above.

143. These sections in the TAA and the SSA provide the Commissioner with an alternative to copying on-site where it is not possible or practicable to do so.

144. Under the TAA a document may be removed from a place and retained for a full and complete inspection for as long as necessary if the Commissioner has:

- the consent of an occupier:
- a warrant issued under s 17D.[76]

145. The consent of an occupier or a warrant is not required to remove a document from a place to make a copy.

Inventory of Items Seized

146. The Inland Revenue officer in charge is required to provide:

- an inventory notice (an inventory of the items seized); and
- a copy of the authority for the search (the search warrant or the search power if there is no warrant).[77]

147. The inventory notice is provided to:

- the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place; and
- the person who the officer in charge has reason to believe is the owner of the thing seized.[78]

148. The inventory notice is not required to be provided to the occupier/person in charge of the vehicle or other thing if the Inland Revenue officer in charge is satisfied that none of the items seized are owned by the occupier/person in charge.[79] In practice, the inventory notice will not be provided to the occupier/person in charge if the officer in charge is satisfied none of the seized things are owned by that person.

72 Section 17C(4).
73 Section 110(d)) of the SSA.
74 Section 110(g) of the SSA.
75 Section 110(i) of the SSA.
76 Section 17C(3).
77 Section 133(1) of the SSA.
78 Section 133(1) of the SSA.
79 Section 133(2)(c) of the SSA.

149. The practical effect of this is that the inventory notice will be provided to the owner of any items seized, who may also be the occupier.

150. As noted, if the Inland Revenue officer in charge is satisfied that none of the items seized are owned by the occupier, then the inventory notice need not be given to the occupier. When documents are removed from a tax agent's or lawyer's office, the inventory notice will be provided to the tax agent, not to each individual client whose records may have been uplifted.

151. The inventory notice shall be in writing and will be provided:

- at the time the seizure took place; or
- as soon as practicable after the seizure; and
- in any case no later than seven days after the seizure.[80]

152. A failure to give the inventory notice within the seven days does not retrospectively render the search unlawful.[81]

153. The inventory notice will specify:

- What has been seized. This will include a general description of what has been seized. For example, the number of folders or boxes of documents removed, and the number of hard drives imaged.
- Information about the extent to which a person from whom a thing was seized, or the owner of the thing, has a right to apply:
  - to have access to the thing; or
  - to have access to any document relating to the application for a search warrant (if any) or the exercise of the search power that led to the seizure.[82]
- Information about the legal privilege and non-disclosure right for tax advice documents in the TAA.[83]

154. Section 17C(5) provides that an owner of a document may inspect and copy a document that is seized.

155. The practical effect of this is that a person from whom the thing was seized (eg, an occupier who is not the owner) does not have a right under the TAA or SSA to apply for access to any thing seized during a search, only the owner does.

156. Accordingly, the person from whom a thing was seized (eg, an occupier who is not an owner) may only request access to any document seized during a search either under the Privacy Act 2020 or the Official Information Act 1982. This also means that the information in an inventory notice about the extent to which a person who is not the owner of a thing seized can request access will be different from that relating to the owner of the thing seized.

157. In relation to the extent that the occupier or the owner has a right to apply to have access to any document relating to the application for a search warrant or the exercise of the search power, there is no right to apply for this information under the SSA or the TAA. Accordingly, any request for this information will be either under the Privacy Act 2020 or the Official Information Act 1982, or, if a person is charged with an offence, under the Criminal Disclosure Act 2008.

158. A request will be considered on its own facts and circumstances, and there are a number of grounds for withholding information, including prejudice to the maintenance of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial).[84] This means that information used in warrant applications might not be released, if requested, until the conclusion of the investigation and any litigation.

159. In addition to the inventory notice, the Inland Revenue officer in charge is required to provide:

- the occupier/person in charge of the vehicle or other thing; and
- the person who the officer in charge believes is the owner of anything seized

with a copy of the search warrant (if any) and, if the search power is exercised without a warrant, the name of the enactment the search took place (ie, the TAA) and the reason for the search.[85]

80 Section 133(1) of the SSA.

81 *Rimene v R* [2021] NZCA 42 at [50].

82 Section 133(2)(a) of the SSA.

83 Section 133(2)(b) of the SSA.

84 Section 6(c) of the Official Information Act 1982, s 53(c) of the Privacy Act 2020, s 16(1)(a) of the Criminal Disclosure Act 2008 (which does not include the "right to a fair trial" ground).

85 Section 133(1)(b) of the SSA.

160. If there is no occupier or person in charge of the vehicle or thing present at the time of the seizure, the inventory notice and the copy of the search warrant or the enactment and reason for search if a warrantless search may be provided to the occupier by leaving the notice/copy in a prominent position at the place, or in or on the vehicle or other thing.[86]

Postponing the Inventory Notice

161. The Inland Revenue officer in charge may apply to a Judge for a postponement of the obligation to provide:
    - the information in [72] (ie, the information required by s 131(4) and (5) of the SSA) if no occupier is present; or
    - the inventory notice

    on the grounds that compliance would:
    - endanger the safety of any person; or
    - prejudice ongoing investigations.

162. An application may be made:
    - in the case of an entry and search power that is a search warrant, at the time of the application for a search warrant or until seven days after the warrant is finally executed; or
    - in the case of any other entry and search power, until seven days after the search power is exercised.[87]

163. A Judge may postpone the requirement to give the information required for a specified period not exceeding 12 months.[88]

Seizure when uncertain if lawful to seize

164. Where the Inland Revenue officer in charge is uncertain whether any item found may be lawfully seized, and it is not reasonably practicable to determine whether the item can be seized at the place or vehicle where the search takes place, the item may be removed for the purpose of examination or analysis to determine whether it may be lawfully seized.[89]

165. If the item removed is, after examination or analysis, determined to not be able to be lawfully seized, it will be returned. Until the time it is determined that the item can be lawfully seized the inventory notice requirement in s 133 of the SSA does not apply.[90]

Extent of Search

166. A warrant issued under s 17D is a warrant to access the premises. Once access is effected the Commissioner is entitled to inspect any document, property, or matter as set out in [3]. As the Court of Appeal noted in *Tauber v Commissioner of Inland Revenue*:[91]

> A warrant issued under s 16(4) is not a warrant to search premises for particular information or documents. Rather, it gives authority for access to enter a private dwelling. Once entry is made pursuant to the warrant the authorised officer(s) then has the powers under s 16(1) of the Act which involve at all times having "full and free access to all lands, buildings, and places, and to all documents ... for the purpose of inspecting any documents ..."

167. As long as the document, property, process or matter is considered:
    - necessary or relevant for the purposes or principles set out in ss 16 and 16B:
    - likely to provide information that would otherwise be required for the purposes of the Inland Revenue Acts and any function lawfully conferred on the Commissioner,

    the powers in s 17C(1) are able to be exercised in relation to the document, property, process or matter.

168. Documents removed for copying under s 17C(1)(c) will be returned as soon as practicable. Refer to [191] to [194] for further information on the return of documents.

86 Section 133(3) of the SSA.
87 Section 134(2) of the SSA.
88 Section 134(3) of the SSA.
89 Section 112 of the SSA.
90 Section 112 of the SSA and *A Firm of Solicitors v District Court at Auckland* [2006] 1 NZLR 586.
91 *Tauber v Commissioner of Inland Revenue* [2012] NZCA 411, at [28].

169. Documents removed under s 17C(1)(d) will be retained for as long as necessary to undertake a full and complete inspection. This includes use in court proceedings.[92] If the Commissioner determines that documents removed under s 17C(1)(c) for copying will be required for a full and complete inspection, the Commissioner will either:
    - obtain the consent of the occupier; or
    - obtain a warrant under s 17D.

Legal advisors, tax agents and support persons

170. A person present at a search (eg, an occupier or owner) is able to obtain legal advice and a lawyer can be present during a search. Having a legal advisor present may reduce the amount of time the Commissioner is present at the premises, reducing business interruption or presence in a private dwelling. It may also help facilitate the answering of proper questions and assist with the resolution of issues regarding legal privilege and non-disclosure.
171. Although it is prudent for someone to have ready access to legal advice during a search, the Commissioner does not have to wait until a person has accessed legal advice before commencing the search. It is a balancing act how long to wait to commence a search but the Commissioner will take into account whether the person present at a search is making arrangements for legal advice.
172. Any person present during a search may have an advisor present, such as a lawyer, accountant or other tax advisor, however legal privilege only applies to advice from a lawyer. As it will likely be oral advice given during a search, the Commissioner does not consider the non-disclosure right under s 20B will apply as that is only for a tax advice document.
173. Waiting for an advisor to arrive can delay the search and result in those conducting the search being present on the site for longer than necessary. It is the Commissioner's practice to be present on a site for the minimum amount of time necessary to conduct the search (including copying and removal of documents). This is to cause the least disruption to occupiers and businesses that is consistent with achieving the purpose of the search.
174. Therefore, occupiers will be provided with a reasonable opportunity to contact an advisor and a decision as to when the search will commence will be made by the Inland Revenue officer in charge of the search. Commencing the search, imaging of electronically stored material or removal of documents does not have to wait until an advisor arrives.
175. Where proceedings have been commenced (eg, an injunction) in relation to the exercise of s 17:
    - the Commissioner is able to continue with the search;
    - no person is excused from fulfilling any obligations under the SSA or TAA (such as answering proper questions); and
    - any evidential material obtain may continue to be used for investigative purposes.[93]
176. Occupiers may also prefer to have a tax agent or other support person present; however, that person's presence must not interfere with the search. As noted above, the Inland Revenue officer in charge may exclude any person, including a lawyer, if the officer has reasonable grounds to believe the person will obstruct or hinder any exercise of any power; see [126] and [127].

Legal privilege and the non-disclosure right

177. For the purpose of the Commissioner's search powers, the only privilege from disclosure is provided for in s 20 (legal privilege). There is also a right not to disclose tax advice documents provided for in ss 20B to 20G (non-disclosure right for tax advice documents). The privileges and confidentialities in s 102 and subpart 5 of Part 4 of the SSA do not apply to the Commissioners search powers in the TAA.[94]
178. As noted above at [164], there is a difference between "removed" and "seized". Similarly, a document that is "removed" (or copied as provided by ss 110(h), 110(i), 113(2)(h) or 113(2)(i) of the SSA) is not "disclosed". This means the removal and/or imaging of a document that may be legally privileged or subject to the non-disclosure right will not breach the privilege or right.[95]

92 See definition of "full and complete inspection" in s 3.

93 Section 180(2) of the SSA.

94 Schedule to the SSA.

95 Section 112 of the SSA and *A Firm of Solicitors v District Court at Auckland* [2006] 1 NZLR 586 and *Avowal Administrative Attorneys Limited v The District Court at North Shore* (2009) 24 NZTC 23,252 (HC) at [48].

Legal privilege

179. In practice, the Commissioner regards the s 20 legal privilege as extending to litigation privilege where New Zealand lawyers (as defined by the Lawyers and Conveyancers Act 2006) are involved. For this purpose, litigation privilege is regarded as documents created for the dominant purpose of advising or assisting on reasonably apprehended litigation.

180. Confidential communications between legal practitioners and their clients that meet the criteria under s 20 are privileged from disclosure for the purposes of ss 16 to 17E (and other sections of the TAA). This privilege from disclosure does not apply to documents made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.[96]

Tax advice document

181. A person who is required under one or more of ss 16 to 17E (and other sections or under a discovery obligation) to disclose information in relation to the information holder or another person is not required to disclose a document that is a tax advice document. A document is not a tax advice document if it was created for purposes that include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.[97] See **OS 18/02: Non-disclosure right for tax advice documents** for more information.

182. The Commissioner will adhere to the provisions of ss 20 to 20G regarding legal privilege and the non-disclosure right when exercising ss 17 and 17C, including when imaging electronic storage media.

183. See **SPS 10/02: Imaging of electronic storage media** for more information on the Commissioner's practices when imaging electronic storage media.

Legal privilege and non-disclosure right process

184. The Commissioner is not responsible for asserting privilege or the non-disclosure right for taxpayers. Legal privilege applies to a document whether it is claimed or not. However, the non-disclosure of tax advice document right must be claimed.[98]

185. A blanket claim of legal privilege or of the non-disclosure right across all documents is unlikely to be a valid claim. As set out in the following process, the Commissioner will provide a reasonable opportunity for the owner of documents to review the documents to enable particularised claims to be made within a reasonable timeframe.

186. Where practicable, Inland Revenue officers will use the following process in relation to s 20 (legal privilege) and ss 20B to 20G (the non-disclosure right):

- Provide the occupier with the opportunity to seek advice and make particularised claims under s 20 and ss 20B to 20G.
- In relation to electronically stored documents that are potentially subject to legal privilege or non-disclosure of tax advice documents right claims, copy or image, seal and remove them, or remove the electronic storage device containing those documents for imaging off-site.
- Where electronically stored documents have been imaged:
  - the imaged copy will remain in the custody of Inland Revenue's specialist computer forensic unit, and will not be released to other Inland Revenue compliance officers until after this process is complete; and
  - the owner can provide a list of keywords to Inland Revenue's specialist computer forensic unit to be used to identify documents to which s 20 (legal privilege) or ss 20B to 20G (non-disclosure right) apply.
- In relation to hard copy documents that are potentially subject to legal privilege or non-disclosure right claims, to seal and remove them.
- Work with the owner of the documents to agree a process for:
  - storage of the documents;
  - the owner (or their representative) reviewing the documents;
  - making particularised claims of legal privilege or non-disclosure within a reasonable timeframe; and
  - reviewing and resolving disputed privilege and non-disclosure right claims within a reasonable timeframe.

96 Section 20(1)(c).
97 Section 20B(2)(c).
98 Section 20B(3)(b).

- Where particularised claims are not made or any disputed claims are not resolved within the agreed timeframe, 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 (or for related orders regarding tax contextual information).

187. The Commissioner might agree to documents potentially subject to claims of legal privilege or the non-disclosure right remaining sealed for a reasonable period until the owner (or their representative) has the opportunity to review them, make particularised claims and resolve any disputed claims. However, where the owner has neglected, unreasonably delayed or chosen not to do this, the Commissioner may take any steps necessary to enable the investigation to continue.

188. In addition, s 180(2)(b) of the SSA specifically authorises the Commissioner to continue with the investigation when proceedings have been commenced in relation to the exercise of search powers or the use for investigative purposes of any evidential material obtained from the search. A person can apply to the High Court under s 180(3) of the SSA for interim orders overriding s 180(2). This means if the Commissioner (or the person claiming legal privilege or the non-disclosure right) applies to the District Court to determine whether the claim is valid or not, then the Commissioner can use any of the material obtained for investigative purposes, unless the High Court orders otherwise.

189. If the claim of legal privilege or the non-disclosure right cannot be resolved between the Commissioner and the person making the claim, either party can 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 (or for related orders regarding tax contextual information).

After the search

Access to documents

190. Where the Commissioner removes a document under s 17C, the owner is entitled to inspect and obtain a copy of the document at the place to which it is removed:

- at the time of removal; or
- at reasonable times subsequent to the removal.[99]

Return of documents

191. When a document is removed to make a copy under s 17C(1)(c), then the document will be returned as soon as practicable.[100] This includes electronic storage media removed for imaging.

192. Where a document has been removed and retained for a full and complete inspection under s 17C(1)(d), the original does not need to be returned until the Commissioner has completed a full and complete inspection of the document. A full and complete inspection includes the use of the document as evidence in court proceedings.[101] Given this, the Commissioner may not be able to provide a timeframe by which documents are likely to be returned.

193. However, under s 17C(6), a copy of a document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original. Therefore, unless there are good reasons to retain the originals, the Commissioner will generally copy and return original documents retained under s 17C.

194. Examples of good reasons to retain an original document include:

- where the Commissioner intends to undertake forensic examination of the document;
- where the documents are unable to be quickly organised and analysed (this could be due to the poor state of the documents or poor recordkeeping by the owner);
- where a certified copy will not provide the best or accurate evidence in court proceedings (eg, marks on the original document may be illegible on a copy); or
- where the original document is required for evidential purposes (eg, where the original is required by a handwriting expert or the original electronic file is required for forensic evidential purposes).

99 Section 17C(5).

100 Section 17C(2).

101 See definition of "full and complete inspection" in s 3.

Offences

195. The importance of the Commissioner being able to obtain information under the TAA and the SSA means that it is an offence to obstruct the Commissioner or an authorised officer in carrying out those powers, and it is an offence to provide the Commissioner with false information in relation to the exercise of s 17.

196. The TAA, SSA and Crimes Act 1961 offences include:

- Obstruction, under s 143H.
- Not providing information when required to do so by a tax law, under s 143(1)(b).
- Knowingly not providing information, under s 143A(1)(b).
- Knowingly not providing information with intent to evade tax or obtain a refund or payment of tax, under s 143B(1)(b) and any of (f), (g) or (h).
- Knowingly providing altered, false, incomplete or misleading information, under s 143A(1)(c).
- Knowingly providing altered, false, incomplete or misleading information intending to evade tax or obtain a refund or payment of tax, under s143B(1)(c) and any of (f), (g) or (h).
- Aiding, abetting, inciting or conspiring with another person to commit an offence against the TAA, under s 148.
- Failing to comply with a direction under s 117(1) of the SSA when a search warrant is pending, under s 176 of the SSA.
- Failing to carry out obligations in relation to computer systems when required to do so by s 130(1) of the SSA, under s 178 of the SSA.
- Perverting the course of justice under s 117(e) of the Crimes Act 1961.

197. It is an offence for anyone who acquires information through the exercise of a search power to disclose that information.[102] There are also offences for accessing information on a matter relating to a Revenue Law before completing a declaration of confidentiality or disclosing that information after accessing it.[103]

198. Decisions to prosecute will be made in accordance with the Solicitor-General's Prosecution Guidelines and Inland Revenue's Prosecution Framework.

This Operational Statement is signed on 27 June 2025.

Rob Falk

Technical Lead, Technical Standards, Legal Services

102 Section 179 of the SSA.

103 Section 143D.

Appendix: Summary of the application of the SSA to the TAA

1. Section 89 of the SSA sets out the extent and manner in which the general provisions in Part 4 of the SSA apply to:
   - powers conferred by other Parts of the SSA; and
   - other enactments.
2. In relation to other enactments, s 89(2) of the SSA provides that Part 4 of the SSA applies in respect of powers conferred by the enactments listed in column 2 of the Schedule to the SSA, to the extent identified in column 4 of the Schedule.
3. The use of a schedule in this way makes it clear that the only provisions which apply to the TAA are those listed in the Schedule. The Schedule itself consists of four columns, listing as follows:
   - column 1 states the Act;
   - column 2 specifies a section of that Act (the specific search powers);
   - column 3 contains a brief description of the power in that section; and
   - column 4 sets out which provisions in Part 4 of the SSA apply.
4. The TAA is listed in column 1 of the Schedule, and the Commissioner's search power (s 17) and power to obtain a warrant to (i) enter a private dwelling and (ii) remove documents and retain them for a full and complete inspection (ss 17D(2) and (3)) are listed in column 2.
5. Column 4 states that only Subparts 1, 3, 4, 7, 9 and 10 (except ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4)) of Part 4 apply to these TAA powers.
6. To the extent that there is any inconsistency between the Schedule to the SSA and the TAA, the TAA prevails.[104]
7. The table below summarises how the SSA applies to the TAA.

104 Section 89(3) of the SSA.

Part of SSA	Content		Applies to TAA
Part 1	General provisions – interpretation		Yes – Inland Revenue officers fall within the definition of "enforcement officers". Plus, the TAA adopts subparts 1, 3, 4, 7, 9, and 10 of Part 4 of the SSA (except for ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4)), see s 17D(5).
Part 2	Police powers		No
Part 3	Enforcement officers' powers & orders		Some – see below. (because of the definition of "enforcement officer").
	Subpart 1	Surveillance device regime Declaratory orders	Not able to apply for surveillance device warrants, but some surveillance activities are permissible without a warrant. Yes.
	Subpart 2	Production orders	Yes, but Commissioner will generally use s 17H of the TAA.
	Subpart 3	Misuse of Drugs Act search powers	No.
	Subpart 4	Powers of search incidental to arrest/ detention	No.
Part 4	Subpart 1	Application of this part	Yes.
	Subpart 2	Consent searches	No.
	Subpart 3	Application for, and issuing of, search warrants	Yes.
	Subpart 4	Carrying out search powers	Yes, with some exclusions: ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4)).
	Subpart 5	Privilege and confidentiality	No.
	Subpart 6	Procedures for seized/produced materials	No.
	Subpart 7	Immunities	Yes.
	Subpart 8	Reporting	No.
	Subpart 10	Miscellaneous	Yes.
Part 5	Amendments to other enactments	Section 302 amends TAA	Yes.
Sch	Application of specified provisions of Part 4 to other enactments		Yes – to ss 17 and 17D(2) and (3).

References

Legislative references

Criminal Disclosure Act 2008, s 16

Evidence Act 2006, ss 51 and 60

New Zealand Bill of Rights Act 1990, ss 21 and 23

Official Information Act 1982, s 6

Privacy Act 2020, s 53

Search and Surveillance Act 2012, ss 3 ("computer system", "enforcement officer", "remote access search" and "search power"), 5, 18D, 89, 95, 98, 100, 102, 103, 106, 110, 112, 113, 115, 116, 117, 118, 119, 123, 130, 131, 132, 133, 134, 176, 178, 179, 180, Schedule

Search and Surveillance Commencement Order 2013

Tax Administration Act 1994, ss 3 ("document" and "full and complete inspection"),16 to 17K, 18B, 20, 20B to 20G, 102, 141K, 143, 143A, 143B, 143G, 143D, 143E, 143EB, 143H, 148, 227

Case references

A Firm of Solicitors v District Court at Auckland [2006] 1 NZLR 586

Avowal Administrative Attorneys Limited v The District Court at North Shore (2009) 24 NZTC 23,252 (HC)

Avowal Administrative Attorneys Limited v The District Court at North Shore [2010] NZCA 183, [2010] 3 NZLR 661

Erasmus v R [2017] NZCA 222

McPherson v R [2021] NZCA 249

Rimene v R [2021] NZCA 42

R v BW DC Tauranga CRI-2011-070-003626, 26 June 2012, [2012] TXHNZ 53 (DC)

R v Spark [2008] NZCA 561

Singh v R [2010] NZSC 161

Tauber v Commissioner of Inland Revenue (2011) NZTC 20-071 (HC)

Tauber v Commissioner of Inland Revenue [2012] NZCA 411

Tupoumalohi v R [2020] NZCA 117

Williams v Jones HC Auckland CIV-2003-404-006565, 16 November 2005

Woodgate Ltd v Commissioner of Inland Revenue [2023] NZHC 1132

Other references

OS 18/02: *Non-disclosure right for tax advice documents* (operational statement, Inland Revenue, 2018).
https://www.taxtechnical.ird.govt.nz/operational-statements/operational-statement-1802

SPS 10/02: *Imaging of electronic storage media* (standard practice statement, Inland Revenue, 2010).
https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1002-imaging-of-electronic-storage-media

SPS 12/01: *Recording Inland Revenue interviews* (standard practice statement, Inland Revenue, 2012).
https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1201-recording-inland-revenue-interviews

SPS 16/03: *Notification of pending audit or investigation* (standard practice statement, Inland Revenue, 2016).
https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1603-notification-of-pending-audit-or-investigation

SPS 19/02: *Voluntary disclosures* (standard practice statement, Inland Revenue, 2019).
https://www.taxtechnical.ird.govt.nz/standard-practice-statements/shortfall-penalties/sps-1902-voluntary-disclosures

SPS 21/01: *Deduction notices* (standard practice statement, Inland Revenue, 2021).
https://www.taxtechnical.ird.govt.nz/standard-practice-statements/processing/sps-21-01

Status of the Commissioner's advice (Commissioner's statement, Inland Revenue, November 2012)
https://www.taxtechnical.ird.govt.nz/commissioner-s-statements/status-of-commissioner-s-advice

Voluntary disclosure form – IR281 (form, Inland Revenue, February 2020).
https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir281/ir281-2020.pdf?modified=20200512211409&modified=20200512211409

OS 25/05: Section 17B Notices

Issued: 26 June 2025

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 operational statement outlines the procedures the Commissioner will generally follow when issuing notices, including to third parties, under s 17B of the Tax Administration Act 1994. Section 17B, which relates to information demands, contains one of the Commissioner's information-gathering powers. The Commissioner can use other information-gathering powers (such as s 17) in conjunction with s 17B, but they are not discussed in this statement.

All legislative references in this statement are to the Tax Administration Act 1994 (TAA), unless specified otherwise.

START DATE 26 June 2025

REPLACES

- **OS 13/02:** Section 17 notices (operational statement, Inland Revenue, August 2013)

Introduction

1. Section 17B empowers the Commissioner to require any person to provide any information and produce any documents considered necessary or relevant for any purpose relating to the administration or enforcement of an Inland Revenue Act or a function lawfully conferred on the Commissioner.
2. Section 17B is most often used in the context of an investigation of a taxpayer's tax position but can also be used for any function lawfully conferred on the Commissioner; for example, in liquidation or bankruptcy situations to obtain information.
3. Section 17B allows the Commissioner to require information directly from taxpayers. It also authorises the Commissioner to require information from third parties.
4. Information collected using s 17B is treated as confidential and kept secure.

Discussion

Section 17B notices

5. Section 17B gives the Commissioner the power to require a person to provide any information that the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of:
   - an Inland Revenue Act; or
   - any matter arising from or connected with a function lawfully conferred on the Commissioner.
6. The Commissioner will often request information without relying on s 17B. If information is not provided voluntarily or in a timely manner, the Commissioner can use s 17B to demand the information by issuing a notice under the section.
7. The Commissioner may also issue a s 17B notice despite not requesting the information (without relying on s 17B) first. For example, this may occur where the taxpayer and/or their advisors have previously been uncooperative.
8. Non-compliance with a s 17B notice may result in the Commissioner using the statutory remedies available, including prosecution.
9. Section 17B can be used for any function lawfully conferred on the Commissioner. However, the s 17B power to require information to be provided cannot be used for an improper purpose.

10. The Commissioner may require the information to be:
    - verified by a statutory declaration or otherwise;
    - provided to a particular office of the Commissioner; or
    - provided in a manner acceptable to the Commissioner.[1]

Information demanded in a s 17B notice

11. Under s 17B, the Commissioner can demand "information" be provided. Information includes documents, and the definition of "document" in s 3 is a broad definition that covers past, current and future technologies, including any records in electronic form. It includes all forms of information storage, including things that store or record information electronically.[2]
12. The Commissioner can require information in writing where no records are available, and the information sought is exclusively in a person's mind.[3] This means the Commissioner can require written answers to questions relating to documents that must be provided under s 17B and written answers to other questions.
13. A person is not required to create new information in response to a s 17B demand.[4]
14. The Commissioner can use a s 17B notice to require taxpayers or third parties to provide information. Third parties include (but are not limited to):
    - employers;
    - banks or financial institutions;
    - tax agents; and
    - government agencies.
15. Only the recipient of a s 17B notice is required to provide information in response to the notice. The Commissioner cannot require a person other than the person named in the notice to also provide information in response to the notice.[5] However, see [22] to [25] for when information held by another person will be treated as being within a recipient's possession, knowledge or control.

Contents of a notice

16. There is no prescribed form for a s 17B information demand.
17. Where information is to be demanded under s 17B, a notice is issued in writing and usually includes the:
    - correct name of the recipient;
    - fact the information is required under s 17B;
    - information sought, described with as much particularity as possible including whether tax contextual information is sought;
    - date by which the information must be provided;
    - person and place (if required) the information must be provided to;
    - form the information should be provided in (if required); and
    - name and job title of the person exercising the delegation to issue the information demand.
18. If the parties have already agreed how the information will be provided that is usually specified in the notice.
19. Notices will also mention the possibility of prosecution for failing to comply.

1 Section 17B(3).

2 The Court of Appeal in *Avowal Administrative Attorneys Ltd v District Court at North Shore* [2010] NZCA 183 held that a computer hard drive came within the (then) definition of "book and document". This finding was consistent with the observations made by the Court of Appeal in *A Firm of Solicitors v District Court at Auckland* [2006] 1 NZLR 586 that a computer hard drive is a "document" that may be imaged.

3 *NZ Stock Exchange v CIR* [1990] 3 NZLR 333 (CA). This is subject to a taxpayer's right to a fair trial, see 63 to 67.

4 *NZ Stock Exchange v CIR* [1990] 3 NZLR 333 (CA).

5 *Lupton v CIR* (2007) 23 NZTC 21,204 (HC) at [43] and [44].

20. A s 17B notice usually contains a reference to the recipient or taxpayer's ability to claim either legal privilege or the non-disclosure right for tax advice documents (these are discussed further from [29]). This reference may not be included where the information required is clearly not legally privileged or a tax advice document. Although the absence of such a reference does not affect the taxpayer's ability to claim the privilege or right if the privilege or right applies.
21. Where the disclosure of tax contextual information is required in a s 17B notice, the notice will advise that the tax contextual information must be provided on form **IR520 – tax contextual information disclosure**, which contains the required statutory declaration.[6]

Information that must be provided

22. A person must provide the relevant information that is or is deemed to be in their possession, knowledge or control. That includes information held by another person who the person can require to provide the information to them. Examples include information held by a person's solicitor or tax agent or information held by another person on the person's behalf.
23. Information in the possession, knowledge or control of a non-resident is treated as being in the knowledge possession or control of a New Zealand resident if the New Zealand resident directly or indirectly controls the non-resident.[7] This means a s 17B demand can be made to the New Zealand resident for information in the possession, knowledge or control of a non-resident.
24. Information or a document is treated as being in the knowledge, possession or control of a member of a large multinational group in an income year, if the information or document is:
    - relevant to the taxation of the large multinational group; and
    - in the knowledge, possession or control of the member or another member of the large multinational group.[8]
25. This means, for example, that a New Zealand–based member of a large multinational group must provide information in respect of that group.

Information that does not have to be provided

26. A person does not have to provide information in response to a s 17B notice where the information is not (or is not deemed to be) in their possession, knowledge or control.
27. A person also does not have to provide information that is subject to:
    - legal privilege; or
    - the non-disclosure right for tax advice documents.
28. Importantly, legal privilege or the non-disclosure right is claimed by the person who receives the notice. That means they consider the information sought and decide whether to claim legal privilege or the non-disclosure right.

Legal privilege

29. A person who is required under s 17B to disclose information is not required to disclose information that is legally privileged.[9]
30. The legal privilege in s 20 applies:
    - to confidential communications passing between (either directly or indirectly through an agent) a legal practitioner in the practitioner's professional capacity and:
        - another legal practitioner in their professional capacity; or
        - their client;
    - where the communication is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
    - the communication is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

6 Section 20F(4).

7 Section 17E(1).

8 Section 17E(2). This provision also allows the Commissioner to disregard any law of a foreign country relating to the secrecy of information. Also see s 3 for the definition of "large multinational group".

9 Section 20.

31. A legal practitioner is a barrister or solicitor of the High Court of New Zealand.[10] The Commissioner considers this means the person holds a current New Zealand practising certificate as a barrister or barrister and solicitor when the confidential communication passed.[11]
32. This means the legal privilege s 20 provides does not extend to a communication between a foreign lawyer and a New Zealand practitioner and their client.
33. In practice, the Commissioner regards the s 20 legal privilege as extending to litigation privilege where New Zealand lawyers (as defined by the Lawyers and Conveyancers Act 2006) are involved. For this purpose, litigation privilege is regarded as covering documents created for the dominant purpose of advising or assisting on reasonably apprehended litigation.

Solicitor's trust account

34. Financial information and investment records kept in connection with solicitors' trust accounts are not privileged.[12] This means that where the information consists wholly or partly of or relates wholly or partly to:
    - the receipts, payments, income, expenditure or financial transactions of any person; or
    - investment receipts of any person

    it is not privileged from disclosure. This applies where it is contained in or comprises the whole or part of any book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the practitioner.

Recipient of the notice has to claim privilege

35. A s 17B notice sets out the timeframe within which the information demanded is to be provided to the Commissioner. It is for the notice's recipient to consider the documents demanded during this timeframe and to claim legal privilege, should they want to.
36. However, the Commissioner recognises that a recipient of a s 17B notice should have sufficient time to seek legal advice on whether any information demanded is subject to legal privilege. If the recipient needs further time to seek legal advice, such as where a large volume of information is demanded, the recipient should contact the Inland Revenue officer who sent the s 17B notice to discuss an extension of time. Contact should be made with the Commissioner as soon as possible, but in any case, before the original due date.
37. When a person claims any information is legally privileged, the Commissioner may or may not accept the claim. It depends on the facts and circumstances.
38. If the Commissioner does not accept the claim for legal privilege, the Commissioner will engage with the person and attempt to reach agreement about whether the information is legally privileged.

District Court can determine privilege claim

39. If the claim of legal privilege cannot be resolved between the Commissioner and the person making the claim, either party may apply to a District Court Judge under s 20(5) for orders as to whether the claim for legal privilege is valid.
40. In practice, as the person will be refusing to disclose the information on the ground that it is privileged, it is likely it will be the Commissioner that applies to a District Court Judge for orders under s 20(5); although the person making the claim may also apply.

Non-disclosure right for tax advice documents

41. The non-disclosure right provides a right to not disclose certain tax advice documents provided between tax advisors and their clients.[13] Broadly, this right applies to confidential documents (tax advice documents) that are brought into existence for the main purpose of giving or receiving advice on the operation and effect of New Zealand tax laws.

10 Section 20(7).

11 See the definitions of "practitioner" and "lawyer" in s 6 of the Lawyers and Conveyancers Act 2006.

12 Section 20(2) and (3).

13 Section 20B.

42. The advisor must have been subject to an approved advisor's group code of conduct and disciplinary procedures when the tax advice document was created.[14]
43. Importantly, the person or tax advisor authorised to act on the person's behalf must claim the non-disclosure right in accordance with s 20D.
44. Examples of documents (including those attached to another document that is a tax advice document) that are generally not eligible to be tax advice documents include, but are not limited to:
    - business and management records;
    - financial statements, work papers and notes to financial accounts;
    - letters of engagement;
    - numerical calculations compiled for the purpose of calculating a taxpayer's tax liability;
    - transfer pricing documentation;
    - legal transaction documents such as contracts, licence agreements, loan documentation, guarantees, deeds, title documents, tax indemnity agreements and letters between the transaction parties;
    - databases and spreadsheets;
    - diagrams demonstrating transactions; and
    - documents the tax advisor created for main purposes other than giving a taxpayer advice on the operation and effect of tax laws, such as advising on employment law, company law, securities law, other regulatory requirements, or the accounting or financial treatment of transactions.
45. For further information on the non-disclosure right, see **OS 18/02: Non-disclosure right for tax advice documents**. OS 18/02 sets out the Commissioner's approach to tax advice documents, how to claim a non-disclosure right for tax advice documents and how claims are managed.

Factors the Commissioner considers before issuing a s 17B notice

46. When deciding whether to issue a s 17B notice, the factors the Commissioner considers depend on the circumstances and may include:
    - the information and the reason for requiring it;
    - whether the information has been or could be the subject of a voluntary request;
    - the impact of the demand on the suppliers of information;
    - whether the disclosure of tax contextual information is required;
    - the possible impact on a taxpayer's fair trial rights; and
    - whether the information is being sought from a third party where arrangements are in place for the supply of information.

Information and the reason for requiring it

47. The Commissioner can require only information that the Commissioner considers necessary or relevant for any purpose relating to:
    - the administration or enforcement of an Inland Revenue Act; or
    - the administration or enforcement of any matter arising from, or connected with, a function lawfully conferred on the Commissioner.[15]
48. This criterion is concerned only with whether the Commissioner considers it necessary or relevant.[16]

14 Typically, a tax advisor is subject to an approved advisor group's code of conduct and disciplinary procedures because they are a member of the approved advisor group.

15 Section 17B(1).

16 *NZ Stock Exchange v CIR* [1990] 3 NZLR 333 (CA).

49. The Commissioner considers that, in line with his duties (especially his duty to protect the integrity of the tax system), any information demand should be:
    - reasonably required in the circumstances of the case; and
    - reasonable in relation to the quantity of information sought and the timeframe for providing that information.
50. In determining whether the information is necessary or relevant and the information demand is reasonable Inland Revenue officers will generally consider:
    - the reason the information is needed and how it relates to the Commissioner's functions;
    - what information is actually needed and the appropriate timeframe for providing that information given the complexity of what is sought;
    - whether the collection will deliver the required outcomes and the implications of not collecting the information; and
    - what alternatives (if any) exist, including, whether the information is accessible from other internal, government or public sources in a form the Commissioner can readily use.

Voluntary requests

51. The Commissioner will often request information without relying on s 17B. Unlike a 17B demand, the Commissioner considers it is voluntary for a person to provide information in response to such a request. As the request is voluntary, not providing the information does not give rise to statutory consequences under the TAA (eg, it is not an offence). Generally, the Commissioner will make one of these requests (where the response is voluntary) before issuing a s 17B notice.
52. However, sometimes a s 17B notice will be issued without a prior request for the information. For example, this may occur where the:
    - taxpayer has previously been uncooperative, which may include having failed to provide information when required (eg, failing to file a return) or requested by the Commissioner (eg, where the Commissioner asks for information without issuing a s 17B notice);
    - Commissioner considers a risk of non-compliance may exist; for example, from a delay in requiring the information to be provided;
    - Commissioner considers there may be prejudice to the maintenance of the law; or
    - taxpayer has already been non-compliant with their tax obligations; for example, the Commissioner may issue s 17B notices on banks or other persons where a taxpayer has outstanding tax debt or outstanding returns.

Impact of the demand on the holders of information

53. The Commissioner may require **any** information the Commissioner considers necessary or relevant for any purpose in s 17B(1)(a) or s 17B(1)(b) (that is, the purposes set out at [47]).
54. The Commissioner will consider the impact of the demand on the holders of information. However, a requirement to provide information being difficult, expensive, time consuming, or giving rise to practical difficulties to comply with, does not make the requirement to provide information unreasonable in the circumstances or in other ways unlawful or improper.[17]

Disclosure of tax contextual information

55. Even when the non-disclosure right applies, the Commissioner can request the tax contextual information relating to a tax advice document.
56. Tax contextual information means information relating to a tax advice document that falls into any of the following categories, as defined in s 20F(3):
    - facts or assumptions relating to the transaction identified in the information demand and to which the advice relates, whether the transaction has occurred or is expected to occur or is assumed to have occurred by the creator of the tax advice document (that is, either the tax advisor or the taxpayer);
    - description of steps involved or expected to be involved in the performance of the transaction;
    - advice related to the operation and effect of laws, other than tax laws, on the taxpayer and any related facts or assumptions that this advice is based on;

17 *Blakeley v CIR* (2008) 23 NZTC 21,865 (HC) and *NZ Stock Exchange v CIR* [1992] 3 NZLR 1 (PC).

- advice related to the operation and effect on the taxpayer of tax laws which relate to the collection of debts payable to the Commissioner (that is, debt recovery issues) and any related facts or assumptions that this advice is based on; and
- facts or assumptions from, or relating to the preparation of, the taxpayer's financial statements, supporting worksheets or other source documents or documents containing information that the taxpayer is required to provide the Commissioner under an Inland Revenue Act and including a tax advisor's accounting and tax workpapers that support the financial statements and/or tax return.

57. Generally, the Commissioner will seek tax contextual information to establish the facts relating to a transaction or series of transactions. The information sought will include relevant information such as whether the transaction took place, the names of the parties involved, the purpose of the transaction, relevant dates, amounts, conditions and formulae.
58. Tax contextual information may be required to be disclosed where the Commissioner:
    - issues a subsequent s 17B notice requiring disclosure of the tax contextual information after the taxpayer or their authorised tax advisor has made a claim for the non-disclosure right in respect of information requested in a notice; or
    - requires, in rare cases, the tax contextual information as part of the original notice.
59. Generally, the Commissioner will require the disclosure of tax contextual information in a subsequent s 17B notice where:
    - material gaps appear to exist in the information available;
    - there is an issue of credibility in respect of the information Inland Revenue already holds;
    - inconsistent information already provided needs to be verified; or
    - considerable factual complexity requires clarification and there are no other reasonable sources for that information.
60. Where the Commissioner considers it necessary to protect the integrity of the tax system, an original s 17B notice may require the tax contextual information to be disclosed at the same time the information demand is given. This is likely to occur where:
    - the circumstances involve suspected evasion or other suspected criminal action;
    - s 17 (Commissioner may obtain information by accessing property or documents) is being applied;
    - the transactions in question are particularly complex and the evidence is inconsistent, and there may be insufficient time for Inland Revenue staff to properly complete the investigation within the time bar period; and/or
    - there is a history of non-compliance by the taxpayer or associated persons.
61. The Commissioner does not routinely require the disclosure of tax contextual information.
62. If the disclosure of the tax contextual information is required, the tax contextual information must be provided on form **IR520 – Tax contextual information disclosure**, which contains the required statutory declaration.

Possible impact on a taxpayer's fair trial rights

63. Everyone who is charged with an offence (including offences under the Inland Revenue Acts) has the right to a fair trial. A taxpayer also has other related rights in criminal proceedings.[18] For example, a defendant cannot be compelled to be a witness or to confess guilt and is entitled to adequate time to prepare their defence.
64. The Commissioner recognises that where criminal proceedings have been commenced or are contemplated, issuing a s 17B notice could impact on a taxpayer's fair trial rights. However, it is possible to issue a s 17B notice in these circumstances without impacting on a taxpayer's fair trial rights.
65. For example, provided that responding to a notice does not affect the taxpayer's ability to prepare for trial, the Commissioner considers that issuing a s 17B notice to the taxpayer or a third party in relation to pre-existing documents does not have an impact on the taxpayer's fair trial rights. This is because the taxpayer's rights (such as the right against self-incrimination) do not apply to pre-existing documents (other than documents prepared for obtaining legal advice or those subject to litigation privilege).
66. This means that where criminal proceedings have been commenced or are contemplated, the Commissioner will consider the taxpayer's fair trial rights when deciding to issue a s 17B notice.

18 Sometimes all these rights are described as the right to a fair trial.

67. A taxpayer's fair trial rights in the context of the disputes process is discussed in **CS 20/04: The disputes resolution process and fair trial rights**.

Where information is being sought from a third party where arrangements are in place for the supply of information

68. The Commissioner can use a s 17B notice to require information about a taxpayer that a third party holds.
69. The Commissioner can and does enter into arrangements with third parties about how information requests to that third party will be handled.
70. These arrangements may cover:
    - whether a s 17B notice is required;
    - the form of any notice;
    - how the information will be supplied to the Commissioner; and
    - the timeframe for responding to any notice.
71. When considering whether to issue a s 17B notice to third parties and what form any notice should take, the Inland Revenue officer will:
    - confirm whether an agreed process is in place; and
    - follow that process where appropriate in the circumstances.

External datasets

72. The Commissioner has an external dataset framework for determining whether and how to use s 17B to obtain bulk data relating to individuals, entities or groups of taxpayers from businesses, organisations (including central and local government) or individuals.
73. Examples of external datasets are:
    - all credit card transactions for a defined period from a credit card supplier; or
    - a copy of the Charities Services charities register.
74. Decisions to issue a s 17B notice for an external dataset and the form it will take are made under this framework. Importantly, this framework covers off consideration of the information required and the form it is provided in.
75. More information about the external dataset framework is on Inland Revenue's website, see **Privacy policy**.

Timeframe for responding

76. As part of the s 17B notice, the Commissioner sets the date by which the information needs to be provided. There is no set timeframe in the legislation. However, the Commissioner will set a reasonable timeframe for responding, considering the information sought.

Commissioner usually allows at least 21 calendar days

77. The Commissioner's usual practice is to allow at least 21 calendar days for a response to a s 17B notice (unless agreement is reached to allow a shorter timeframe). However, if it is information that the non-disclosure right could apply to the Commissioner will allow 28 days to respond to the request.
78. The timeframe may be less for responding under arrangements that are place in with some third parties.
79. In some circumstances, the Commissioner will allow a longer period to respond, for example, if the:
    - demand involves complex information; or
    - Commissioner considers it will take longer to collect the information.

Extension of time and other changes to a s 17B notice

80. The Commissioner will make every attempt to maintain contact with the recipient of a s 17B notice to give them an opportunity to raise concerns.
81. A recipient should contact the Inland Revenue officer who issued the s 17B notice at the earliest possible time if they are having genuine difficulty in complying with the demand and not when the time for compliance has passed.

82. Any change to the notice (including the date for compliance) must be agreed to by the Commissioner before the original date expires. Beyond this, the offence for non-compliance may have already occurred.[19]
83. Where a change to the s 17B notice is agreed, it will be recorded in writing.
84. Any change to the date for compliance set out in the s 17B notice also requires consideration of the impact the change of date may have on the periods allowed for claiming the right of non-disclosure of tax advice documents. That is, the periods allowed for claiming the right of non-disclosure are adjusted to the newly agreed date for compliance with the s 17B notice.

Security of information

85. The Commissioner recognises the need to protect the security of information provided. It is likely to be personal, confidential or commercially sensitive. This means that the Commissioner will consider what is an appropriate manner of delivery, storage and management of information being sent to the Commissioner in compliance with s 17B.
86. The Commissioner acknowledges that the provider of the information has a legitimate interest in ensuring its security during delivery to the Commissioner.
87. If the Commissioner contacts the recipient of a s 17B notice before issuing the notice, the Commissioner will, where appropriate, discuss any security issues. The Commissioner will seek to reach resolution with the recipient about an acceptable manner of delivery. If agreement is reached, the Commissioner will set it out in the s 17B notice.
88. If the Commissioner has not been in communication with the recipient of a s 17B notice about the notice before issuing it, the recipient should raise any issues the recipient has about security in transit with the Commissioner before the due date for complying with the notice. The Commissioner will seek to reach agreement with the recipient on resolving the security in transit issue. A failure to reach agreement by the date to comply with the notice does not excuse non-compliance by the due date.
89. The Commissioner will not agree to security in transit solutions that may compromise the Commissioner's information security requirements. This is particularly relevant for electronic information. The Commissioner's information technology requirements may mean the recipient's desired solutions may not be agreed to. For example, if a USB stick is used to deliver the documentation, the Commissioner will agree only to Inland Revenue security-compatible encryption technology.
90. Given the rapid development of technology, security in transit solutions acceptable to the Commissioner are not itemised in this statement. What is acceptable depends on the facts and circumstances of the s 17B demand and the information to be provided.

Non-compliance with a s 17B notice

91. Serious consequences can arise if a s 17B notice is not complied with by the due date. If the recipient of a notice realises they have not complied with a notice, they should contact the Inland Revenue officer named in the notice as soon as possible.
92. Provision of the information required as soon as possible is an important step in mitigating the consequences of not complying with a s 17B notice within the required timeframe.
93. The Commissioner has various options he can pursue if a s 17B notice is not complied with. These options include:
    - prosecution for non-compliance, including for aiding and abetting;
    - obtaining the information another way, for example, by a third-party request or a court order; and
    - deciding that the onus of proof has not been satisfied.
94. When a s 17B notice has not been complied with within the required timeframe, the Commissioner usually seeks an explanation as to why the notice was not complied with if the circumstances allow. However, this does not prevent the Commissioner from starting to take other steps to get the information.
95. A request for an explanation does not entitle the taxpayer or their authorised tax advisor to claim (for the first time or to make a subsequent claim) the non-disclosure right for tax advice documents if the time limit for making that claim has expired.

19 Section 143(1)(b).

96. There are also additional consequences that can arise from not complying with a s 17B notice in relation to:
    - a multinational group or a member of a multinational group; and
    - an offshore payment for which a deduction may be allowed.

Prosecution

97. It is an offence to not comply with a s 17B notice. An offence occurs where a person:
    - does not provide the information;[20]
    - knowingly does not provide the information;[21]
    - knowingly does not provide the information and does so:
        - intending to evade the assessment or payment of tax;
        - to obtain a refund or payment of tax, knowing the person is not lawfully entitled to it; or
        - to enable another person to obtain a refund or payment of tax, knowing the other person is not lawfully entitled to it.[22]

98. Depending on the offence, if the recipient is found guilty, they could be liable to either or both:
    - imprisonment for a term not exceeding 5 years; or
    - a fine not exceeding $50,000.[23]

99. However, a person cannot be convicted of an offence for failing to provide information demanded in a s 17B notice if the person proves:
    - they did not have that information in their knowledge, possession or control; and
    - a non-resident the person controlled directly or indirectly did not have the information in their knowledge, possession or control.

100. The Commissioner considers that control is used in the wider sense and includes information held by others on the person's behalf.

101. If the Commissioner decides to prosecute a person for not complying with a s 17B notice, time limits differ depending on the offence. The time limits for filing charging documents to begin prosecution action are as follows:
    - Within 5 years after the date on which the offence was committed for the offence of knowingly not providing information when required to do so (s 143A(1)(b)).[24]
    - Within 10 years after the termination of the year in which the offence was committed for the offence of not providing information when required to do so (s 143(1)(b)).[25] Note that the 10 year limit applies where the offence relates to the Income Tax Act 2007 or the Goods and Services Tax Act 1985. Therefore, for example, a failure to comply with a 17B notice in the context of the Child Support Act 1991 does not result in the 10 year limit in s 150A applying. In other cases (eg, child support) it will be 6 months or 12 months (depending upon whether it is a first or subsequent offence).[26]
    - No time limit for the offence of knowingly not providing information when required and the offender does so with the intention to evade the assessment or payment of tax (s 143B(1)(b)).[27]

102. Generally, prosecution action will be commenced within a reasonable time of the date of non-compliance (as well as being inside the statutory time limits for filing charges).

20 Section 143(1)(b).
21 Section 143A(1)(b).
22 Section 143B(1)(b).
23 Section 143B(4).
24 Section 25(3)(c) of the Criminal Procedure Act 2011.
25 Section 150A. See also *Harris v The District Court at Auckland* HC Auckland CIV 2008-404-003398, 4 September 2008.
26 Section 25(3)(a) and (3)(b) of the Criminal Procedure Act 2011.
27 Section 25(2)(b) of the Criminal Procedure Act 2011.

Failing to provide tax contextual information

103. If the non-compliance with a s 17B notice relates to a requirement to disclose tax contextual information from tax advice documents, as required by s 20F, the offences that may have occurred also include obstruction[28] and, as the tax contextual information must be in a statutory declaration, providing a false statement or declaration.[29]

Aiding and abetting

104. A person who aids, abets, incites or conspires with another person to commit an offence by not complying with a s 17B notice also commits an offence.[30]

105. A person convicted of an offence of aiding, abetting, inciting or conspiring is liable for up to the same maximum fine or term of imprisonment or both that could apply to a person who commits the principal offence.

106. This means, for example, that the directors, officers or managers of a company who decide the company will not comply with a s 17B notice can be prosecuted for the company's failure to comply with the notice. They would be subject to the same maximum fine or term of imprisonment or both that could apply to the company.

Obtaining the information another way

107. When a person does not comply with a s 17B notice within the timeframe, the Commissioner may explore other options to collect the information.

108. These options include:

- seeking the information from someone else including a tax agent or another third party (eg, a bank or party to a transaction), which may involve s 17B notices to that person;
- applying to the District Court for an order requiring compliance; and
- considering a compulsory inquiry before a District Court Judge or the Commissioner.

109. The extent to which any those options are explored or utilised depends on the facts and circumstances of each case.

110. Applications for a District Court order and compulsory inquiries are discussed further below.

Application for a District Court order requiring compliance

111. When a person does not fully comply with a s 17B notice, the Commissioner may apply to the District Court for an order requiring the person to provide the information under s 17H(1).

112. Not fully complying with the s 17B notice includes not providing some or all of information required by the s 17B notice. It also includes not fully complying with any of the requirements made by the Commissioner under s 17B(3) (see [10]).

113. It is an offence to fail to comply with the terms of a court order made under s 17H.[31]

114. A person is not excused from complying with a court order on the ground that:

- providing the information could or might prove a breach of a tax obligation or subject the person to a fine, penalty or conviction; or
- the person could claim another privilege in relation to the provision of the information in proceedings in a court.[32]

Consider a compulsory inquiry

115. To obtain the information, the Commissioner can require the person to attend and provide information to the Commissioner or to produce documents in their possession or control that contain the information or that the Commissioner considers are likely to contain the information.[33]

116. Another way of describing this inquiry is a compulsory interview.

28 Section 143H.
29 Section 111 of the Crimes Act 1961.
30 Section 148.
31 Section 143G(1).
32 Section 17H(10).
33 Section 17I.

117. The Commissioner could also apply to a District Court Judge to hold an inquiry for the purposes of obtaining the information.[34] The Judge may:
    - summon a person who the Commissioner or another interested person requires to be examined; and
    - examine the person on oath in chambers regarding any matter relevant to the subject matter of the inquiry.
118. In either case, a person can be prosecuted for failure to appear and comply with the inquiry.[35]

Deciding the onus of proof has not been satisfied

119. Generally, in tax matters the onus of proof is on the taxpayer to prove a tax position they have taken is correct. This means it is up to the taxpayer to prove that what they say is correct.
120. If a taxpayer has not provided the information the Commissioner considers is necessary to support a tax position, the Commissioner may decide the onus of proof has not been satisfied and seek to adjust the taxpayer's tax position. This is because the taxpayer has not proven the position they have taken is correct.

Additional consequences for failing to comply with a s 17B notice in relation to multinational group

121. Additional consequences for failing to comply with a s 17B notice exist in relation to a multinational group.[36]
122. A member of a large multinational group is liable to pay a penalty if the:
    - Commissioner requires the member to provide information or a document that is treated under s 17E(2) as being in the knowledge, possession or control of the member; and
    - member fails to provide the information or document within the time allowed by the Commissioner.[37]
123. The penalty is the amount the Commissioner specifies, which must not exceed $100,000.[38]
124. In addition, the Commissioner must notify the member by a further notice that, if the member does not provide a satisfactory response to the information demand before the date (the information deadline) that is 1 month after the date of the further notice:
    - the Commissioner may rely on the information the Commissioner holds in exercising the Commissioner's power to prosecute, penalise, assess or reassess the member or other members of the large multinational group for a tax year to which the information required by the information demand relates; and
    - information required by the information demand and not provided to the Commissioner by the information deadline is not allowed as evidence for use by the member or other members of the large multinational group in a dispute concerning an action of the Commissioner referred to in the above sub-paragraph.
125. If that subsequent notice is not complied with by the information deadline (1 month after the date of the further notice), the consequences in [123] apply.

Additional consequences for failing to comply with a s 17B notice in relation to offshore payments

126. Additional consequences exist for failing to comply with a s 17B notice in relation to offshore payments for which a deduction may be allowed.[39]
127. If a person fails to provide a response, or a sufficient response, to the information demand by the date that is 3 months after the information demand (the demand date), the Commissioner may disallow the deduction and the taxpayer cannot dispute the assessment.[40]

34 Section 17J.
35 Section 143F.
36 Section 17G.
37 Section 139AB(1).
38 Section 139AB(2).
39 Section 17F.
40 Unless they can show the information was provided or contained in other material in the Commissioner's possession when the s 17B notice was issued and the Commissioner can reasonably verify it; see s 17F(3).

128. If the Commissioner gives the required notice, stating that the Commissioner does not consider a sufficient response has been given to the s 17B notice, the information (which has not been provided) is not admissible in proceedings[41] in which a deduction for an offshore payment is at issue.[42]

Specific issues

Issuing a s 17B notice during the disputes process

129. The dispute process set out in part 4A supports full and frank communication between the parties in a structured way.[43]

130. The use of s 17B prior to commencement of the dispute process, particularly where information from the taxpayer has not been provided when requested, may mean the number of matters entering the dispute process is reduced.

131. However, the legislation allows the Commissioner to use a s 17B notice to get information relating to a dispute even after the dispute has commenced.[44] This will be rare in practice as the Commissioner will already have made enquires and have the information going into the disputes process (particularly in the case of Commissioner initiated disputes). Even so, matters may arise during the dispute that necessitate the issuing of a s 17B notice.

132. Importantly, the disputes resolution process may be truncated and an amended assessment made where a taxpayer has failed to comply with a s 17B notice issued during the dispute process.[45]

Issuing a s 17B notice when civil litigation is under way

133. The Commissioner can issue a s 17B notice up until civil litigation has commenced. A s 17B notice, on occasion, may be exercised after the proceedings are commenced provided it is being used for a proper purpose and not to gain an otherwise unachievable advantage or to extract information for use in the proceedings.

134. Several court judgments have considered whether the Commissioner can require information to be provided under (what is now) s 17B from or about a person when that person is the subject of civil litigation with the Commissioner (eg, challenge proceedings).[46]

135. The Commissioner's approach, based on this case law, is that:

- **before proceedings are commenced** the Commissioner may use the information-gathering power in s 17B until civil proceedings start, including for preparing a case for a hearing; and
- **after proceedings are commenced** the Commissioner may use the information-gathering power in s 17B provided it is used for a proper purpose and may not use the information-gathering power in s 17B:
  - for the sole purpose of extracting information for use in the proceedings; or
  - to gain an otherwise unachievable advantage.

136. This means that whether to use the information-gathering power in s 17B after civil proceedings have commenced is considered on a case-by-case basis and involves consideration of the reasons for wanting to issue the notice.

Issuing a s 17B notice to access external auditor's audit workpapers

137. The Commissioner can issue a s 17B notice to an external auditor for audit workpapers and they must be made available to the Commissioner.

138. However, it is the Commissioner's operational practice not to routinely request audit working papers. Section 17B demands to a taxpayer's auditor for access to audit working papers will arise in only special cases and will first go through the Commissioner's internal sign-off processes to ensure such demands are necessary and relevant.

41 Under part 8 or part 8A.

42 Section 17F(3) and 17F(4).

43 SPS 23/01: Disputes process.

44 Section 89N(1)(c)(vi).

45 Section 89N(1)(c)(vi) and SPS 23/01.

46 *Vinelight Nominees Ltd v CIR* (2005) 22 NZTC 19,298 (HC), *Chesterfield Preschool Ltd v CIR (No 2)* (2005) 22 NZTC 19,500 (HC), *Next Generation Investments Ltd (in liq) v CIR* (2006) 22 NZTC 19,775 (HC), *Foxley v CIR* (2008) 23 NZTC 21,813 (HC) and *Tauber v CIR* (2011) 25 NZTC 20,071 (HC).

Issuing s 17B notices to a tax agent for a list of clients who have entered into particular transactions or arrangements

139. The Commissioner can seek information from tax agents under s 17B where he becomes aware of particular transactions or arrangements entered into by taxpayers in order to identify other taxpayers who may have entered into similar transactions or arrangements.

140. Inland Revenue officers first attempt to identify those taxpayers without requesting information from tax agents. However, the Commissioner may ask tax agents likely to have some involvement with the arrangements in question to provide a list of clients who may have entered into a particular (or similar) arrangement.

141. These requests are usually made in only limited circumstances and usually only where it is considered the transactions or arrangements are likely to involve tax avoidance or evasion.

142. Before making such requests to tax agents, the Commissioner generally first takes all reasonable steps to obtain the necessary or relevant information from the taxpayers or other third parties.

143. The relevant but non-exhaustive considerations that the Commissioner will consider before requesting this information include:

- the impact of the request on taxpayer perception of the integrity of the tax system;
- the size of client bases involved, and the practicalities and the relative cost of compliance with the s 17B notice;
- the level of perceived risk of taxpayers seeking to remove assets or leave the jurisdiction;
- the complexity of the arrangement, and the reasonableness of the expectation that the advisor will be able to identify the taxpayers in question;
- the level of revenue considered to be at risk; and
- Inland Revenue's ability to obtain the information from other sources.

144. Before issuing a s 17B notice the Commissioner will generally arrange to meet with the particular tax agent to:

- advise that a s 17B notice is to going to be issued;
- provide a draft copy of the notice;
- explain the scope and matters to be covered in the notice; and
- discuss whether a s 17B notice is the best way to achieve the Commissioner's objectives.

145. Subject to any changes made to the draft notice, the final notice will be sent to the tax agent. The tax agent has the option to provide the information without a s 17B notice.

146. The s 17B notice will offer, where practicable, Inland Revenue assistance to extract the information.

147. Before any request for information of this type is made, appropriately authorised Inland Revenue officers will independently review the proposed request. As part of considering whether issuing a s 17B notice is appropriate in the circumstances, this review will consider whether the arrangement is clearly described and the parameters of the request are clear (eg, the scope of the request, period covered, form of the response and level of detail required).

Issuing a s 17B notice to get access to health records

148. In rare instances, the Commissioner may seek access to an individual's health records. For example, the taxpayer may have given medical reasons for failing to provide information or documents or for not meeting tax obligations. In some cases, the Commissioner may consider it necessary to verify the medical reasons given for such failures.

149. Such s 17B notices are issued only after careful consideration and go through an internal review and sign-off process.

150. The Commissioner will consider whether a medical certificate or letter from a relevant health professional is enough before requiring access to a person's health records.

Issuing a s 17B notice to a liquidator or the Official Assignee

151. The Commissioner considers he can issue a s 17B notice to obtain information from a liquidator rather than obtaining a court order under s 256(1)(a) of the Companies Act 1993.[47]

152. The Commissioner also considers he can, in principle, use s 17B to obtain information from the Official Assignee in relation to a bankrupt person.

153. The Commissioner cannot use s 17B unreasonably or for questionable or improper reasons.[48]

154. The Commissioner is aware of the various rules under the Insolvency Act 2006 pertaining to creditors' and other persons' ability to access information from the Official Assignee. For example, the creditor's right to:

- inspect documents;[49]
- inspect the record of examination by the Official Assignee;[50]
- inspect the record of examination by the court;[51]
- inspect the Official Assignee's accounting records for a particular bankruptcy;[52] and
- obtain a copy of the final statement of receipts and payments.[53]

155. Where the Commissioner can access information from the Official Assignee under the Insolvency Act 2006, the Commissioner will generally use that Act rather than s 17B.

156. Requests for information from the Official Assignee are made in accordance with any process the Commissioner has entered into with the Official Assignee for the provision of information.

157. Note that under s 185 of the Insolvency Act 2006, a statement made by a person examined or questioned under that Act is not admissible in criminal proceedings against that person.

Third party does not require taxpayer permission to respond to a s 17B notice

158. When a s 17B notice is issued to a third party, the TAA does not require the third party to advise the taxpayer whose information is being sought about the s 17B notice or obtain their permission before providing the information to the Commissioner.[54] However, the TAA also does not prevent the third party from advising the taxpayer about the s 17B notice.

159. The Commissioner does not have to let that taxpayer know that a s 17B notice will or has been issued or get the taxpayer's permission before issuing a s 17B notice to a third party.

Section 17B notice not used to get outstanding returns

160. Generally, the Commissioner will not use s 17B for the sole purpose of requiring taxpayers to provide outstanding returns.

161. Rather, the Commissioner can apply, under s 17H, for a court order requiring a person to provide a tax return.

Issuing a s 17B notice to get publicly available information

162. The Commissioner will generally not use s 17B where information held by public bodies such as Land Information New Zealand or the Companies Office is available publicly.

163. However, public availability of information does not prevent the Commissioner from requiring information to be provided under s 17B.

164. Generally, the Commissioner uses s 17B to request otherwise publicly available information in bulk form in a manner that he can use.

165. Where the request is for an electronic dataset of information that is publicly available the Commissioner will follow the operational procedures for approving such a request.

47 *Next Generation Investment Ltd (in liq) v CIR* (2006) 22 NZTC 19,775.

48 *Next Generation Investment Ltd (in liq).*

49 Section 100 of the Insolvency Act 2006.

50 Section 168 of the Insolvency Act 2006.

51 Section 178(2) of the Insolvency Act 2006.

52 Section 227(2) of the Insolvency Act 2006.

53 Section 228(3) of the Insolvency Act 2006.

54 In some instances, a third party may be under an obligation to advise the taxpayer about the s 17B notice for other reasons. For example, if the terms of a contract between the third party and the taxpayer requires the third party to do so.

The recipient of s 17B notice cannot refuse to provide information because the Commissioner has not paid for it

166. There is no basis in s 17B for the recipient of a s 17B notice to refuse to provide information to the Commissioner unless the Commissioner pays for the information.

167. This also means where a person provides information for a fee to subscribers or the public (eg, a credit or property reporting agency), they cannot refuse to provide that information in response to a s 17B notice in the absence of payment.

Process where a significant amount of information is required

168. Where a significant amount of documentation is required, the Commissioner will consider the appropriate Inland Revenue office for the documentation to be provided to and, if appropriate, require the information be sent to that office.[55]

169. If the documentation is all in electronic form, then the office closest to the person the s 17B notice is issued to may not necessarily be the most appropriate office, whereas if the documentation is in hard copy in multiple boxes, then the closest office may be appropriate. Which is the appropriate office depends on the facts and circumstances.

Commissioner cannot be required to sign a confidentiality agreement

170. The Commissioner cannot be required to sign a confidentiality agreement before information is provided in response to a s 17B notice. If the notice is not complied with by the due date, then non-compliance has occurred.

171. It is the Commissioner's practice to not sign confidentiality agreements in these circumstances.

172. The Commissioner already has confidentiality requirements. Under s 18, a revenue officer must keep confidential all sensitive revenue information (which includes information that might reasonably be regarded as private, commercially sensitive or otherwise confidential) and must not disclose the information unless the disclosure is a permitted disclosure.[56]

173. A revenue officer can be prosecuted for intentionally breaching the confidentiality provisions in the TAA.

Application of information privacy principles

174. Section 22 of the Privacy Act 2020 includes information privacy principles relating to personal information.

Commissioner's collection of personal information

175. Information privacy principle 2 provides that personal information must be collected from the individual concerned but it is not necessary to do so where the agency believes, on reasonable grounds, any of the factors set out in the principle apply.

176. However, the Commissioner will not breach principle 2 if the Commissioner issues a s 17B notice demanding personal information not from the person concerned but from someone else.[57]

Agency's disclosure of personal information

177. Information privacy principle 11 sets limits on when an agency that holds personal information can disclose that information to another agency or person.

178. However, where the Commissioner has issued a s 17B demand to a third party requesting personal information it holds about someone else, the third party providing the information to the Commissioner will not be a breach of information privacy principle 11.[58]

Correcting information provided

179. Where information has been provided to the Commissioner in compliance with a s 17B notice, the person whom the information is about, or their representative, can seek access to and correction of their personal information the Commissioner holds.

55 Section 17B(3).

56 That meets the requirements of ss 18D to 18J.

57 See s 24(2) of the Privacy Act 2020.

58 See s 24(1) of the Privacy Act 2020.

Invalid parts of a notice can be severed

180. If parts of an otherwise valid s 17B notice are determined to be invalid, the invalid parts can be severed from the valid notice, meaning the recipient would still be required to provide the information demanded in the valid parts of the notice.[59]

181. However, if such a situation arises, the Commissioner will consider whether the existing notice should be withdrawn, and a fresh one issued in the interests of clarity.

Other powers

182. In some cases, rather than demanding information under s 17B the Commissioner accesses the information under s 17. Section 17 gives the Commissioner the power to enter all places (in the case of a private dwelling, either the consent of an occupier or a warrant is required) for the purposes of inspecting documents. The procedures the Commissioner follows when exercising the s 17 search power are outlined in **OS 25/04: The Commissioner of Inland Revenue's search powers**.

This operational statement is signed on 26 June 2025.

Rob Falk

Technical Lead, Technical Standards, Legal Services

59 *Lupton v CIR* (2007) 23 NZTC 21,204 (HC) at [65].

Appendix: Summary of key updates

Table 1 summarises key updates included in this operational statement. It is not intended to be an exhaustive list of every difference between this operational statement and OS 13/01.

Table 1 – Summary of key updates

Topic	Description	Relevant paragraphs of this operational statement
Rewrite of the Commissioner's information collection powers	The information collection powers in the TAA were rewritten with effect from 18 March 2019, with s 17B replacing s 17. This operational statement has been updated to reflect this rewrite. The rewrite was to make the information collection rules clearer and easier to navigate. The new law is intended to have the same effect as the old law: s 227F of the TAA. For a comparison of the TAA information collection provisions pre-18 March 2019 and post-18 March 2019, see New legislation: Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019 Tax Information Bulletin, Vol 31, No 5 (May 2019): **53-59**.	Various
Non-disclosure right	OS 18/02: Non-disclosure right for tax advice documents was published in August 2018 and replaced SPS 05/07. This operational statement reflects OS 18/02.	Paragraphs 41 to 45
Requesting information from large multinational groups	New rules relating the Commissioner requesting information from members of a large multinational group were inserted in the TAA with effect from 27 June 2018. This operational statement comments on these rules and the consequences of not complying with them.	Paragraphs 24, 25, 96 and 121 to 125
Fair trial rights	CS 20/04: the Disputes Resolution Process and Fair Trial Rights was published in July 2020. This operational statement comments on the Commissioner's view on the possible interaction between issuing a s 17B notice and a taxpayer's fair trial rights.	Paragraphs 63to 67
Third-party arrangements	This operational statement recognises that the Commissioner can and does enter into arrangements with third parties about how information requests to that third party will be handled. It also comments on what such arrangements may cover.	Paragraphs 68 to 71
External datasets framework	This operational statement comments on the Commissioner's external dataset framework for determining whether and how to use s 17B to obtain bulk data.	Paragraphs 72 to 75
Response timeframes	This operational statement notes that the Commissioner's usual practice is to allow at least 21 days for a response to a s 17B notice (OS 13/01 did not specify a usual response timeframe).	Paragraphs 77 and 78
Security of information	This operational statement comments on the Commissioner's approach to the delivery, storage and management of information sent in response to a s 17B notice.	Paragraphs 85 to 90
Privacy Act 2020	The Privacy Act 2020 replaces the Privacy Act 1993. This operational statement comments on the relationship between information privacy principles in s 22 of the 2020 and the s 17B power.	Paragraphs 174 to 179

References

Legislative references

Child Support Act 1991

Companies Act 1993, s 256

Crimes Act 1961, s 111

Criminal Procedure Act 2011, s 25

Goods and Services Tax Act 1985

Income Tax Act 2007

Insolvency Act 2006, ss 100, 168, 178, 185, 227, 228

Lawyers and Conveyances Act 2006, s 6 ("lawyer", "practitioner")

New Zealand Bill of Rights Act 1990, s 21

Privacy Act 2020, ss 22, 24

Search and Surveillance Act 2012, s 71

Tax Administration Act 1994, ss 3 ("document", "large multinational group"), 17, 17B, 17E to 17G, 17H to 17J, 18, 18D to 18J, 20, 20B, 20D, 20F, , part 8, part 8A, 139AB, 143, 143A, 143B, 143F, 143G, 143H, 148, 150A

Case references

A Firm of Solicitors v District Court at Auckland [2006] 1 NZLR 586 (CA)

Avowal Administrative Attorneys Ltd v District Court at North Shore [2010] NZCA 183

Blakely v CIR (2008) 23 NZTC 21,865 (HC)

Chesterfield Preschool Ltd v CIR (No 2) (2005) 22 NZTC 19,500 (HC)

Foxley v CIR (2008) 23 NZTC 21,813 (HC)

Harris v The District Court at Auckland HC Auckland CIV 2008-404-003398, 4 September 2008

Lupton v CIR (2007) 23 NZTC 21,204 (HC)

Next Generation Investment Ltd (in liq) v CIR (2006) 22 NZTC 19,775 (HC)

NZ Stock Exchange v CIR [1990] 3 NZLR 333 (CA)

NZ Stock Exchange v CIR [1992] 3 NZLR 1 (PC)

Tauber v CIR (2011) NZTC 20,071 (HC)

Vinelight Nominees Ltd v CIR (2005) 19,298 (HC)

Other references

CS 20/04: The disputes resolution process and fair trial rights
taxtechnical.ird.govt.nz/commissioner-s-statements/cs-20-04

OS 13/02: Section 17 notices (operational statement, Inland Revenue, August 2013)
taxtechnical.ird.govt.nz/operational-statements/os-1302-section-17-notices

OS 18/02: Non-disclosure right for tax advice documents (operational statement, Inland Revenue, August 2018)
taxtechnical.ird.govt.nz/operational-statements/operational-statement-1802

OS 25/04: The Commissioner of Inland Revenue's search powers (operational statement, Inland Revenue)

Privacy policy (webpage, Inland Revenue, last updated 6 June 2024)
www.ird.govt.nz/about-this-site/your-privacy/privacy-policy

SPS 23/01: Disputes process (standard practice statement, Inland Revenue, February 2023)
taxtechnical.ird.govt.nz/standard-practice-statements/disputes/sps-23-01

Status of Commissioner's advice (Commissioner's statement, Inland Revenue, November 2012)
taxtechnical.ird.govt.nz/commissioner-s-statements/status-of-commissioner-s-advice

Tax contextual information disclosure – IR520 (form, Inland Revenue, November 2018)
www.ird.govt.nz/managing-my-tax/audits

QUESTION WE'VE BEEN ASKED

This section of the *TIB* sets out the answers to some day-to-day questions people have asked. They are published here as they may be of general interest to readers.

QB 25/17: Income tax: Can I claim a deduction for expenses I incur on repairing a recently acquired capital asset?

Issued | Tukuna: 11 July 2025

This question we've been asked is about whether a taxpayer can deduct for income tax purposes the amount of expenditure they have incurred to repair a capital asset that they have recently acquired so they can use it in their business or income-earning activity.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss DA 1 (general permission), DA 2(1) (capital limitation)

REPLACES | WHAKAKAPIA

- Case law: Repairs and maintenance – capital or revenue expenditure? *Tax Information Bulletin* Vol 5, No 9 (February 1994): 3 (example 4 and discussion of *Law Shipping* and *Odeon Associated Theatres*)
- IS 12/03: Income tax – Deductibility of repairs and maintenance expenditure – general principles *Tax Information Bulletin* Vol 24, No 7 (August 2012): 68 (paragraphs [26], [212]–[218], [232] and example 21)
- IS0025: Dairy Farming – deductibility of certain expenditure *Tax Information Bulletin* Vol 12, No 2 (February 2000): 10 ("Recently acquired plant" at 40–41).

Question | Pātai

Can I claim an income tax deduction for expenses I incur on repairing a capital asset I recently acquired where the repairs are essential to ensuring I can use it in my business or income-earning activity?

Answer | Whakautu

No. The capital limitation in s DA 2(1) prevents you from claiming a deduction because the expenses are of a capital nature.

However, where the capital asset is an item of depreciable property, you may be able to claim a depreciation loss based on the amount of the expenses.

Explanation | Whakamāramatanga

Introduction

1. This question we've been asked (QWBA) is about a particular aspect of the income tax treatment of expenditure taxpayers may incur in carrying out work on an item of tangible property other than trading stock or revenue account property they use in a business or profit-making activity (ie, a "capital asset").[1] It clarifies when the recent acquisition of the capital asset may affect the income tax treatment of expenses incurred in carrying out repair work that might otherwise be deductible. This QWBA supplements existing guidance on the deductibility of expenditure on such work carried out in other circumstances.

1 Generally, revenue account property is defined in s YA 1 to include trading stock (as defined in s EB 2) and property that would produce income if disposed of. The term "capital asset" is not defined in the Act.

2. This QWBA assumes the expenditure on repairs meets the requirements of the general permission in s DA 1. Its focus is on the sole issue of whether the expenditure is capital in nature. If it is, the capital limitation in s DA 2(1) does not permit a deduction for the amount of the expenditure.

Definitions used in this QWBA

3. "**Essential initial repairs**" in this QWBA means repairs a taxpayer carries out on a capital asset they have recently acquired where the expenditure is non-deductible capital expenditure, as explained in this QWBA. Broadly, these repairs involve work on the capital asset that is essential to make it suitable for the taxpayer's intended long-term use. This work does not need to be the first work carried out on the capital asset since acquisition. The expenditure is non-deductible even though, given the nature, scale and extent of the repair work, the expenditure would have been of a revenue nature and a deductible expense if the previous owner of the asset had incurred it (assuming the general permission was met).
4. "Essential initial repairs" do not include expenditure on work that would otherwise be characterised as capital in nature under general principles, regardless of whether the expenditure was incurred immediately after acquiring the asset or at a later time. Generally, such capital expenditure relates to work variously described from time to time as involving an alteration, extension or replacement of the asset, including expenditure that is part of an overall capital project.
5. By definition, "essential initial repairs" do not include work carried out to a recently acquired asset that is not essential to make it suitable for the taxpayer's intended long-term use. The tax treatment of the cost of such non-essential repair work is determined under general principles, unless the work is part of an overall project to undertake essential initial repairs. In that case, all the costs are treated together as essential initial repairs.
6. Unless otherwise indicated, this QWBA uses the term "**repair**" (or variants) for convenience to refer in a tax neutral way to expenditure a taxpayer incurs on carrying out work on a capital asset.
7. "**Acquisition**" (or variants) of a capital asset in this context includes acquiring the asset through purchase or inheritance.[2]

Depreciation

8. Although depreciation is not the focus of this item, as the answer suggests, if the capital asset is an item of depreciable property, any non-deductible repair costs (ie, the costs of essential initial repairs) may be able to be included in calculations of depreciation losses from the date the repairs are completed.[3]
9. The depreciation rules are found in subpart EE of the Act. Broadly, the requirements that must be met before a depreciation loss arises are that the:
    - taxpayer owns the item of property;
    - property is depreciable property as defined;
    - property is used, or available for use, to derive assessable income; and
    - depreciation loss is calculated in the correct manner (ie, using the correct method and rate).[4]

The general principles for distinguishing capital from revenue expenditure

10. The income tax treatment of essential initial repairs arises from the distinction made between expenditure that is considered to be of a:
    - capital nature (and not deductible due to the capital limitation); or
    - revenue nature (and deductible under the general permission).
11. The courts have drawn this distinction on numerous occasions. Their decisions have given rise to a number of principles, summarised in this section as follows.[5]

2 **Note:** leased assets are not included because other factors outside the scope of this item may then be relevant. However, the concept of essential initial repairs has arisen in the context of leased premises. See, for example: *Case W93* 89 ATC 785 (AATA) and *Jackson (Inspector of Taxes) v Laskers Home Furnishers Ltd* [1956] 3 All ER 891 (EWHC).

3 Either because the entire capital asset or, where the expenditure is an "improvement", the asset or improvement is unable to be used or available for use prior to their completion (See ss EE 1(2)(c), EE 16(5), EE 37(2)(a) and s EE 67 "improvement").

4 Note that from 1 April 2024 a 0% depreciation rate applies to all buildings (see: *Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters)* Act 2024).

5 This summary is adapted from the Court of Appeal's summary in *CIR v Trustpower Ltd* [2015] NZCA 253 from [51] to [76].

12. The decisions in Hallstroms and Nchanga provide the best guides to the general principles that require distinguishing between:[6]
    - the acquisition of the means of production (capital) and the use of them (revenue); or
    - the reform or more effective establishment of the organisation by which income will be produced (the "profit-yielding subject") (capital) and the means by which that organisation will be used (revenue); or
    - the costs of creating, establishing, acquiring or enlarging the permanent structure of the business (capital) and the costs of using the structure to earn income or of performing the income-earning operations (revenue).
13. Based on these principles, it is necessary to consider what the expenditure is calculated to effect from a practical and business point of view (Hallstroms).
14. The Privy Council adopted the general principles of Hallstroms and Nchanga in BP Australia.[7] It suggested five factors could be considered to help decide whether expenditure is capital or revenue in nature. These factors are guides only. In the end, the answer will depend on a close examination of the facts of the particular case and the character of the particular payment.
15. The Court of Appeal summarised the "BP Australia factors" in McKenzies:[8]
    - the need or occasion which called for the expenditure;
    - whether the payments were made from fixed or circulating capital;
    - whether the payments were of a once and for all nature producing assets or advantages which were of an enduring benefit;
    - how the payments would be treated under ordinary principles of commercial accounting; and
    - whether the payments were expended on the business structure of the taxpayer or whether they were part of the process by which the taxpayer earned income.
16. The Court of Appeal considered that the general principles arising from Hallstroms and Nchanga remain the best guide for distinguishing between income and capital and may be sufficient for that purpose without resort to the BP Australia factors.[9]

Essential initial repairs are an example of how these general principles apply

17. As mentioned, essential initial repairs are considered capital in nature meaning a deduction for their cost is prevented by the capital limitation in s DA 2(1). Deciding whether repairs are essential initial repairs involves applying the principles for distinguishing between capital and revenue as set out above. In the particular circumstances of essential initial repairs, the date of the acquisition of the relevant capital asset will be pertinent. In this context, the courts have also referred to other potentially relevant matters (see from [33]).
18. Under the general principles, essential initial repairs are those repairs that, from a practical and business point of view, the taxpayer must undertake so that they can use the capital asset they recently acquired as intended. This conclusion is consistent with the view that the cost of those repairs:
    - is part of the taxpayer acquiring the means of production, establishing or extending a business organisation, or acquiring the implements of work or the enterprise itself (Hallstroms);
    - is part of the cost of "creating, acquiring or enlarging the permanent … structure of which the income is to be the produce or fruit" (Nchanga);
    - alters the framework within which the income-producing activities are for the future to be carried on (with the asset) (Foley Bros[10]);
    - is incurred with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade (British Insulated and Helsby Cables Ltd v Atherton[11]).

6 *Hallstroms Pty Ltd v FCT* (1946) 72 CLR 634 (HCA) and *Commissioner of Taxes v Nchanga Consolidated Copper Mines* [1964] AC 948 (PC).
7 *BP Australia Ltd v Commissioner of Taxation for the Commonwealth of Australia* [1966] AC 224 (PC).
8 *CIR v McKenzies (NZ) Ltd* [1988] 23 NZLR 736 (CA).
9 *Trustpower* (CA) at [76].
10 *FCT v Foley Bros Pty Ltd* (1965) 13 ATD 562 (HCA) at 563.
11 *British Insulated and Helsby Cables Ltd v Atherton* [1926] AC 205 (HL) at 213–214.

19. In terms of the various "BP Australia factors" listed at [15], the need or occasion which called for the expenditure on essential initial repairs is the necessity to restore or maintain the functionality of an asset recently acquired so it can form part of the business structure of the taxpayer's income-earning activity. Also, the payments for essential initial repairs are usually of a once and for all nature, especially when made in catching up on a previous owner's lack of maintenance (see deferred repairs discussed from [35]).

When will the work undertaken involve essential initial repairs?

20. A number of court decisions are commonly cited in the context of essential initial repairs.[12] However, as Woodhouse J stated in one of these cases, these lines of authority "might seem to provide convenient sign-posts" for the characterising of expenditure but "it is not easy to derive help from particular facts of decided cases".[13]
21. Despite Woodhouse J's caution, the cases mentioned (and others) do provide some assistance as to a court's likely approach to the treatment of essential initial repairs. From those cases, the Commissioner considers the following matters are relevant to determining if the work undertaken involves essential initial repairs.
22. Expenditure a taxpayer incurs in carrying out repairs on a recently acquired capital asset will be essential initial repairs and, as a result, capital in nature where the work was "due" at the time that the taxpayer acquired the asset.
23. Repairs will be considered due when the repairs are required to restore or maintain the asset's functional effectiveness, including its ongoing functionality, where this is essential to make the asset suitable for use as intended by the taxpayer. The relevant use is the specific manner in which the taxpayer ultimately intends, in the long-term, to use the asset in their business or income-earning activity.
24. When assessing the taxpayer's intended use, it is irrelevant whether in the short-term, the asset is used or is capable of some use in some way pending the repairs being completed.[14] It is also not necessary to establish whether the taxpayer was aware of the need to carry out the repairs at the time they acquired the asset when assessing whether work carried out involved essential initial repairs given the taxpayer's ultimate intended use.[15]
25. However, essential initial repairs do not arise simply because the need for the repairs may have arisen before the taxpayer acquired and used the asset. All assets start to deteriorate from the date of their manufacture or construction and this period may not coincide with the taxpayer's use of the asset. Similarly, essential initial repairs do not arise simply because the purchase price of the asset was affected by the asset's state of disrepair (see further at [34]). The important consideration is how any deterioration that may have occurred before the taxpayer acquires the asset affects their intended use of it.
26. By definition, essential initial repairs do not include work carried out to a recently acquired asset that is not essential to make it suitable for the taxpayer's intended long-term use (referred to here as "non-essential repairs"). While the need for the non-essential repairs may have arisen due to wear and tear that occurred prior to the asset being acquired, the tax treatment of the cost of such work is determined under the general principles, depending on the particular facts of each case.[16]
27. However, when non-essential repair work is part of one overall capital project the courts have indicated that the proper approach is to consider all the work carried out as a whole. It may not be correct to separate out part of the project for separate consideration.[17] If the non-essential repair work is carried out as part of an overall project to complete essential initial repairs, all the costs are treated as capital in nature.

12 Including: *Law Shipping Co Ltd v Commissioners of Inland Revenue* (1923) 12 TC 621 (IH (1 Div)); *Inland Revenue Commissioners v Granite City Steamship Co Ltd* (1927) 13 TC 1 (IH (1 Div)); *Jackson (Inspector of Taxes) v Laskers Home Furnishers Ltd*; *Collector of Inland Revenue, Cook Islands v AB Donald Ltd* [1965] NZLR 679 (HC); *W Thomas & Co Pty Ltd v FCT* (1965) 14 ATD 78 (HCA); and *Odeon Associated Theatres v Jones (Inspector of Taxes)* [1972] 1 All ER 681 (EWCA).

13 *Collector of Inland Revenue, Cook Islands v AB Donald Ltd* at 684.

14 See, for example, *Law Shipping* where the asset was used for 6 months prior to repair. See also *Case W7* 89 ATC 161 (AATA) at [22] where the taxpayer's intended long-term use was considered determinative.

15 See *W Thomas & Co Pty Ltd v FCT* (HCA) at 88.

16 See *Odeon Associated Theatres* (EWCA) per Buckley LJ at 693.

17 See for instance, *Colonial Motor Co Ltd v CIR* (1994) 16 NZTC 11,361 (CA) at 11,399.

28. Whether repairs are essential initial repairs will be a question of fact in each case. The answer is not simply the product of applying a temporal test comparing the date of acquisition with the date when expenditure was incurred. This means a "recently" acquired asset is not one defined in terms of whether the repairs are made within some set period following acquisition. Nor is it necessarily the case that an initial repair is the first repair made to a recently acquired asset.
29. However, the shorter the time between purchasing the asset and undertaking repairs, the stronger is the inference that the repairs were essential to restore and maintain the asset's relevant functionality to enable the taxpayer's intended use. Conversely, the longer the time between purchasing the asset and undertaking the repair, the less likely essential initial repairs will arise. For example, in the Australian Administrative Appeals Tribunal Case W93, Senior Member PM Roach considered repairs carried out some 15 years after acquisition and intense use by the taxpayer were "hardly appropriately described as initial repairs".[18]

Apportionment

30. An essential initial repair will not include expenditure to the extent it is for work that remedies normal wear and tear arising from the taxpayer's actual use of the asset in carrying on a business or an income-earning activity, whether this is the intended long-term use or not.
31. This means that apportionment or dissection of expenditure may be appropriate where the taxpayer may have made some use of the asset since acquiring it or uses it partially in their business or income-earning activity.[19] However, if the repair element is simply ancillary to an essential initial repair, the entire amount is treated as capital in nature.
32. If apportionment is appropriate, the taxpayer must apportion the expenditure on a fair and reasonable basis (such as time, area or some other quantifiable measure). A time basis may be appropriate where defects arise gradually over an extended period.

All the facts and circumstances must be assessed

33. As with any decision on the character of an item of expense, all the surrounding circumstances must be considered. As mentioned, determining whether essential initial repairs arise is an example of where the general principles for distinguishing capital from revenue expenditure apply and those principles are the most relevant guides. However, in the particular facts of a recently acquired asset, a range of other matters may be relevant to determining if repairs involve essential initial repairs, including, but not limited to:
    - the amount of time that has elapsed between acquiring the capital asset and undertaking the repairs;
    - the state of repair or disrepair of the asset at the time the taxpayer acquired it;
    - whether the asset was in a fit state for use as intended in the taxpayer's business or income-earning activities;
    - the price of the asset or its value at acquisition and whether this was, or can be assumed on a reasonable basis to have been, affected by the state of repair or disrepair of the asset;
    - the previous use of the asset in comparison with the taxpayer's intended use;
    - the nature and extent of the repair work carried out; and
    - whether the taxpayer has made any use of the asset before or during the period between acquisition and when the relevant work is completed (which may be relevant to any questions over whether the repairs arose from that use or in respect of apportionment).
34. Of these matters, the price or value of the asset at the time of acquisition is often referred to in the context of essential initial repairs. The purchase price of any secondhand asset will usually be reflective of a number of factors, and this may include its state of disrepair. The purchase price may then be relevant in the context of essential initial repairs to the extent that it is indicative of the state of the asset at the time. This may, in turn, be indicative of whether or not the repairs in question were "due" in the sense described above at the time of the asset's acquisition.

18 At 789.

19 "Dissection" in this context means where a composite payment relates to several things or services that may be able to be separately identified as for different purposes (such as an itemised invoice). In contrast, "apportionment" of an amount of expenditure applies where a single payment achieves two or more purposes at the same time.

Essential Initial repairs as distinct from "deferred repairs"

35. Finally, it is of note that this QWBA is about essential initial repairs. At times, essential initial repairs have been called "dilapidation repairs" because the previous owner may have deferred repair work on the asset, with the result that the new owner acquired it in a dilapidated state.

36. However, the situation where essential initial repairs arise is distinct from the situation where the asset may have become dilapidated because repairs that have arisen during the taxpayer's ownership and use of the asset have been deferred and accumulated with other work and subsequently undertaken as part of a larger project (ie, "deferred repairs"). The revenue character of a repair is not usually lost because a taxpayer has deferred the work to a more convenient time. However, deferred repairs in this sense should not be confused or conflated with the essential initial repairs that are the subject of this QWBA.

Examples | Tauira

Example | Tauira 1 – Where repairs are part of the cost of acquiring a business asset

Transit Gurus Ltd operates a road transport business and acquires a trailer at a discounted price to use in that business. The trailer is cheap because it has been stored outside and sitting unused for many years. It is now in a rundown condition and requires repairs to make it roadworthy.

After buying the trailer, the company incurs expenditure to repair it. The repairs include fitting new tyres, repairing structural rust damage, replacing broken or missing taillights, rewiring, cleaning and repainting. Once the repairs are completed, the trailer is re-registered and obtains a warrant of fitness.

The repair costs are for essential initial repairs and are capital in nature because they are essential to restoring and maintaining the trailer's function for its intended use as part of Transit Gurus' road transport business.

No deduction for the amount of the repairs is allowed for income tax purposes because the capital nature of the expenditure means the capital limitation in s DA 2(1) prevents deductions.

However, Transit Gurus may be able to add the total cost of repairs to the purchase price of the trailer and include it in the calculation of any depreciation losses the company may be entitled to for the use of the trailer in its business. Depreciation entitlements would arise once the essential initial repairs were completed and the trailer was able to be used or be available for use.

Example | Tauira 2 – Where repairs are part of the cost of inherited rental property

James inherited a 100 year-old tenanted residential rental property. At this time, the property was in an extremely poor state of repair. Its condition was such that only a sleepout at the rear of the property was being rented on a short-term basis, with a high turnover of tenants and poor rental returns.

The property was located in a desirable neighbourhood and James decided to keep the property because he considered that if he restored it to a good condition, the rental return could be substantially increased by attracting a different calibre of tenant for longer-term letting of the entire property.

In the months following the inheritance, James carries out repairs to the property while it remains tenanted. These include repairing the leaking roof, replacing damaged ceilings, replacing some of the guttering and downpipes and repainting portions of the interior and exterior of the property. The main water supply pipe from the road to the building, which was leaking under the house, is also replaced. The gardens are tidied up and the boundary fences repaired and repainted. After the existing tenant vacates the property, James undertakes further internal repainting and other internal repairs including to the sleepout, such as replacing or repairing broken and damaged light fittings.

Once the repairs are completed, James is able to re-let the property to new tenants on a long-term basis and the rental income increases substantially.

The expenditure James incurred was essential to restore and maintain the functionality of the property to the level required for his intended use of letting it on a longer-term basis at improved rental yields. When he acquired it, James recognised he would need to incur further expenditure to bring the property to the condition he desired for its long-term use.

For these reasons, James' expenditure is on essential initial repairs and is capital in nature. No deduction for the expenditure is possible because of the capital limitation in s DA 2(1).

The fact that James used the property to derive rental income before completing all the repair work, does not alter this outcome. However, if some of the repairs, such as those made to the sleepout, were caused by the tenant and attributable to the period when James owned and rented the property before completing the repairs, there may be a case for dissecting or apportioning some of the expenditure on some reasonable basis. James is able to deduct any amount so dissected or apportioned from the rental income he receives.

Example | Tauira 3 – Where repairs are part of the cost of business premises

The Joyous Greeting Card Company operates a long-established business of manufacturing greeting cards and gift wrappings. To expand that business, Joyous acquired larger premises in the same city. When company personnel inspected the premises before purchase, they did not notice any maintenance issues with the building. It was apparent, however, that the former owner's use of the premises for manufacturing bread had left considerable amounts of flour and other residues coating all the interior surfaces of the building.

On taking up possession, Joyous incurred significant expenses in cleaning and repainting all the interior surfaces of the building. This work was essential to make the building useable in the company's business because cleanliness is a paramount concern when dealing with paper and related stocks and products.

During the cleaning and repainting, it became apparent that it was necessary to repair some parts of the interior lining of the ceilings and walls before repainting could begin.

It may not be common for cleaning and repainting to be thought of as involving expenditure of a capital nature. However, in these particular circumstances, considering the premises' previous use and the company's intended use, the expenditure involves essential initial repairs. No deduction is allowed for the expenditure because of the capital limitation in s DA 2(1).

The extraordinary costs on this type of work arose because the company incurred them to restore and maintain the functionality of the property to the level essential for the company's intended use in its business. The other repairs to the walls and ceilings were required for the same reasons and the fact that the company did not know of the need for this repair work at the time of acquisition, does not change the outcome.

Example | Tauira 4 – Where repairs to a building in a commercial complex are essential initial repairs

MetroHub Properties Ltd acquired a commercial complex comprising several separate buildings. MetroHub intended to use the complex for the purpose of deriving commercial rental income as part of its existing commercial property portfolio.

When MetroHub acquired the complex, all but one of the buildings were tenanted and producing rental income. One multi-storey building, however, had been unoccupied for years and was in a run-down condition.

MetroHub incurred expenditure in the year of purchasing the complex to repair the multi-storey building so it was in a condition for renting out. The work comprised interior cleaning, rubbish removal and redecorating, repairs to the roof, guttering and downpipes, replacing broken windows and maintaining the exterior grounds.

The repairs in this case involved essential initial repairs because they were required to restore and maintain the functionality of the multi-storey building to the level that MetroHub could use it for the intended purpose of leasing. No deduction is allowed for the repairs because of the capital limitation in s DA 2(1).

This outcome applies even though parts of the complex were capable of functioning as intended and, as a whole, the complex could be seen as not in need of repair for that purpose.

However, in this case, the relevant asset identified for repairs and maintenance purposes, as the object of the expenditure, determines the relevant intended use. In this case, the object of the work was the multi-level building and its surrounding land, not the entire commercial complex.

Example | Tauira 5 – Where repairs to a building do not involve essential initial repairs

Fredcount Apparel Ltd acquired business premises for the purposes of using it in its garment manufacturing business. At that time, the building had been on the market for a long time because its design and construction limited its range of potential uses. The company was not worried by these matters because it was aware that the vendor was a former business competitor who had been using the building for the same purpose that it intended to use it for.

Fredcount acquired the building at a significant discount on its government valuation that reflected the building's limitations and a general downturn in the commercial property market occurring at the time. The price was not discounted because the building was considered to be in need of repair. A visual pre-purchase inspection of the building by company personnel revealed no apparent issues with the state of the building.

However, a year later the company noted the roof was leaking and it carried out repairs. Soon after, it also noted issues with the floor and carried out repairs to rotten floor joists. The repair was ineffective so further repairs to the floor were made 6 months later. It then became apparent that stormwater was causing the flooring issues because a stormwater drain had been leaking. Fredcount repaired the drain and carried out further repairs on the floor, which involved cutting out more rotten portions and laying a new floor over the top.

The repairs in this case are not essential initial repairs and not otherwise capital in nature due to their nature and extent, so their cost is a deductible expense under the general permission to the taxpayer.

While the repair work was the result of gradual deterioration of the building before Fredcount acquired it, this alone does not mean any repairs shortly after acquisition are essential initial repairs. The important consideration in the context of essential initial repairs is how any deterioration that may have occurred by the date of acquisition may affect the company's use or intended use of the asset. The repair work was not essential to put the premises into a condition it could function and continue to function for the intended purpose for which the company had acquired the premises. The building had been suitable for that intended use when Fredcount acquired it, no repairs were evident at purchase and the previous owner had used it for identical purposes.

Example | Tauira 6 – Where repairs do not involve essential initial repairs but are still capital in nature

Tina purchased a tenanted residential rental property divided into two flats and immediately started to derive rental income. A few months after purchase, during a drought, cracks open up in the ground surrounding the house, causing it to subside. Substantial excavation and restoration of the land and repairs of the house were urgently required.

To prevent further subsidence, Tina replaces the main support wall of the house so that it is in a different position and enlarges the size of one of the flats in the process. Tina replaces the floor with a reinforced concrete floor and installs new drainage. She also adds a reinforced concrete terrace.

Substantial internal work also occurs because Tina takes the opportunity to carry out additional work on the property. Tina removes internal partitioning that would have needed replacement due to borer damage and replaces it with a new and improved layout.

Some of the work in this case may otherwise have been in the nature of repairs of a revenue nature. If the work had been limited to these repairs, the expenditure is unlikely to have involved essential initial repairs, even though the need for repair (borer damage) arose before Tina acquired the property. The work would not have been required at the time Tina acquired it in order to restore and maintain the required functionality of the property essential for her intended use.

However, all the expenditure, including any expenditure that would otherwise have been for deductible repairs, is capital in nature because it is part of an overall capital project that has altered the character of the property.

As such, the expenditure is capital in nature. The amount of the expenditure is not deductible because of the capital limitation in s DA 2(1). This would be the case regardless of whether Tina had carried out the work shortly after purchase or at some later date.

Accordingly, Tina's expenditure does not involve essential initial repairs but, despite this, still involves expenditure of a capital nature.

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007: ss DA 1, DA 2(1), EB 1, EE 1(2)(c), EE 16(5), EE 37(2)(a), EE 67 "improvement", YA 1 "revenue account property"

Case references | Tohutoro kēhi

BP Australia Ltd v Commissioner of Taxation for the Commonwealth of Australia [1966] AC 224 (PC)

British Insulated and Helsby Cables Ltd v Atherton [1926] AC 205 (HL)

Case W7 89 ATC 161 (AATA)

Case W93 89 ATC 785 (AATA)

CIR v McKenzies (NZ) Ltd [1988] 23 NZLR 736 (CA)

CIR v Trustpower Ltd [2015] NZCA 253

Collector of Inland Revenue, Cook Islands v AB Donald Ltd [1965] NZLR 679 (HC)

Colonial Motor Co Ltd v CIR (1994) 16 NZTC 11,361 (CA)

Commissioner of Taxes v Nchanga Consolidated Copper Mines [1964] AC 948 (PC)

FCT v Foley Bros Pty Ltd (1965) 13 ATD 562 (HCA)

Hallstroms Pty Ltd v FCT (1946) 72 CLR 634 (HCA)

Inland Revenue Commissioners v Granite City Steamship Co Ltd (1927) 13 TC 1 (IH (1 Div))

Jackson (Inspector of Taxes) v Laskers Home Furnishers Ltd [1956] 3 All ER 891 (EWHC)

Law Shipping Co Ltd v Commissioners of Inland Revenue (1923) 12 TC 621 (IH (1 Div))

Odeon Associated Theatres v Jones (Inspector of Taxes) [1972] 1 All ER 681 (EWCA)

W Thomas & Co Pty Ltd v FCT (1965) 14 ATD 78 (HCA)

LEGAL DECISION – CASE SUMMARIES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, Court of Appeal, and the Supreme Court.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

CSUM 25/10: High Court dismisses judicial review of decisions to decline proposals for relief under s 177 of the TAA

Decision date: 30 May 2025

CASE

Anthony v CIR [2025] NZHC 1382

LEGISLATIVE REFERENCES

Companies Act 1993, s 4

Judicial Review Procedure Act 2016

Tax Administration Act 1994, ss 6, 6A, 157, 176, 177, 177A, 177B

CASE LAW REFERENCES

Kea v Commissioner of Inland Revenue (2011) 25 NZTC 25,740 (HC)

Russell v Commissioner of Inland Revenue [2015] NZCA 351

Raynel v Commissioner of Inland Revenue (2004) 21 NZTC 18,583 (HC)

Berryman v Solicitor-General [2008] 2 NZLR 772 (HC)

Rochdale Precinct Society Inc v Christchurch City Council [2018] NZHC 467

Watergates NZ Ltd v Commissioner of Inland Revenue [2024] NZHC 1128

FORUM

Auckland High Court

Summary

This was a judicial review case. The applicants challenge decisions of the Commissioner to decline proposals for relief under s 177 of the Tax Administration Act 1994 (the **TAA**). At issue is the interpretation of provisions of the TAA and the Commissioner's obligation to collect the highest net revenue that is practicable within the law.

Roshan Anthony (**Mr Anthony**) was the first applicant and Summit Scaffold NZ Limited (**Summit Scaffold**) was the second.

Mr Anthony is the sole director of Summit Scaffold. He challenged the Commissioner's decision not to have the default judgment against him set aside. The Court found that there is no specific legislative provision for making a proposal for the Commissioner to consent to an application for setting aside a judgment.

Summit Scaffold challenged the Commissioner's decision not to accept its request for an instalment arrangement. The Court held that the Commissioner has a broad discretion in deciding whether to accept a proposal for relief and must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations including, importantly, the integrity of the tax system. The Commissioner may justifiably reject a proposal in the face of a taxpayer's poor compliance history, even if the proposal might appear to maximise recovery of outstanding tax from the individual taxpayer in the short term.

Impact

The decision affirmed the Commissioner's broad statutory discretion when considering applications for tax relief. It also recognised the test for solvency as set out in section 4 of the Companies Act.

Facts

In March 2024, the Commissioner filed debt proceedings against Mr Anthony in the District Court seeking judgment of $180,886.52 for unpaid income tax for the 2019, 2020, 2022 and 2023 tax years. In July 2024, a certificate of judgment debt in the amount of $181,248.69 for Mr Anthony's debt was sealed by the District Court against him.

In May 2024, the Commissioner initiated liquidation proceedings against Summit Scaffold for $399,220.27 of unpaid tax. This included GST, PAYE and income tax.

Between June 2024 and October 2024, Mr Anthony and Summit Scaffold made five proposals to the Commissioner for instalment arrangements for the outstanding tax. These were all declined.

The fifth proposal was a request for financial relief under the TAA by letter from their lawyer dated 22 October 2024:

(a) Mr Anthony's request was predicated on a claim for serious hardship under s 177(1)(a) of the TAA and offered to pay Mr Anthony's outstanding personal tax of $54,387.86 in full, within two months. Mr Anthony also made an ancillary request for the Commissioner to consent to an application to set aside the default judgment entered against him;

(b) Summit Scaffold's request was to pay the total tax arrears owing by it, namely $533,329.32, by entering into an instalment arrangement with the Commissioner under s 177(1)(b) of the TAA. The proposal involved Summit Scaffold making a lump sum payment of $100,000.

In relation to Mr Anthony, the Commissioner did not accept that his circumstances met the test for serious hardship under s 177(1)(a), but accepted his proposal to pay his outstanding personal tax within two months. That proposal was considered to maximise recovery of outstanding tax. However, the Commissioner did not agree to consent to an application to set aside the default judgment. It is this aspect of the decision which Mr Anthony challenged.

In relation to Summit Scaffold, the Commissioner declined to accept the instalment arrangement proposal, primarily (but not solely) because accepting the proposal was not considered to be consistent with the duty to protect the integrity of the tax system. The Commissioner's decision was explained in a six-page letter to Summit Scaffold dated 24 October 2024.

The applicants commenced judicial review proceedings alleging failure to take relevant considerations into account, taking irrelevant considerations into account, breach of legitimate expectation, unreasonableness and procedural unfairness.

They argued that the Commissioner failed to adequately consider the level to which the proposal would be revenue maximising for the IRD, the applicants' compliance efforts, and their counter-offer of security, and improperly relied on past compliance failures without acknowledging the applicants' more recent efforts and arrangements to meet the tax obligations.

The Commissioner submitted that the applicants cannot point to a reviewable error in the decision-making process. Furthermore, the Commissioner has appropriately exercised judgement within the boundaries of the statutory framework.

Issues

At issue is the interpretation of provisions of the TAA related to financial relief (ss 176, 177, 177A and177B) and the Commissioner's obligation to collect the highest net revenue that is practicable within the law (ss 6 and 6A).

Decision

Andrew J recognised that the Commissioner has a discretion to grant financial relief to taxpayers who are unable to pay their tax in full immediately. In considering any request for relief, the Commissioner's broad managerial responsibilities under ss 6 and 6A are also engaged. His Honor held:

> [36] Under s 176 of the TAA, the Commissioner "must maximise the recovery of outstanding tax from a taxpayer" but not to the extent that "recovery is an inefficient use of the Commissioner's resources." The section (appearing in Part 11 of the TAA) is targeted at recovery of arrears from individual taxpayers as relevant to any remission, relief and

refunds to be granted. A consequence of s 176 is that, save in the limited circumstances specified in s 176(2), relief must not be granted other than where it is considered to maximise recovery of outstanding tax from any individual taxpayer.

[37] The duty in s 6A of the TAA (to collect over time the highest net revenue practicable within the law) is more general in its focus. Unlike s 176, it is not targeted at recovery of "outstanding tax" from individual taxpayers. The Commissioner's managerial responsibility in s 6A requires the Commissioner to have regard to broader matters including promoting compliance (especially voluntary compliance) amongst the body of New Zealand taxpayers more generally. The duty in s 6(1) to protect the integrity of the tax system (including taxpayers' perception of the integrity) is interrelated – a tax system that is perceived to be unfair, arbitrary or without consequence for non-compliance will not engender taxpayer compliance, voluntarily or otherwise.

[38] Section 176 of the TAA does not place a greater obligation on the Commissioner than the duty imposed by s 6A to collect over time the highest net revenue practicable within the law (a duty that expressly applies "despite anything in the Inland Revenue Acts") nor does it relieve Inland Revenue officers of their duty under s 6 to use their best endeavours to protect the integrity of the tax system as defined. The obligation to protect the integrity of the tax system is to be read alongside the duties expressed in both ss 6A and 176A.

[39] This means that s 176 sets a bar below which the Commissioner cannot lawfully use his discretion to grant financial relief, but it does not impose a positive duty on the Commissioner to accept each and every relief proposal solely on the basis that the proposal would maximise recovery of outstanding tax from a particular taxpayer when compared to the alternatives, such as liquidation or bankruptcy. In considering a request for financial relief, the Commissioner and his delegates must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations.

In relation to Mr Anthony's application for judicial review, Andrew J held that there is no specific legislative provision for the Commissioner to consent to an application for setting aside a judgment. Section 177 only allows requests for financial relief in one of two ways – by claiming that recovery or relief would place the taxpayer in serious hardship (under s 177(1)(a)), or by requesting to enter into an instalment arrangement (under s 177(1)(b)).

As for Summit Scaffold's application for judicial review, Andrew J acknowledged that the Commissioner has a broad discretion in deciding whether to accept a proposal for relief.[1] There is a clear statutory duty on the Commissioner and officials to at all times use their best endeavours to protect the integrity of the tax system and to collect, over time, the highest net revenue practicable within the law.[2] The Commissioner may justifiably reject a financial proposal in the face of a taxpayer's poor compliance history.[3] That is so, even if the proposal might appear to maximise recovery of outstanding tax from the individual taxpayer in the short term.

His Honour noted the fundamental problem to the challenge brought by Summit Scaffold is it seeks to conflate the distinction between maximising recovery of outstanding tax from a single specified taxpayer under s 176 and the more general duty under s 6A. His Honour held that it is manifestly clear from the legislation that in considering requests for financial relief, the Commissioner and his delegates must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations including, importantly, the integrity of the tax system.

Summit Scaffold argued that this case is analogous to *Watergates NZ Ltd v Commissioner of Inland Revenue* in that the Commissioner here has similarly failed to have regard to the parameters of the TAA when declining the proposal. This argument was rejected. His Honour stated that *Watergates* was an exceptional and unusual one where the Commissioner gave cursory and very limited regard to mandatory relevant factors, including the applicant's financial position and an ability to pay historic tax arrears. Here, the decision to decline the proposal was explained in a six-page letter. One of the factors that carried significant weight was Summit Scaffold's poor compliance history. This included its failure to comply with the previous instalment arrangement. Another important factor was that Summit Scaffold had received financial relief in February 2021 which involved remission of penalties of $17,815.73 to promote voluntary compliance. However, Summit Scaffold continued its poor compliance practices, leading to the present situation of significant arrears being owed to the Commissioner.

1 *Watergates NZ Ltd v Commissioner of Inland Revenue* [2024] NZHC 1128

2 Tax Administration Act, s 6A.

3 *Kea v Commissioner of Inland Revenue, Russell v Commissioner of Inland Revenue*

Turning to the test for solvency, His Honor held:

> [61] The test for solvency is set out in s 4 of the Companies Act 1993. To satisfy the solvency test, the company must both be able to meet its debts as they become due, and the value of the company's assets must be greater than the value of its liabilities.

His Honor found that the issue of whether the company was balance sheet insolvent is a red herring. The company was unable to pay its debts as they fell due, as is clear from the significantly overdue tax debt. The company had been in default of its tax obligations since the fourth quarter of 2022 and it is not seriously arguable that the company is not insolvent. An offer of security might have had a mitigating effect on the Commissioner's concern but the applicants elected not to offer security over any property held in the name of Mr Anthony's spouse.

None of the causes of action succeeded. Andrew J concluded that the applicants failed to establish any material error of law by the Commissioner.

CSUM 25/11: Risk of double recovery due to potential enforcement action by Inland Revenue does not prevent profit forfeiture orders under proceeds of crime regime

Decision date: 30 May 2025

CASE

***Commissioner of Police v Masonic Limited and others* [2025] NZCA 205**

LEGISLATIVE REFERENCES

Companies Act 1993, sch 7 cls 1(2)(aa), (d), (g), (ga) and 1(5);

Criminal Proceeds (Recovery) Act 2009 (CPRA), ss 3, 5, 6, 7, 28, 33-35, 50, 50C, 53, 55, 67, 83

Goods and Services Tax Act 1985, s 43

New Zealand Bill of Rights Act 1990, 21

Tax Administration Act 1994 (TAA), ss 6A, 143, 143A, 143B, 157, 169, 177C

Court of Appeal (Civil) Rules 2005, r 45

High Court Rules 2016, r 5.61

CASE LAW REFERENCES

Cheah v Commissioner of Police [2020] NZCA 253

Commissioner of Police v Cheng [2023] NZHC 606

Commissioner of Police v Nabawi [2021] NZHC 2413

Commissioner of Police v Snook [2018] NZHC 2537

Erceg v Balenia Ltd [2008] NZCA 535

Fuati v Jin [2023] NZCA 165

Fortex Group Ltd (In Receivership and Liquidation) v MacIntosh [1998] 3 NZLR 171 (CA)

Li v Commissioner of Police [2022] NZHC 514

Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 1) [2006] NZSC 59, [2007] 2 NZLR 1

R v Cheng [2018] NZDC 3344

R v Pedersen [1995] 2 NZLR 386 (CA)

R v Waya [2012] UKSC 51, [2013] 1 AC 294

Re Diplock [1948] Ch 465 (CA)

Rodriguez v Commissioner of Police [2020] NZCA 589

Solicitor-General v Beckham [2015] NZHC 2816

Solicitor-General v Rhodes HC Auckland, CIV-2007-404-3773, 16 February 2010

Zhou v Commissioner of Police [2023] NZCA 137

LEGAL TERMS

Benefit, significant criminal activity, tax evasion

Summary

The Court of Appeal granted the COP's appeal, agreeing with the COP and CIR that where tax has been evaded and not subsequently paid to the CIR, the tax evader has benefited from significant criminal activity, and a profit forfeiture order should be made. The court rejected the view that the CIR's ability to recover unpaid tax means there can be no benefit to the offender.

Impact

The decision reemphasises the wide definition of benefit in terms of the CPRA and profit forfeiture orders. The decision ensures tax evaders are unable retain the proceeds of tax evasion simply because the CIR may later recover the outstanding tax. The decision protects the integrity of the tax system by promoting voluntary compliance and ensuring that the chance for persons to profit from tax evasion is eliminated.

Facts

In 2016 a restraining order was obtained by the CoP over properties and funds that were linked to the alleged methamphetamine dealing of Thomas Cheng and the alleged tax evasion and money laundering by Thomas' father, William Cheng (Mr Cheng) and Thomas' mother in law, Niyoh Chew Hong (Ms Hong). Ultimately, the value of restrained assets included properties and bank accounts worth approximately $20 million.

The CIR had assessed income tax and GST liabilities for 11 other respondents (all NZ companies or Singaporean limited liability partnerships) on the basis of rental payments received from the properties owned by each respondent. Rental payments had gone into the bank accounts of Mr Cheng and Worldwide Models Limited. Mr Cheng is the authorised signatory on the company's account. None of the 11 respondents disputed the assessments of their tax liability which before interest and penalties amounted to $1,679,246.33.

In March 2023 Cooke J determined the COP's application for profit forfeiture orders in relation to the total sum of $20,102,053.22. The application insofar as it related to Mr Cheng and Ms Hong was founded on allegations of tax evasion and money laundering. It was not alleged that they were involved with the significant drug dealing in which Thomas Cheng had been engaged. Cooke J granted the profit forfeiture claim relating to Thomas Cheng's drug dealing offending. In relation to the other respondents, Cooke J found that there was a significant criminal activity of tax evasion, but not in relation to money laundering.

The tax liability by the time of the forfeiture hearing had increased to $11,443,457.36 due to penalty and interest provisions under the TAA. However, the potential benefit of the tax evasion in the proceeding was assessed at $1.6 million on the basis that the interest and penalties were not a benefit derived from the offending itself. Rather, they were penalties faced by the respondents for their tax evasion.

Although Cooke J found that the respondents had been involved in the significant criminal activity of tax evasion, he concluded that the respondents had not profited from that activity on the basis that the CIR is:

> … in a position to recover all the unpaid tax, as well as significant penalties and interest in a way that eliminates any benefit from this offending.

Issues

The only issue on appeal was whether the possibility of successful enforcement action by the CIR means a tax evader has not benefitted and therefore precludes a forfeiture order being made under s 55 of the CPRA.

Decision

The court granted the COP's appeal and ordered profit forfeiture against the respondents in the sum of 1,679,246.33.

The court considered that the High Court erred in finding there was no benefit from tax evasion because of potential recovery by the CIR.

The court held that the CPRA is "a penal scheme designed to reduce the opportunity for a criminal to benefit from significant criminal offending and to deter others from engaging in similar offending." The scheme is designed to be harsh and "[o]ver-recovery is not generally a reason to reduce the amount of a penalty order." Parliament emphasised the need to eliminate "the chance for criminals to profit from their actions, and sometimes thoroughly extirpating any chance of gain will mean over-recovery."

The court rejected the High Court's conclusion that the ability for the CIR to "recover unpaid tax means there is no benefit and therefore precludes a forfeiture order under s 55" of the CPRA. The court noted that:

> … it is by no means certain that the CIR will recover the outstanding tax. As noted above, the CIR is (broadly) an ordinary civil litigant subject to the ordinary difficulties of civil enforcement.

The court considered that benefit in the sense that the CPRA uses it can be temporary – a respondent who obtains additional money for a short time period, even if they later are forced to disgorge it and pay penalties, has still benefitted from their criminal action. The court stated that the "[m]ere availability of funds, even if they do not amount to a net increase, is a benefit in the terms of the CPRA."

The court recognised that double recovery by two different government departments could be disproportionate but that this was not the case here, and they were not aware of any to date. In this case, the respondents had not paid any of the tax debt and were opposing enforcement action by the CIR. The court ultimately found that "[u]nless and until the CIR recovers the outstanding tax, the respondents retain the benefit of significant criminal activity." The court noted that it would only be the last $1.6m recovered that would constitute double recovery.

The court said that the High Court's approach would suggest that tax evasion could never, on its own, engage the CPRA as there would always be the potential for recovery by the CIR. They did not think that this was correct.

The court did not say what would happen in a case of true double recovery, leaving that to be determined in a case where double recovery is directly at issue. The court noted that, despite being given the opportunity during the hearing, the taxpayers had not consented to payment of the funds sought by the COP to the CIR, and that they have structured their affairs in a way that has in theory placed them at risk of double recovery by the Crown, but that did not require remedy. The alternative of no recovery for the Crown and a significant gain for delinquent taxpayers would be contrary to the purposes of both statutes. The court found it significant that the risk relates to a small percentage of the total tax debt - $1.6 million of $11.4 million outstanding as at 2023.

TECHNICAL DECISION SUMMARIES

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TDS 25/15: GST – input tax deductions, grants, omitted sale

Decision date | Rā o te Whakatau: 28 March 2025

Issue date | Rā Tuku: 12 June 2025

Subjects | Kaupapa

GST: input tax deductions, government grants; omitted sale

Taxation laws | Ture tāke

All legislative references are to the Goods and Service Tax Act 1985 (GSTA) unless otherwise stated.

Summary of facts | Whakarāpopoto o Meka

1. The Taxpayer in this dispute was a company that was registered for GST.
2. During the disputed period, the Taxpayer filed GST returns claiming input tax deductions for various expenses. The Taxpayer also received COVID-19 Support Payments and a COVID-19 Resurgence Support Payment (COVID-19 Payments) during this period.
3. Customer and Compliance Services (CCS) considered that some of the input tax deductions claimed were not allowable. This was because the Taxpayer had not provided sufficient documentation to support the deductions, or the goods and services acquired were not used or made available for use in making taxable supplies. CCS also considered that the Taxpayer should have returned output tax on the COVID-19 Payments.
4. In addition, CCS found an error in the Taxpayer's working papers which resulted in the omission of a sale from the GST return during the disputed period. CCS proposed to amend the GST assessment to include this sale.

Issues | Take

5. The main issues considered in this dispute were:
   - whether the input tax deductions claimed by the Taxpayer were allowed;
   - whether output tax should be returned on the COVID-19 Payments; and
   - whether the GST return should be amended to include the omitted sale.
6. There was also a preliminary issue on the onus and standard of proof.

Decisions | Whakatau

7. The Tax Counsel Office (TCO) concluded that:
   - the input tax deductions claimed by the Taxpayer were not allowed;
   - output tax should be returned on the COVID-19 Payments received by the Taxpayer; and
   - the Taxpayer's GST return should be amended to include the omitted sale.

Reasons for decisions | Pūnga o ngā whakatau

Preliminary issue | Take tōmua: onus and standard of proof

8. Except for proceedings relating to evasion or similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]
9. The standard of proof required is the balance of probabilities.[3]
10. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayer has discharged the onus of proof in the context of the issues raised by the parties in the dispute, based on the documentary evidence put before it.

Issue 1 | Take tuatahi: Input tax deductions

11. At issue was whether the Taxpayer was entitled to the GST input tax deductions claimed for expenses made in the disputed period. The expenses in dispute included expenses that appeared to be private expenses, cash withdrawals, entertainment expenses for business partners and clients and other expenses where no tax invoice had been produced.
12. CCS also proposed an apportionment of the household expenses used for a home office, based on an estimate of the floor area of the house that was used as the home office. The Taxpayer argued that the apportionment should be higher.
13. Further, CCS proposed to disallow input tax deductions from expenditure relating to supplies that were exempt or not subject to GST, such as bank fees, interest and residential rent payments.
14. The calculation of GST payable by a registered person is set out in s 20. The input tax that a registered person has paid when acquiring goods and services may be offset against the GST output tax charged on supplies made by the person in the same period (s 20(3)).
15. The requirements for an input tax deduction are:
    - Input tax can only be claimed by a GST registered person. Registration for GST is dependent on a person carrying on a taxable activity.
    - Goods or services must have been acquired. It is not enough that a payment to a registered person is identified, it must have sufficient connection to the supply of goods and services.[4]
    - The goods or services acquired must have been used for, or available for use in making taxable supplies (s 20(3C)).
    - Tax invoice requirements must be met (s 20(2)(a)). It is not sufficient that a taxpayer merely proves the existence of a supply. The taxpayer must also provide sufficient particulars of the supply.[5]
16. A registered person must estimate the extent to which the goods or services are used for making taxable supplies (s 20(3G)). The extent to which a deduction for input tax is allowed is calculated using the formula: full input tax deduction × percentage intended use (s 20(3H)).
17. Section 14 provides a list of supplies that are exempt from GST. This list includes the supply of financial services (i.e. interest and bank fees) (s 14(1)(a)) and residential rent (s 14(1)(c)).

1 Section 149A(2) of the Tax Administration Act 1994 (TAA). See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC), and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 Section 138P(1B) of the TAA.

3 *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028, and *Case X16* (2005) 22 NZTC 12,216.

4 *CIR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 at 13,193.

5 *Case 1/2012* (2012) 25 NZTC 1,013

18. TCO considered that the Taxpayer was not entitled to the input tax deductions claimed because the Taxpayer did not provide sufficient documentation or other evidence to show the expenses in dispute were related to goods and services that were used or available for use in making taxable supplies.
19. In relation to the apportionment of household expenses, in the absence of any documentation to support a higher apportionment, TCO accepted CCS's proposed apportionment. The Taxpayer had not discharged its burden of proof that CCS's calculation was wrong and by how much.
20. Further, the supply of financial services such as interest and bank fees and residential rent are exempt supplies under s 14. As no GST was charged on these expenses, no input tax deductions can be claimed in relation to the expenses.

Issue 2 | Take tuarua: COVID-19 Payments

21. The COVID-19 Support Payment was a government grant that was made available to businesses that experienced a decline in revenue because of COVID-19. Similarly, the COVID-19 Resurgence Support Payment was a government grant or subsidy that was given to businesses which experienced a 30% drop in revenue due to an increase in the COVID-19 alert level.
22. Section 5(6D) provides that where any payment in the nature of a grant or subsidy is made on behalf of the Crown to a person in relation to or in respect of that person's taxable activity, the payment is deemed to be consideration for a supply of goods and services made by the person in the course of their taxable activity.
23. There are 3 exclusions from the term "payment in the nature of a grant or subsidy" (s 5(6E)(b)). The exclusions cover social welfare benefits, payments made to a person for their personal use and benefit, and payments declared by an Order in Council not to be a taxable grant or subsidy.
24. The ordinary meaning of "grant" and case law[6] suggest a grant has the following characteristics:
    - The Crown or another public body pays it gratuitously (without obligation) out of public funds.
    - The payment is often made to public, charitable or private bodies so that third parties can benefit.
    - The focus is on the character or quality of what the payer pays and of the consideration they give, rather than what the payee receives in their hands.
    - The objective of the payment is to promote or encourage an industry or enterprise.
    - The words "in the nature of" extend the coverage of s 5(6D) so even if a payment is not technically a grant or subsidy, the subsection will apply if the payment is within the nature of a grant or subsidy.
25. TCO concluded that the COVID-19 Payments were grants under s 5(6D) because:
    - The COVID-19 Payments came within the ordinary meaning of "grant" and had the characteristics of a grant.
    - The payments were made by Inland Revenue, on behalf of the Crown, to support businesses suffering a loss of revenue from the effects of COVID-19.
    - The Taxpayer was registered for GST and carried on a taxable activity and the payments were made in relation to that taxable activity.
    - None of the exclusions in s 5(6E)(b) applied.
26. Therefore, the COVID-19 Payments were deemed to be consideration for a supply of goods and services and output tax was required to be returned on the payments.

Issue 3 | Take tuatoru: Omitted sale

27. A GST registered person must provide a return setting out the tax payable by them for a GST period (s 16 and s 23). The tax payable includes the output tax attributable to the period. "Output tax" is the GST charged, pursuant to s 8(1), on supplies made by the registered person.
28. TCO confirmed that there was an error in the Taxpayer's working papers and concluded that, given the omitted sale was attributable to the disputed period, the GST return should be amended to include the output tax on the omitted sale.

6 *Director-General of Social Welfare v De Morgan and another* (1996) 17 NZTC 12,636 (CA), *Kena Kena Properties Ltd v Attorney-General* (2002) 20 NZTC 17,433 (PC)

TECHNICAL DECISION SUMMARIES

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TDS 25/16: Charitable trust – transfer of assets

Decision date | Rā o te Whakatau: 24 February 2025

Issue date | Rā Tuku: 26 June 2025

Subjects | Kaupapa

Income tax: charitable trust; transfer of assets; deregistration tax; asset stripping by trustees

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007 (Act) unless otherwise stated.

Summary of facts | Whakarāpopoto o Meka

1. The Arrangement in this ruling involves a Charitable Trust that is a charity registered under the Charities Act 2005 (CA 2005) (Charities Register). It has derived exempt income under ss CW 41 and CW 42.[1]
2. The trustees of the Charitable Trust (Trustees) have been incorporated as a board under the Charitable Trusts Act 1957 (CTA 1957).
3. The Trustees propose to transfer all of the Charitable Trust's property (together with any related rights and obligations) (Trust Fund) to a new trust (New Trust) prior to its "end date". The end date is expected to be the day on which the Charitable Trust is removed from the Charities Register (End Date). The Charitable Trust would subsequently be wound up and its board of trustees dissolved under the CTA 1957.
4. The New Trust would be established for charitable purposes. The New Trust would hold and apply assets in furtherance of its charitable purposes in New Zealand. The New Trust does not intend to apply to be a registered charity at the outset but may do so in the future if it is considered to be in the best interest of the New Trust for advancing its charitable purposes.

Issues | Take

5. The main issues considered in this ruling were:
   - whether the Charitable Trust will have income under s HR 12(3) if it transfers all of the Trust Fund to the New Trust before the End Date;
   - whether s HD 15 applies to the Trustees as a result of their transferring the Trust Fund to the New Trust; and
   - whether s BG 1 applies to negate or vary the conclusions of the above issues.

Decisions | Whakatau

6. The Tax Counsel Office (TCO) concluded the following:

1 Sections CW 41 and CW 42 provide tax exemptions for income derived by a charity.

- No income will arise under s HR 12(3) to the Charitable Trust if the Trust Fund is transferred to the New Trust prior to the Charitable Trust's End Date.
- Section HD 15 does not apply to the Trustees in respect of the proposed transfer of the Trust Fund to the New Trust.
- Section BG 1 does not apply to negate or vary the above conclusions.
- The conclusions in this ruling are subject to conditions that had the following effect:
  - The trustees of the New Trust must ensure all funds will be applied in furtherance of the New Trust's charitable purposes and act in accordance with the New Trust's trust deed;
  - The Charitable Trust must, at all times, comply with its rules in the Charities Register for the purposes of the exemption under s CW 41 or s CW 42; and
  - If the exemption under s CW 41 or s CW 42 does not apply, then s HD 15 must continue to not apply. That is, it cannot be reasonably concluded that a purpose of the Arrangement was to effectively deplete the Trust Fund, so the Charitable Trust is unable to meet its existing or future tax liability. In addition, the Trustees, on making reasonable enquiries, could not have anticipated at the time of the Arrangement that such a liability would need to be met.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Income under s HR 12

7. Section HR 12 applies to a deregistered charity that derived exempt income under s CW 41 or s CW 42 when they were a registered charity. Where s HR 12 applies, the deregistered charity is deemed to have derived an amount of income calculated under s HR 12(3).
8. Relevantly, s HR 12(2)(c) provides that this provision does not apply to a deregistered charity if it would have less than $10,000 of income under s HR 12 on its "end date". This provision is a safe harbour from the tax rules for deregistered charities.
9. The amount of income referred to in s HR 12(2)(c) is determined under s HR 12(3). Under s HR 12(3), a deregistered charity is deemed to have derived an amount of income that is equal to the market value of the net assets held by the charity on its "end date", ignoring the assets described in s HR 12(3)(a)-(e). Notably, assets that are transferred to a tax charity for charitable purposes within 1 year of the end date are ignored (s HR 12(3)(a)). However, for the purposes of this issue, s HR 12(3)(a)-(e) do not apply.
10. "End date" means the "day of final decision" (s HR 12(7)), which is relevantly defined as the day the relevant person is removed from the register of charitable entities under the CA 2005 (s YA 1). The Charitable Trust's End Date corresponds with the meaning of "end date".
11. Given the Charitable Trust proposes to transfer its Trust Fund to the New Trust before its End Date, the Charitable Trust will have no net assets on that date. It follows that the Charitable Trust will have $10,000 or less income (it will have nil income) on the end date.
12. Therefore, TCO concluded that the safe harbour in s HR 12(2)(c) applies to the Charitable Trust, and it will have no income under s HR 12.
13. This conclusion is subject to the conditions that the trustees of the New Trust will ensure all funds be applied in furtherance of the New Trust's charitable purposes and act in accordance with the New Trust's trust deed. Further, the Charitable Trust must, at all times, comply with its rules in the Charities Register for the purposes of the exemption under s CW 41 or s CW 42 and continue to maintain its registration as a charitable entity under the CA 2005 prior to the transfer of the Trust Fund.

Issue 2 | Take tuarua: Liability under s HD 15

14. This issue considered whether s HD 15 applies to the Trustees as a consequence of the Charitable Trust transferring its Trust Fund to the New Trust.
15. Section HD 15 applies when a company enters into an arrangement that has the effect of the company not being able to meet an existing or future income tax liability (Tax Obligations). For s HD 15 to apply, it must be reasonably possible to conclude that a purpose of the arrangement is to have the effect of the company not being able to meet the Tax Obligations, and if a director had made reasonable inquiries, they could have anticipated at the time of the arrangement that the income tax liability would, or would likely, be required to be met.

16. Where s HD 15 applies, all persons who are directors of the company at the time of the arrangement are treated as agents of the company for the Tax Obligation and may be held jointly and severally liable for it.
17. A "company" means a body corporate or other entity that has a separate legal existence from its members, whether incorporated or created in New Zealand or elsewhere (s YA 1). For the purposes of s HD 15, a company includes a company that is acting in the capacity of trustee (s HD 15(9)).
18. A board incorporated under the CTA 1957 is treated as having the legal capacity of a body corporate and can do and suffer such acts and things for which a separate legal existence is required.[2] Therefore, the Charitable Trust's board of trustees, being incorporated under the CTA 1957, satisfies the definition of company for the purposes of s HD 15.
19. For an entity that is treated as a company under the Act, "director" means a person who acts in the same or similar way as a director would if the entity were a company incorporated in New Zealand under the Companies Act 1993 (s HD 15(9)(b)).
20. Under the Charitable Trust's trust deed, the Trustees have the power to act or omit to act for the benefit of the Trust Fund and the furtherance of the Charitable Trust's charitable purposes in New Zealand. The Trustees also have the power, authority and discretion in the management, administration, and performance of the Charitable Trust. As such, TCO considered the Trustees act in the same or similar way as a director would and were considered "directors" for the purposes of s HD 15.
21. The Tax Obligations contemplated by s HD 15 is an existing or future income tax liability. As the Charitable Trust is a registered charity and a "tax charity" as defined in s CW 41(5), the Charitable Trust's income up to now has been exempt under ss CW 41 and CW 42. As such, there is no existing income tax liability. Similarly, there will be no future income tax liability while the Charitable Trust remains a registered charity.
22. In addition, given the disposal of the Trust Fund to the New Trust prior to the Charitable Trust's End Date will not give rise to any income for the Charitable Trust under s HR 12(3) (as TCO concluded in Issue 1), it follows that the Arrangement will not give rise to a future income tax liability.
23. Therefore, TCO concluded that s HD 15 would not apply to the Trustees as a consequence of the Arrangement, so long as the Charitable Trust continues to be exempt under s CW 41 or s CW 42 and remains a registered charity prior to the transfer of the Trust Fund.
24. This conclusion is subject to the condition that should the Charitable Trust be found to not qualify for the exemption, s HD 15 must continue to not apply. That is, it cannot be reasonably concluded that a purpose of the Arrangement was to effectively deplete the Trust Fund, so the Charitable Trust is unable to meet its existing or future tax liability. In addition, the Trustees, upon making reasonable enquiries, could not have anticipated at the time of the Arrangement that the liability would, or would likely, be required to be met.

Issue 3 | Take tuatoru: Section BG 1

25. Section BG 1(1) provides that a "tax avoidance arrangement" is void as against the Commissioner. Section GA 1 enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.
26. The Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289 considered it desirable to settle the approach to applying s BG 1. This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.
27. The Tax Counsel Office's approach in making this decision is consistent with Interpretation Statement: IS 23/01 Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01). IS 23/01 will not be replicated in this TDS but in summary the steps are as follows:
    - Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.
    - Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
        - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.
        - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.

2 Section 13 of the CTA 1957.

    - Considering the implications of the preceding steps and answering the ultimate question under the Parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
- If the arrangement has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the Parliamentary contemplation test.

28. Taking into account all of the relevant facts and circumstances (noting that as this is a summary it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) TCO concluded as follows.

The Arrangement

29. The Arrangement for s BG 1 purposes includes the following steps and transactions:
    - The establishment of the New Trust on terms set out in the New Trust's trust deed executed by its initial trustees.
    - The trustees of the New Trust will be incorporated as a board under the CTA 1957.
    - The New Trust will not apply for registration as a charitable entity under the CA 2005 at the outset.
    - The transfer of the Trust Fund from the Charitable Trust to the New Trust with the necessary approvals and consents required for such transfer.
    - Following the transfer of the Trust Fund, the Charitable Trust will be wound up (there being no remaining property or assets held on the terms of the trust) and the board of trustees of the Charitable Trust dissolved under the CTA 1957.
30. According to the Applicants, the commercial or private purposes of the Arrangement are:
    - To transfer the Trust Fund to the New Trust which would be bound under the terms of the trust deed of the New Trust to hold and apply the assets exclusively in furtherance of the charitable purpose of the New Trust in accordance with New Zealand law.
    - To mitigate the significant time and resources in meeting the Charitable Trust's obligations under the CA 2005.
    - To assist the Trustees being able to perform their roles and duties effectively in determining how best to govern and operate the Trust Fund in furtherance of the Charitable Trust's charitable purposes, taking into account the context and objectives of the trust, including implementing the Charitable Trust's investment policy and decisions.
31. The Arrangement will give rise to the following tax effects:
    - No income will arise under s HR 12(3) as a consequence of the deregistration of the Charitable Trust from the Charities Register to the extent that the Trust Fund is transferred to the New Trust prior to the Charitable Trust's End Date.
    - Section HD 15 does not apply to the Trustees in respect of the proposed transfer of the Trust Fund to the New Trust and the subsequent winding up and dissolution of the board of trustees of the Charitable Trust.
32. TCO considered the second tax effect did not give rise to s BG 1 concerns because s HD 15 cannot apply where the Charitable Trust will only derive tax exempt income. Further, the Charitable Trust will have no income under s HR 12 on its End Date. Consequently, no income tax liability will arise for the Charitable Trust on or after deregistration, and accordingly, the proposed Arrangement would not have any effect of causing the Charitable Trust to avoid the payment of a tax liability.
33. The remainder of the s BG 1 analysis focused on the first tax effect – i.e. no income will arise under s HR 12(3) as a result of the Arrangement.

Parliamentary contemplation

34. TCO considered the purpose of s HR 12 as follows:
    - To ensure that only bona fide charities should be eligible for tax concessions under ss CW 41 and CW 42.
    - A charity will not be a bona fide one where it takes its charitable assets out of the charitable sector. This could be done by retaining the charitable assets after deregistration or by disposing of the assets after deregistration to a recipient that is not regulated under the CA 2005.
    - Deregistered charities in those circumstances should have to account for the tax concessions they previously enjoyed.
    - The commentary on the amendments made to s HR 12(3)(a) in 2024[3] made it clear that Parliament's purpose is to

3 Commentary on the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (May 2023).

incentivise charitable assets to remain in the charitable sector subject to regulatory oversight under the CA 2005. If a charity is subject to this regulatory oversight, the funds and their accumulated tax benefits will be used for charitable purposes that benefit New Zealanders. This suggests that Parliament was not as concerned about transfers of charitable assets by a charity (in accordance with their rules) while it is still registered and subject to regulatory oversight under the CA 2005 given the regulatory safeguard.

Commercial and economic reality

35. TCO then considered the factors for determining the commercial and economic reality of the Arrangement and concluded that the Arrangement makes use of the relevant provisions in a manner that is consistent with Parliament's purpose for those provisions. In particular:

- There is a good commercial reason for restricting the Arrangement to an asset transfer before the Charitable Trust's End Date. The Trustees will deal with the Trust Fund and act to further the Charitable Trust's charitable purposes in accordance with the terms of the trust. The Trustees will be acting consistently with its statutory duty by transferring the Trust Fund to the New Trust with a compatible charitable purpose in a way that mitigates the depletion of the Trust Fund as much as possible.
- The non-application of s HR 12 is a tax advantage that Parliament contemplates can be used by an existing charity to transfer all of its assets to a new charity before its end date.
- The transferor of assets, being a charity, to a new charity before the end date is still subject to the CA 2005.

Conclusion

36. Accordingly, TCO consider that the way in which the Charitable Trust intends to transfer the Trust Fund to the New Trust will be done in a way that is contemplated by Parliament. The Arrangement is commercially explicable, is not artificial or contrived in a way that is inconsistent with Parliamentary contemplation, and there is no mismatch between the form of the Arrangement and its commercial and economic reality.
37. Therefore, TCO concluded that the Arrangement does not have a tax avoidance purpose or effect, and s BG 1 does not apply to the Arrangement.

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Tax Counsel Office

The Tax Counsel Office (TCO) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The TCO also contributes to the "Questions we've been asked" and "Your opportunity to comment" sections where taxpayers and their agents can comment on proposed statements and rulings.

Legal Services

Legal Services manages all disputed tax litigation and associated challenges to Inland Revenue's investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

Technical Standards

Technical Standards sits within Legal Services and contributes the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters. Technical Standards also contributes to the "Your opportunity to comment" section.

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Policy advises the Government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as Orders in Council.