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TAX INFORMATION Bulletin

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YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents. Because we are keen to produce items that accurately and fairly reflect taxation legislation and are useful in practical situations, your input into the process, as a user of that legislation, is highly valued.

You can find a list of the items we are currently inviting submissions on as well as a list of expired items at **taxtechnical.ird.govt.nz** (search keywords: public consultation).

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Ref	Draft type	Title	Comment deadline
PUB00470	Interpretation statement	Income tax – payments by employers on the death of an employee to executors and family	31 January 2026
PUB00477	Interpretation statement	GST treatment of short-stay accommodation	16 February 2026
PUB00516	Interpretation statement	GST - Court-awarded costs and disbursements	20 February 2026
PUB00522	Interpretation statement	GST financial services – Services supplied in relation to retirement schemes	27 February 2026

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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.

SL 2025/260: Income Tax (Tax Credit) Order 2025

Order

Section MF 7 of the Income Tax Act 2007

The Income Tax (Tax Credit) Order 2025 was made on 17 November 2025. The Order sets rates of tax credit payments and thresholds (as set out in the table below) for the 2026–27 tax year and later tax years.

Background

Under the Income Tax Act 2007, the Family Tax Credit and Best Start Tax Credit payment rates must be adjusted for inflation once the cumulative value of quarterly increases in the consumers price index (CPI) reaches 5%. These inflation-indexed increases ensure these two tax credits maintain their real value over time. The cumulative CPI was 5.27% from 1 October 2023 to 30 September 2025, which will require a higher rate of payment from 1 April 2026. The Government has agreed to increase the threshold amount of the Minimum Family Tax Credit to help maintain its policy objective of encouraging sole parents with dependent children to move off a main benefit and into work. The threshold amount is usually adjusted annually. This can be done by Order in Council under the Income Tax Act 2007.

Key features

The Family Tax Credit and Best Start Tax Credit rates, and the Minimum Family Tax Credit threshold have been increased under section MF 7 of the Income Tax Act 2007. The current and new tax credit rates and thresholds per year are provided in the table below:

Tax Credit	Current amount $	New amount $
Family Tax Credit rate		
Eldest child	7,524	7,921
Subsequent children	6,130	6,454
Best Start Tax Credit rate	3,838	4,041
Minimum Family Tax Credit threshold	35,316	36,604

The Family Tax Credit amounts for the first child and subsequent children in section MD 3(4)(a) and (b) have been increased for inflation in accordance with section MF 7(1)(a). The Best Start Tax Credit amount in section MG 2(2)(a) has also been adjusted for inflation in accordance with section MF 7(1)(db).

The Minimum Family Tax Credit threshold amount in section ME 1(3)(a) has been increased to help maintain its policy objective, in accordance with section MF 7(1)(d). The previous Income Tax (Tax Credit) Order 2023 (SL 2023/288) is revoked.

Effective date

The new prescribed tax credit amounts and thresholds will apply for the 2026–27 tax year and later tax years.

Further information

The new Order in Council can be found at:

https://www.legislation.govt.nz/regulation/public/2025/0260/latest/LMS1541895.html?src=qs

SL 2025/271: Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 3) 2025

Section RA 21(3) and (4) of the Income Tax Act 2007

The Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 3) 2025 was made on 24 November 2025. The Order in Council decreases the fringe benefit tax (FBT) prescribed rate of interest for low-interest employment-related loans from 6.67% to 6.29%.

Background

The FBT rules tax non-cash benefits provided to employees. Included in the definition of "fringe benefit" is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable.

A prescribed rate set by regulations is used as a proxy for the market rate of interest to save employers the compliance costs associated with determining the market rate relevant to loans they have provided to their employees.

Section RA 21(3) of the Income Tax Act 2007 permits the making of regulations by Order in Council to set a prescribed rate of interest for calculating FBT on low-interest loans. Once a rate is set, it remains the prescribed rate until changed by a subsequent Order in Council.

By administrative convention, the FBT prescribed rate of interest is based on the "floating first mortgage new customer housing rate" series published by the Reserve Bank (RBNZ) each month. It is updated when there has been an increase or decrease in the RBNZ rate of 20 or more basis points since the FBT rate was last set. The RBNZ rate for September 2025 was 6.29%. This is down from 6.67%, the rate for April 2025, when the FBT prescribed rate of interest was last set. The FBT prescribed rate of interest is being lowered accordingly.

Key features

The FBT prescribed rate of interest for low-interest employment-related loans has been decreased from 6.67% to 6.29%, and will come into force on 25 December 2025.

Effective date

The new prescribed rate of 6.29% applies for the quarter beginning 1 October 2025 and subsequent quarters.

Further information

The new Order in Council can be found at:

https://www.legislation.govt.nz/regulation/public/2025/0271/latest/LMS1544107.html

SL2025/310: Taxation (Use of Money Interest Rates) Amendment Regulations (No 2) 2025

Order

Section120H of the Tax Administration Act 1994

The Taxation (Use of Money Interest Rates) Amendment Regulations (No 2) 2025 was made on 8 December 2025. The Order in Council changes the use of money interest (UOMI) rates on underpayments and overpayments of taxes and duties in line with market interest rates. The new UOMI underpayment rate is 8.97% (previously 9.89%) per annum. The new UOMI overpayment rate is 2.25% (previously 3.27%) per annum.

Background

The UOMI underpayment rate is charged to taxpayers on underpayments of tax to Inland Revenue, while the UOMI overpayment rate is paid to taxpayers on money paid to Inland Revenue exceeding their tax liability.

Section 120H(1)(b) of the Tax Administration Act 1994 permits the making of regulations by Order in Council to set the UOMI underpayment and overpayment rates. The rates are set in the Taxation (Use of Money Interest Rates) Regulations 1998 and can be updated by Order in Council.

The UOMI underpayment rate is based on the "floating first mortgage new customer housing rate" series published by the Reserve Bank of New Zealand (RBNZ) each month, while the UOMI overpayment rate is based on the RBNZ "90-day bank bill rate" series published each month. In particular, the Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 provide that the UOMI underpayment rate is set at the RBNZ floating first mortgage new customer housing rate plus 250 basis points. The UOMI overpayment rate is set at the higher of 0% and the RBNZ 90day bank bill rate less 100 basis points.

Administrative principles provide that the two UOMI rates should both be adjusted if either the RBNZ 90-day bank bill rate or the floating first mortgage new customer housing rate has moved by 100 basis points or more since the last adjustment, or if one of these indexes has moved by 20 basis points or more and the UOMI rates have not been adjusted in the last 12 months. The UOMI rates are adjusted as required to ensure they are in line with market interest rates.

Note that the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Matters) Bill (the Bill) proposes to repeal the current Order in Council mechanism and enable the Commissioner of Inland Revenue to vary UOMI rates by determination. If the Bill is enacted, future updates would be made by determination. The Bill proposes to incorporate the formulae in the Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 into the Tax Administration Act 1994.

Effective date

The new UOMI underpayment and overpayment rates apply on and after 16 January 2026.

Further information

The new Order in Council can be found at:

https://www.legislation.govt.nz/regulation/public/2025/0310/latest/LMS1553333.html?src=qs

SL 2025/259: Tax Administration (Extension of Application Deadline for Research and Development Tax Credits) Order 2025

Order

Section 226 of the Tax Administration Act 1994

This Order in Council extends the Research and Development Tax Incentive (RDTI) general approval due date for businesses with a September balance date for the 2024–25 income year. The extension changed the due date from the last day of the third month after the end of the income year (31 December 2025) to 15 January following the end of the income year (15 January 2026).

Background

The RDTI general approval due date for applicants with a September balance date fell on 31 December, during Inland Revenue's shutdown period. This meant that businesses were unsupported at their due date. The lack of support increased the risk of error. The increased risk of error was a concern because, in most cases, RDTI filings cannot be accepted or amended after the due date.

Key features

The Order extends the due date for RDTI general approval for businesses with a September balance date for the 2024–25 income year to 15 January 2026.

Effective date

The new rate was set on 17 November 2025 and came into force on 18 November 2025.

Further information

The new Order in Council can be found at:

https://www.legislation.govt.nz/regulation/public/2025/0259/8.0/LMS1541968.html

INTERPRETATION STATEMENT

This section of the *TIB* contains interpretation statements issued by the Commissioner of Inland Revenue.

These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of the assessment we consider that the earlier advice is not consistent with the law.

Some interpretation statements may be accompanied by a fact sheet summarising and explaining the main points. Any fact sheet should be read alongside its corresponding interpretation statement to completely understand the guidance. Fact sheets are not binding on the Commissioner. Check **taxtechnical.ird.govt.nz/publications** for any fact sheets accompanying an interpretation statement.

IS 25/26: The Commissioner's duty of care and management – section 6A of the Tax Administration Act 1994

Issued | Tukuna: 23 December 2025

This Interpretation Statement sets out the Commissioner's view on his "care and management" duty in s 6A of the Tax Administration Act 1994. In doing so, it clarifies the relationship between s 6A and the other provisions of the Inland Revenue Acts, including s 6 of the Tax Administration Act 1994, which requires the Commissioner to use best endeavours to protect the integrity of the tax system. All legislative references are to the Tax Administration Act 1994 (the TAA) unless otherwise stated.

REPLACES | WHAKAKAPIA

- **IS 10/07**: "Care and management of the taxes covered by the Inland Revenue Acts" – Section 6A(2) and (3) of the Tax Administration Act 1994

Summary | Whakarāpopoto

1. Section 6A(1) provides that one of the Commissioner's core responsibilities is "the care and management of the taxes covered by the Inland Revenue Acts". This involves two interrelated responsibilities.
2. First, the Commissioner is charged with the care of the taxes. This means the Commissioner is responsible for promoting the integrity and effective functioning of the tax system. To discharge this responsibility, the Commissioner must seek to foster the tax system's capacity to function effectively in light of economic, commercial, technological and other changes.
3. Second, the Commissioner is charged with the management of the taxes. This means that he is responsible for making managerial decisions in the interests of bringing about the efficient and effective administration of the tax system. The management responsibility also recognises that the Commissioner makes decisions as to the allocation of his limited resources. This involves the Commissioner exercising judgment as to relative resources he allocates, over a period of time, across the various parts of Inland Revenue, and with respect to dealing with particular taxpayers. The management responsibility also recognises that the Commissioner often needs to exercise judgment in carrying out his functions.
4. The Commissioner's care and management duty extends to things for which he has responsibility under the Inland Revenue Acts that are not ordinarily considered "tax" (for example, child support, student loans and Working for Families tax credits), because "tax" is broadly defined for the purposes of ss 6 and 6A.

5. Section 6A was enacted, along with s 6, to provide the framework within which the Commissioner administers the tax system. Section 6 requires that the Commissioner, at all times, uses best endeavours to protect the integrity of the tax system. Section 6 imposes an "overarching duty",[1] and needs to be read alongside the duties in s 6A. In addition, s 6 has been described as "fettering"[2] the s 6A duty to collect the highest net revenue practicable within the law. The two provisions together are considered a "fundamental plank"[3] of the tax system.

6. The Commissioner must take s 6 into account when exercising his care and management discretion under s 6A. This means that when deciding how to act under s 6A, the Commissioner must consider the extent to which potential courses of action might undermine, or support, the integrity of the tax system as defined in s 6.

7. Section 6A(2) applies "[i]n collecting the taxes committed to the Commissioner's charge", which includes all aspects of the way in which the Commissioner carries out his functions in administering the tax system.

8. Sections 6A(1) and (2) together make up and inform the scope of the Commissioner's duty of care and management. Section 6A encompasses two aspects. First, a duty – the responsibility for the care and management of taxes, which entails an express obligation to collect over time the highest net revenue that is practicable within the law. And secondly, a power – a discretion as to how to act in fulfilling that duty.

9. Section 6A(2) elaborates on the Commissioner's core function of the care and management of the taxes as set out in subs (1). In considering potential courses of action in any aspect of his administration of the tax system that may affect the collection of revenue over time, the Commissioner must have regard to the considerations set out in s 6A(2).

10. Section 6A(2) makes it clear the Commissioner is not required to collect all taxes owing. While the Commissioner has a duty to collect over time the highest net revenue that is practicable, in fulfilling this duty he must be mindful of not only resource considerations and constraints and taxpayer compliance costs, but also the importance of promoting compliance, especially voluntary compliance.

11. Care and management decisions will almost always arise in the context of how to best apply the limited resources the Commissioner has available to him, where there are different courses of action the Commissioner could take, and he must determine which course of action will maximise net revenue over time. Where this is the case, s 6A(2) requires the Commissioner to evaluate the available courses of action by considering their likely effect on the amount of net revenue collected over time, and by having regard to the three factors in s 6A(2)(a), (b) and (c), namely:

    - the resources available to the Commissioner; and
    - the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
    - the compliance costs incurred by persons.

    Section 6A(2) does not prescribe the weight to be given to each factor. The weight to be given to each factor depends on the circumstances of the particular case.

12. The practical effect of the words "over time" is that the Commissioner may adopt courses of action that have the effect of forgoing the collection of the highest net revenue:

    - in the short term, if he considers this will enable the collection of more net revenue in the longer term; and
    - from particular taxpayers, if he considers this will enable more net revenue to be collected from all taxpayers.

13. The words "despite anything in the Inland Revenue Acts" in s 6A(2) mean the Commissioner may carry out the course of action that he considers will "collect over time the highest net revenue that is practicable" even if it results in less tax being collected than is imposed, or required to be collected, by another provision. However, this must be "within the law". The Commissioner cannot exceed his powers in order to maximise revenue.

14. Section 6A(2) is not overridden by a later enacted provision unless Parliament specifically intended the later provision to do so.

1 See [52].
2 See [60].
3 See [61].

15. Some of the important implications of these conclusions are that s 6A authorises the Commissioner to:

    - make decisions about the allocation of resources; and
    - enter into settlements and payment agreements.

    It does not authorise the Commissioner to:

    - disregard the requirements for the lawful exercise of powers and discretions conferred by other provisions;
    - alter taxpayers' obligations and entitlements – aside from in the context of entering into settlements;
    - issue extra-statutory concessions;
    - administratively remedy legislative errors and other deficiencies; or
    - interpret provisions other than in accordance with statutory interpretation principles.

Introduction | Whakataki

16. A reality of modern tax administration is that the Commissioner must operate the tax system with limited resources. This means the Commissioner cannot always collect every last dollar of tax owing in every case. As a result, the Commissioner must decide how to best use his resources to maximise the taxes collected and to foster the integrity and effective functioning of the tax system.

17. The Commissioner's resource allocation and management decisions can affect the integrity of the tax system, including taxpayer perceptions of the integrity of the tax system. In particular, what one taxpayer may consider as flexibility that achieves a practical and sensible outcome, others may consider as inconsistency or favouritism.

18. Before s 6A was enacted, the Inland Revenue Acts arguably required the Commissioner to collect all taxes owing, regardless of the costs and resources involved. According to this view, the Commissioner could decide not to collect taxes owing only if a specific statutory discretion or power authorised him to do so. The possibility that the Commissioner was required to collect all taxes owing (subject only to the specific relief and remission provisions) was problematic, because it:

    - was an unrealistic obligation given the Commissioner's limited resources, and
    - sat uncomfortably with the appropriation and financial accountability requirements under the Public Finance Act 1989 and State Sector Act 1988.[4]

19. As a result, s 6A was enacted to make clear that the Commissioner is not required to collect all taxes owing. Section 6A(1) provides that the Commissioner is "charged with the care and management of the taxes covered by the Inland Revenue Acts". Section 6A(2) provides that the Commissioner has the duty to "collect over time the highest net revenue that is practicable within the law". Section 6A is an express legislative recognition that the Commissioner exercises managerial discretion as to the allocation and management of his resources.

20. Section 6 was enacted at the same time as s 6A. Section 6 requires the Commissioner, at all times, to use best endeavours to protect the integrity of the tax system. Sections 6 and 6A together provide guidance on the exercise of the managerial discretion and ensure the integrity of the tax system is protected.

21. This Interpretation Statement sets out the Commissioner's view on his "care and management" responsibility in s 6A and clarifies the relationship between s 6A and the other provisions of the Inland Revenue Acts, including s 6. Examples from [145] illustrate the principles set out in this statement.

4 The State Sector Act 1988 has since been repealed and replaced by the Public Service Act 2020.

Analysis | Tātari

Legislation

22. Sections 6 and 6A provide:

> **6 Responsibility of Ministers and officials to protect integrity of tax system**
>
> *Best endeavours to protect integrity of tax system*
>
> (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.
>
> *Meaning of integrity of tax system*
>
> (2) Without limiting its meaning, the **integrity of the tax system** includes—
>
> (a) the public perception of that integrity; and
>
> (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
>
> (c) the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
>
> (d) the responsibilities of persons to comply with the law; and
>
> (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
>
> (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.
>
> **6A Commissioner's duty of care and management**
>
> *Care and management*
>
> (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.
>
> *Highest net revenue practicable within the law*
>
> (2) In collecting the taxes committed to the Commissioner's charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
>
> (a) the resources available to the Commissioner; and
>
> (b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
>
> (c) the compliance costs incurred by persons.

Legislative history

23. The legislative history of ss 6 and 6A is outlined in the Appendix to this Interpretation Statement. Because of the relevance of the legislative history to the discussion about the scope of the Commissioner's care and management responsibility, key aspects of the history are summarised as follows:

- Two reports led to the enactment of ss 6 and 6A: the Valabh report[5] and the Organisational Review Committee (ORC) report.[6] The courts have treated those reports as relevant legislative history when considering ss 6 and 6A.[7]
- The Valabh report noted that in its "extreme form" the law obliged the Commissioner to assess and recover all taxes which are due. The Valabh Committee considered this was an unrealistic obligation that did not match Inland Revenue's practice and sat uncomfortably with the appropriation and financial accountability requirements of the (then) State Sector Act 1988 and Public Finance Act 1989.
- The Valabh Committee recommended there be legislative recognition of the Commissioner having managerial discretion to determine priorities and enter into sensible settlements.
- In light of the Valabh Committee's recommendations, the Organisational Review Committee (ORC) was set up to review and make recommendations about the tax administration structure.

5 First Report of the Working Party on the Re-organisation of the Income Tax Act 1976 (Inland Revenue, July 1993) (referred to as the Valabh report).

6 Organisational Review of the Inland Revenue Department ((report to the Minister of Revenue (and on tax policy, also to the Minister of Finance), Organisational Review Committee, April 1994) (referred to as the ORC report).

7 *Westpac Banking Corp v CIR; ANZ National Bank Ltd v CIR* [2008] NZSC 24 (SC); *Auckland Gas Co Ltd v CIR* (1999) 19 NZTC 15,027 (CA); *Fairbrother v CIR* (2000) 19 NZTC 15,548 (HC); *Accent Management Ltd v CIR (No 2)* (2007) 23 NZTC 21,366 (CA).

- The ORC agreed with the Valabh Committee's recommendation that there should be legislative recognition of the Commissioner's managerial discretion.
- The ORC considered that the Commissioner's responsibility for the management of limited resources in the efficient and effective collection of taxes was encapsulated by the term "care and management", which it defined as meaning "managerial discretion as to the use of independent statutory powers in a cost-effective manner".[8]
- The ORC also considered that the protection of the integrity of the tax system was important, due to both the constitutional basis on which taxes are collected and the fundamental strategy of voluntary compliance.
- The ORC proposed wording for legislative provisions that would recognise the Commissioner's managerial discretion and, at the same time, ensure the discretion was subjected to safeguards. What are now ss 6 and 6A are almost identical to what the ORC proposed.
- Both committee reports referred to the United Kingdom "care and management" provision, which was seen as a model for a care and management discretion in New Zealand. It seems clear the proposed discretion was intended to be similar to the United Kingdom discretion. The United Kingdom case law is therefore relevant to understanding the scope of the New Zealand provision.

"Care and management"

Two interrelated responsibilities

24. Section 6A(1) of the TAA provides:

> *Care and management*
>
> (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

25. Section 6A(1) provides that one of the Commissioner's core responsibilities is "the care and management of the taxes covered by the Inland Revenue Acts". This Interpretation Statement looks at the meaning and scope of the Commissioner's care and management responsibility.

26. The phrase "care and management" is not defined in the TAA, and the courts have not given it detailed consideration. The Commissioner considers that the phrase means he has two interrelated responsibilities.

27. The Commissioner is charged with the care of the taxes. This means he is responsible for promoting the integrity and effective functioning of the tax system. To discharge this responsibility, the Commissioner must seek to foster the tax system's capacity to function effectively in light of economic, commercial, technological and other changes. In the context of the current tax system, the promotion of the voluntary compliance system by the Commissioner is consistent with his "care" responsibility. The Commissioner's duty under s 6A in relation to the care of the taxes is consistent with, and sits alongside, his duty under s 6 (discussed from [47]) to use best endeavours to protect the integrity of the tax system.

28. The Commissioner is also charged with the management of the taxes. This means he is responsible for making managerial decisions in the interests of bringing about the efficient and effective administration of the tax system. The management responsibility also recognises that the Commissioner often needs to exercise judgment about how he carries out his functions and deals with particular taxpayers. The need to exercise judgment arises, for instance, where the Inland Revenue Acts provide the Commissioner with alternative courses of action. For example:

    - It is left to the Commissioner to design the audit strategy whereby the taxpayers that will be audited are selected.
    - The Inland Revenue Acts provide the Commissioner with information-gathering powers and specify the requirements for the lawful exercise of these powers. The Commissioner exercises judgment as to when he will exercise these powers.
    - The Inland Revenue Acts may permit the Commissioner to enter into an instalment arrangement, or to institute enforcement proceedings, in order to recover outstanding tax from a particular taxpayer.

    The Commissioner exercises judgment as to which of the alternative courses of action he will adopt.

8 ORC report at 81.

29. The "management" responsibility also recognises that the Commissioner makes decisions about the allocation and management of his resources. The Commissioner has limited resources within which to carry out his functions, so there will be competing demands on those resources. The Commissioner must reconcile those competing demands. This involves him exercising judgment about the relative resources he allocates, over a period of time, across the various parts of Inland Revenue and with respect to dealing with particular taxpayers.

30. This analysis of the care and management responsibility is consistent with the House of Lords' decision in *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 All ER 93 (known as *Fleet Street Casuals*) and the legislative history of s 6A(1).

31. In *Fleet Street Casuals*, the House of Lords held that the United Kingdom care and management provision conferred on the Inland Revenue Commissioners managerial discretion as to the "best means" of collecting the taxes (see the quote at [A15]).

32. Similarly, Lord Roskill stated (at 121) that the Commissioners were entitled to exhibit "administrative common sense" and to make "sensible arrangement[s] in the overall performance of their statutory duties in connection with taxes management". Finally, Lord Scarman stated that the legislation placed income tax under the Commissioners' care and management and, for that purpose, conferred on them "very considerable discretion in the exercise of their powers", and that (at 111):

> In the daily discharge of their duties inspectors are constantly required to balance the duty to collect "every part" of tax due against the duty of good management. This conflict of duties can be resolved only by good managerial decisions, some of which would inevitably mean that not all the tax known to be due will be collected.

33. In light of the *Fleet Street Casuals* case, the Organisational Review Committee defined the phrase "care and management" for the purposes of its report as:[9]

> Managerial discretion as to the use of independent statutory powers in a cost-effective manner.

34. The reference in this definition to the use of independent statutory powers in a "cost effective manner" reflects the main objective intended to be achieved by enacting s 6A(1). The Organisational Review Committee considered that enacting a care and management provision would remove:[10]

> some doubt … as to the extent to which the present wording of section 4 of the Inland Revenue Department Act, charging the Commissioner with "administration" of the Inland Revenue Department Act implies that care and management of limited resources overrides the more specific tasks and duties of the Commissioner defined in the Inland Revenue Acts.

35. The Committee considered that the phrase "care and management" explicitly recognised the Commissioner's "management of limited resources in the efficient and effective collection of taxes" and his "administrative discretion in the application of finite resources to the collection of taxes".[11] The ORC considered that a "care and management" provision would legislatively recognise the Commissioner's need to make decisions concerning the discharge of his functions and how he would deal with particular taxpayers:[12]

> Consistent with good management practice, care and management of limited resources should be applied by the [Commissioner] across the full range of functions of tax administration, including functions which are subject to the convention of managerial independence and the statutory independence of the Commissioner in administering the Revenue Acts.

9 ORC report, Glossary and Commonly Used Abbreviations, page 81

10 ORC report, Appendix D at [36].

11 ORC report at 9.4.2 and 9.5.1, and Appendix D at [35] and [37].

12 ORC report, Appendix D at [36].

36. The Commissioner's care and management duty extends to things for which the Commissioner has responsibility under the Inland Revenue Acts beyond what is ordinarily considered "tax". This is because of the broad definition of "tax" in the TAA, which for the purposes of ss 6 and 6A specifically includes revenue collected under, entitlements arising from, or amounts paid or payable under, the Inland Revenue Acts. The Inland Revenue Acts include the KiwiSaver Act 2006, Child Support Act 1991 and Student Loan Scheme Acts of 1992 and 2011. Other products covered by the Income Tax Act 2007 or other Inland Revenue Acts would also be within the broad definition of "tax" for these purposes such as Working for Families tax credits (including BestStart).

Relationship between sections 6A(1) and (2)

37. Until now, the focus has been on the meaning of the words "care and management" in s 6A(1). The next issue is the relationship between ss 6A(1) and (2).

38. Section 6A provides:

> **6A Commissioner's duty of care and management**
>
> *Care and management*
>
> (1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.
>
> *Highest net revenue practicable within the law*
>
> (2) In collecting the taxes committed to the Commissioner's charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
>
> (a) The resources available to the Commissioner; and
>
> (b) The importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
>
> (c) The compliance costs incurred by persons.

39. Section 6A makes up and informs the scope of the Commissioner's care and management duty. Section 6A encompasses two aspects. First, a duty – the responsibility for the care and management of taxes, which entails an explicit obligation to collect over time the highest net revenue practicable within the law. And second, a power – a discretion as to how to act in fulfilling that duty.

40. Section 6A(2) is a subset of the Commissioner's care and management duty, and as the High Court noted in *CIR v Ben Nevis Forestry Ventures Ltd* (2014) 26 NZTC 21-082, elaborates on the Commissioner's core function of the care and management of the taxes as set out in subs (1). In considering potential courses of action in any aspect of his administration of the tax system that may affect the collection of revenue over time, the Commissioner must have regard to the considerations set out in s 6A(2). This position is supported by the legislative history to s 6A(1) and (2). These provisions were enacted together (along with s 6) as a legislative package to provide the framework within which the Commissioner administers the tax system.

41. Section 6A(2) applies "[i]n collecting the taxes committed to the Commissioner's charge". As discussed further from [85], this includes all aspects of the way in which the Commissioner carries out his functions in administering the tax system.

42. The Commissioner has a duty to collect over time the highest net revenue that is practicable. However, in fulfilling this duty, he must be mindful of not only resource considerations and constraints and taxpayer compliance costs, but also the importance of promoting compliance, especially voluntary compliance. The importance of promoting compliance goes to the heart of the care aspect of the Commissioner's care and management duty – which, as noted at [27], is concerned with protecting the integrity and effective functioning of the tax system as a whole.

43. As already noted, s 6A(2) is very similar to the duty that Lord Diplock in *Fleet Street Casuals* identified as imposed by the United Kingdom "care and management" provision. In *Fairbrother v CIR*, Young J noted (at [21] and [26]) that this similarity was "not a coincidence". His Honour held that "[section] 6A must be regarded as statutory ratification of the approach adopted by the House of Lords in *Fleet Street Casuals*".

44. Section 6A(2) is more extensively analysed from paragraph [79]. Before turning to look at s 6A more closely, it is necessary to consider the relationship between s 6A and other provisions in the Inland Revenue Acts.

Relationship between section 6A and other provisions in the Inland Revenue Acts

45. When thinking about the Commissioner's care and management duty and the scope of the discretion that accompanies it, it is important to understand the relationship between s 6A and other provisions in the Inland Revenue Acts.

46. The following discussion looks at the relationship between s 6A and:

- section 6, which sets out the overarching duty of the Commissioner and his officers to use best endeavours to protect the integrity of the tax system; and
- the other provisions in the Inland Revenue Acts, in particular the extent to which s 6A authorises the Commissioner to act inconsistently with other provisions.

Relationship between sections 6 and 6A

Overview of section 6

47. Section 6 provides:

> **6 Responsibility of Ministers and officials to protect integrity of tax system**
>
> *Best endeavours to protect integrity of tax system*
>
> (1) Every Minister and every officer of any government agency having responsibilities under this Act in relation to the collection of taxes and for the other functions under the Inland Revenue Acts must at all times use their best endeavours to protect the integrity of the tax system.
>
> *Meaning of integrity of the tax system*
>
> (2) Without limiting its meaning, the **integrity of the tax system** includes –
>
> (a) the public perceptions of that integrity; and
>
> (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
>
> (c) the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
>
> (d) the responsibilities of persons to comply with the law; and
>
> (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
>
> (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

48. Section 6(1) requires the Commissioner, along with all other officers of Inland Revenue, to use "their best endeavours" to protect "the integrity of the tax system".[13] This obligation must be discharged "at all times" and "in relation to the collection of tax and for the other functions under the Inland Revenue Acts". These words mean the Commissioner must discharge the s 6 obligation in all aspects of his administration of the tax system.

49. The phrase "best endeavours" is not defined in the TAA. The courts have held that the phrase in other legislative contexts is to be given its ordinary meaning of "trying one's best in all the circumstances": *Assn of University Staff Inc v Vice-Chancellor of the University of Auckland* [2005] ERNZ 224 (EmpC) and *Centaur Investments Co Ltd v Joker's Wild Ltd* (2004) 5 NZCPR 675 (HC).

50. The Court of Appeal commented in *CIR v Michael Hill Finance (NZ) Ltd* (2016) 27 NZTC 22-056 that the Commissioner's responsibility to use best endeavours to protect the integrity of the tax system recognises there are limitations on the Commissioner:

> [31] Moreover, even though the Commissioner is subject to strict standards of conduct because she is exercising highly coercive powers for the purpose of collecting revenue, her responsibility under s 6(1) to protect the integrity of the tax system is not of an absolute nature. The Commissioner is required instead to use her "best endeavours". The aspirational nature of this standard reflects Parliament's recognition of the limitations imposed upon the Commissioner by various factors including the availability of resources, the prospect of revising an interpretation of relevant statutory provisions, and the inevitability of differing views within the IRD about the interpretation of those provisions, particularly s BG 1 of the ITA. Those limitations may well result in a degree of inconsistency among taxpayers, viewed at any point in time. Such inconsistency may alert professional advisers to taxpayers, or the Commissioner, to an error in one assessment or another, as we have explained above. But any resulting adjustment must be directed to correctness. By that means an appropriate degree of consistency should be maintained.

13 Section 6 requires "Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of tax and for the other functions under the Inland Revenue Acts" to use their best endeavours to protect the integrity of the tax system.

51. Section 6(2) identifies six factors that come within the phrase "integrity of the tax system". In providing that it applies "[w]ithout limiting its meaning", s 6(2) indicates that the list of factors is not exhaustive. The factors listed in s 6(2) are fundamental principles in tax law: *Westpac Banking Corp v CIR*. These factors show the phrase "integrity of the tax system" is multifaceted. Some factors may be more important or relevant than others, and there may be potential for conflict between particular factors: *Westpac Banking Corp v CIR*.

52. There has been little detailed judicial discussion on s 6. In the Supreme Court judgment in *Westpac Banking Corp v CIR*, McGrath J noted (at [32]):

> The purpose of s 6 is to incorporate protection of the integrity of the tax system in terms that clearly define what is sought to be protected. The [Organisational Review] Committee had earlier observed in its report that tax integrity included the interaction between the total tax community and individual taxpayers.

His Honour described (at [52]) s 6 as imposing an "overarching duty on Ministers and departmental officials". In *Tannadyce Investments Ltd v CIR* (2011) 25 NZTC 20-103, the Supreme Court also described s 6 as imposing an "overarching duty" on every minister and official having responsibilities under tax legislation. In the High Court decision in *Miller v CIR* (2003) 21 NZTC 18,243, Baragwanath J stated (at 18,253):

> [Section 6] is a statutory expression of long-settled principles of the common law which impose strict standards of conduct upon those exercising public powers conferred for performance of their functions of serving the community.

See also *Ch'elle Properties (NZ) Ltd v CIR* (2005) 22 NZTC 19,622 (HC) at [105] and [106].

53. Section 6 does not give taxpayers an ability to contest through judicial review an assessment or disputable decision. Assessments can only be challenged by the statutory objection procedure: *Russell v Taxation Review Authority* (2003) 21 NZTC 18,255 (CA) at [34] to [36] and *Tannadyce Investments Ltd v CIR* (2009) 24 NZTC 23,036 (HC) at [63]. Judicial review may be available for non-disputable decisions and s 6 may be a relevant consideration. However, s 6 does not create rights enforceable by taxpayers such as those found in the New Zealand Bill of Rights Act 1990: *Russell v Taxation Review Authority* at [19].

Relationship between sections 6 and 6A

54. Having provided an overview of s 6, it is now necessary to look at the relationship between s 6 and s 6A.

55. Section 6 applies "in relation to the collection of taxes and other functions under the Inland Revenue Acts". As noted at [52], it imposes an "overarching" duty on the Commissioner. This means s 6 applies when the Commissioner acts under s 6A. And indeed, the Commissioner's obligations under s 6 to protect the integrity of the tax system may mean it is appropriate for him to exercise his care and management duty under s 6A. However, s 6A(2) provides that it is the Commissioner's duty, "despite anything in the Inland Revenue Acts", to collect over time the highest net revenue that is practicable within the law. This raises the issue of how ss 6 and 6A work together.

56. Section 6 does not require the Commissioner to collect all taxes regardless of costs and resources involved. Instead, s 6 requires the Commissioner to do his best in all the circumstances – to use "best endeavours" – to protect the integrity of the tax system when carrying out his functions and duties: *CIR v Michael Hill Finance*. This means, when considering how he will act under s 6A, the Commissioner must consider the extent to which potential courses of action might protect, or alternatively undermine, the integrity of the tax system.

57. The s 6 duty to use best endeavours to protect the integrity of the tax system recognises that the effective functioning of the tax system relies on voluntary compliance. This is consistent with his duty of care of the taxes – which, as noted at [27], is concerned with protecting the integrity and effective functioning of the tax system as a whole. It is also consistent with the direction in s 6A(2) (which elaborates on the care and management duty) that one of the factors the Commissioner is to have regard to, in carrying out his functions in administering the tax system, is the importance of promoting compliance, especially voluntary compliance.

58. The courts have confirmed that the Commissioner must act consistently with both ss 6 and 6A and that the duties in those provisions are interconnected. The Supreme Court and Court of Appeal have emphasised that ss 6 and 6A together provide the framework within which the Commissioner administers the Inland Revenue Acts: *Auckland Gas Co Ltd v CIR* at [32] and [33] and *A-G v Steelfort Engineering* (1999) 1 NZCC 61,030 (CA) at 61,036. In *Westpac Banking Corp v CIR*, McGrath J held that ss 6 and 6A occupy a "central position in the legislative scheme" (at [52]) and that they were "closely linked" (at [51]):

> The Commissioner's duty to have regard to the importance of voluntary compliance, in collecting the highest net revenue practicable, is closely linked to the importance of public perceptions of the integrity of the system.

59. Similarly, in *Raynel v CIR* (2004) 21 NZTC 18,583, the High Court observed that the Commissioner's obligations in ss 6 and 6A were interrelated in that they reinforced each other and need to be read alongside each other (at [54] and [67]):

> Sections 6 and 6A(3)(b) [now s 6A(2)(b)] emphasise that there is a broader public interest in the integrity of the tax system and in ensuring that taxpayers meet their obligations. Taxpayers who comply with the requirements of the Inland Revenue Acts are entitled to expect that appropriate and (where necessary) firm action is taken against taxpayers who shirk their obligations. If not, complying taxpayers will justifiably perceive there is a lack of integrity in the system and an unfair burden is cast on those who conscientiously comply with their obligations. As well … the voluntary compliance scheme which is central to the proper functioning of the Inland Revenue Acts will be placed in jeopardy unless all taxpayers know that the Commissioner will act firmly and resolutely with those who do not meet their obligations and have no reasonable excuse for doing so.
>
> …
>
> I also conclude that s 176 in its current form does not relieve the officers of the Inland Revenue Department from their duty under s 6(1) to use their best endeavours to protect the integrity of the tax system as defined. **That obligation is to be read alongside the duties expressed in both ss 6A and 176**. [Emphasis added]

60. In *P v CIR* (2015) 27 NZTC, Toogood J in the High Court stated (at [31]):

> The starting point for interpreting the provision is that the Commissioner is required by s 6A(3) [now s 6A(2)] to collect the highest amount of tax that is practicable. **This duty, however, is fettered by considerations to do with the integrity of the tax system. In particular, ss** 6(2)(b) and (f) provide for the right of taxpayers to have their liability determined fairly, impartially, and according to law and Commissioner has a reciprocal responsibility to administer the **[Tax Administration Act] in that manner**. [Emphasis added]

61. And in *Rogerson v CIR* (2005) 22 NZTC 19,260, Potter J in the High Court stated (at [32]):

> **Sections 6 and 6A(3) [now s 6A(2)] articulate fundamental planks in the taxation system**. The Commissioner in the exercise of his powers is not only entitled, but obliged, to look beyond the bare requirement of s 176 to maximise the recovery of tax. Section 176(2) provides restraints on the requirement to maximise recovery in subsection (1), and in addition **there are the fundamental overriding requirements of s 6 to protect the integrity of the tax system and of s 6A to promote compliance, especially voluntary compliance, by all taxpayers**. [Emphasis added]

62. These cases are consistent with the legislative history, which indicates it was intended that the Commissioner would need to act consistently with both ss 6 and 6A(2). The Organisational Review Committee considered that the s 6 obligation should inform every decision made within the tax system.[14] The ORC recognised that enacting a care and management provision made it "all the more important to ensure perceptions of the integrity of the tax system are not diminished".[15] Nevertheless, it considered that protecting the integrity of the tax system and maximising the net revenue collected were consistent objectives. Protecting the integrity of the tax system was "crucial" to maintaining voluntary compliance.[16] The ORC stated:[17]

> A key component of obtaining the highest net revenue, by supporting voluntary compliance, rests on taxpayer perceptions of the integrity of the tax system. Perceptions about integrity are tightly linked to the impartial application of the law and the exercise of the administration's coercive powers and decision making powers with respect to the affairs of individual taxpayers.

14 ORC report at 9.4.1.

15 ORC report at 9.5.1.

16 ORC report at 8.2 and 9.3 and Appendix D at [33].

17 ORC report at 15.1.4.

63. In summary, the cases mentioned above make it clear that s 6 imposes an "overarching duty" and needs to be "read alongside" the duties in s 6A. In addition, s 6 has been described as "fettering" the s 6A duty to collect the highest net revenue practicable within the law. The two provisions together are considered a "fundamental plank" of the taxation system. The cases confirm that the Commissioner must take s 6 into account when exercising his care and management discretion under s 6A, and the words "despite anything in the Inland Revenue Acts" in s 6A(2) do not detract from that. This means that when deciding how to act under s 6A, the Commissioner must consider the extent to which potential courses of action might undermine, or support, the integrity of the tax system as defined in s 6. In addition, as noted at [55], the overarching duty s 6 imposes on the Commissioner to protect the integrity of the tax system may mean it is appropriate for him to exercise his care and management duty under s 6A.

Relationship between s 6A and other provisions of the Inland Revenue Acts

Does s 6A authorise the Commissioner to act inconsistently with other provisions of the Inland Revenue Acts?

64. There is a question about the extent to which s 6A authorises the Commissioner to act inconsistently with other provisions in the Inland Revenue Acts.

65. One possible interpretation of the words "despite anything in the Inland Revenue Acts" in s 6A(2) is that s 6A overrides all other provisions. Under this interpretation, the Commissioner could act inconsistently with any provision if he considers this would maximise the net revenue collected. Passages in several High Court decisions appear to support this interpretation: *Fairbrother v CIR* at [26]; *Raynel v CIR* at [49] and *Accent Management Ltd v CIR* (2006) 22 NZTC 19,758 (HC) at [71]. However, the Commissioner considers that this interpretation is incorrect, and that Parliament did not intend s 6A to override all other provisions.

66. The better view is that s 6A only allows the Commissioner to act inconsistently with a provision in the Inland Revenue Acts when that provision could be seen to require him to "collect all taxes that are due regardless of the resources and costs involved" (*Fairbrother v CIR* at [27]). That is, s 6A allows the Commissioner to collect less tax than the Act otherwise requires, when doing so is consistent with ss 6 and 6A. The words "despite anything in the Inland Revenue Acts" in subs (2), which elaborates on the core care and management function, supports this. In addition, this reflects Parliament's purpose in enacting s 6A. Before s 6A was enacted, the tax legislation at the time arguably required the Commissioner to seek to collect all taxes owing (subject only to the specific relief and remission provisions). Section 6A was enacted to make clear that the Commissioner was not under an obligation to do this – something that would be impossible given the Commissioner is operating within the constraints of limited resources. Rather, he has the duty of maximising the net revenue collected over time.

67. It could be argued that interpreting s 6A as giving the Commissioner discretion to potentially act in a way that overrides other provisions in the Inland Revenue Acts – even in limited situations – would effectively undermine the constitutional framework within which the tax system operates. On that argument, instead of administering the legislation as enacted by Parliament, the Commissioner would have an overarching discretion whether to give effect to it.

68. In *Accent Management Ltd v CIR* (HC), the taxpayer specifically argued that in settling with its co-objectors the Commissioner had invoked a dispensing power that was not conferred by ss 6 and 6A and was contrary to s 1 of the Bill of Rights Act 1688 (UK).

69. Venning J made the following comments in this respect (at [74]):

> In acting in that way it cannot be said the Commissioner is acting in breach of the Bill of Rights 1688 as suggested by Mr Judd by "assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament" or "levying money for and to the use of the Crown, by pretence of prerogative, for other time, and in other manner, than the same as granted by Parliament." **Rather, the Commissioner was, to use the words of Blanchard J, "making a compromise consistent with his duty under ss 6 and 6A"**. [Emphasis added]

70. In effect, Venning J states that in settling, the Commissioner was not dispensing with a tax law, but was exercising a discretion that was provided for in the law – that is, s 6A.

71. The discretion that accompanies the Commissioner's care and management duty, rather than undermining the constitutional framework within which the tax system operates, is part of that framework. It operates together with the overarching duty in s 6 to use best endeavours to protect the integrity of the tax system, which is a safeguard and fetter to the way in which the Commissioner may legitimately use the s 6A discretion.

"Within the law"

72. While s 6A(2) uses the phrase "despite anything in the Inland Revenue Acts", it goes on to state that it is the Commissioner's duty to "collect over time the highest net revenue that is practicable **within the law**" (emphasis added). The Commissioner considers that the words "within the law" constrain the Commissioner's ability to maximise the net revenue collected by requiring him to act consistently with the specific constraints and obligations imposed on him by other provisions.

73. This interpretation is supported by *Kemp v CIR* (1999) 19 NZTC 15,110 (HC). In that decision, the High Court held that the Commissioner could not disregard a provision in the tax legislation that required him to obtain ministerial approval before remitting tax over a certain threshold. Robertson J held that s 6A did not confer a "general dispensing power" on the Commissioner and could not be used to override the specific requirements Parliament had laid down for the exercise of a particular discretion.

74. Some cases that have discussed the overriding nature of s 6A(2) have explicitly gone on to consider the meaning of the words "within the law" in this context: *Raynel v CIR*; *Peebles v A-G* (2014) 26 NZTC 21-107 (HC) and *Balich v CIR* (2007) 23 NZTC 21,230 (HC)).

75. In *Raynel v CIR*, Randerson J in the High Court highlighted (at [49]) three important aspects of what is now s 6A(2):

> Several points stand out. First, the duty imposed by the section applies notwithstanding anything in the Inland Revenue Acts. It is therefore clear that s 6A(3) [now s 6A(2)] is to prevail over other provisions in the Inland Revenue Acts including, in the present context, s 176 of the [Tax Administration Act]. **Secondly, the obligation to collect the highest net revenue is not absolute. The Commissioner is only required to take steps to recover revenue which are practicable and lawful.** Thirdly, the Commissioner is required to have regard to the resources available to him, the importance of promoting compliance (especially voluntary compliance) by all taxpayers, and the compliance costs incurred by taxpayers. [Emphasis added]

76. Randerson J first refers to the overriding nature of s 6A(2) based on the words "notwithstanding anything in the Inland Revenue Acts" (now "despite anything in the Inland Revenue Acts"). He then goes on to state that the Commissioner's obligation to collect the highest net revenue is not absolute and that the Commissioner is only required to take steps to recover tax that are practicable and lawful. In other words, Randerson J saw the practicable and lawful requirements as qualifying only the Commissioner's obligation to collect the highest net revenue and not conflicting with the overriding nature of s 6A(2). This is consistent with the grammar of the provision and the proximity of the words "within the law" to the highest net revenue obligation.

77. The Commissioner considers that *Raynel v CIR* and, albeit to a lesser extent, *Peebles v A-G* and *Balich v CIR*, support the proposition that the words "within the law" temper the Commissioner's duty to collect the highest net revenue. In other words, they ensure the Commissioner cannot exceed his powers to maximise revenue in the short-term (for example, by acting contrary to legislative provisions to increase the amount of tax payable by a taxpayer). This is consistent with the fundamental principle that taxes should not be levied without the authority of Parliament (see s 1 of the Bill of Rights 1688 (UK) and s 22(a) of the Constitution Act 1986).

Section 6A(2): Duty to collect over time the highest net revenue that is practicable within the law

78. The following discussion looks at s 6A(2) in detail and covers its scope and the factors the Commissioner must have regard to in determining which of the available courses of action are consistent with his duty to collect over time the highest net revenue practicable within the law.

Overview of s 6A(2)

79. Section 6A(2) provides:

> *Highest net revenue practicable within the law*
>
> (2) In collecting the taxes committed to the Commissioner's charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
>
> (a) the resources available to the Commissioner; and
>
> (b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
>
> (c) the compliance costs incurred by persons.

80. In administering the tax system generally as well as in dealing with particular taxpayers, the Commissioner will often have different courses of action available to him in terms of how he applies his resources. Where this is the case, s 6A(2) requires him to evaluate those courses of action by considering their likely effect on the amount of net revenue collected over time, and by having regard to the three factors in s 6A(2)(a), (b) and (c).

81. As noted at [77], the Commissioner considers that the words "within the law" in s 6A(2) mean the Commissioner cannot exceed his legislative powers in order to maximise revenue (for example, by acting contrary to legislative provisions to increase the amount of tax payable by a taxpayer).

82. Once the Commissioner has identified the course of action that he considers most consistent with the duty to "collect over time the highest net revenue that is practicable within the law", the words "despite anything in the Inland Revenue Acts" authorise him to undertake that course of action. This is allowed, even if it will result in less tax being collected than is imposed, or required to be collected, by other provisions of the Inland Revenue Acts.

83. In deciding which course of action is most consistent with s 6A(2), the Commissioner will generally consider the circumstances of the particular taxpayers or groups of taxpayers concerned. However, the Commissioner may also, from time to time, issue general statements of policy that set out the course of action he will take in particular types of situations.

84. The text of s 6A(2) is analysed in the following paragraphs.

Scope of section 6A: "In collecting the taxes committed to the Commissioner's charge"

85. Section 6A(2), which elaborates on the care and management duty and sets out the duty to collect the highest net revenue over time, uses the phrase "[i]n collecting the taxes committed to the Commissioner's charge". Neither the courts nor the Organisational Review Committee have commented on the meaning of that phrase.

86. It is considered that the phrase "[i]n collecting the taxes committed to the Commissioner's charge" includes all aspects of the way in which the Commissioner carries out his functions that relate to or enable the receiving or taking possession of taxes, including the administration of the tax system as a whole. It is considered that the Commissioner needs to have regard to his care and management duty and the s 6A(2) considerations across the range of functions that are part of his role.

87. This is consistent with the statutory context and the purpose of s 6A. The Organisational Review Committee envisaged that the duty to collect the highest net revenue over time would be the primary objective of the tax administration function of Inland Revenue.[18] Considering the phrase "[i]n collecting the taxes committed to the Commissioner's charge" as including all aspects of the Commissioner's functions is consistent with that aim, because it would mean that the care and management duty and the specific s 6A(2) considerations would be relevant to every aspect of the Commissioner's administration of the tax system. This is in keeping with the High Court's observation in *Ben Nevis* (noted at [40]) that s 6A(2) **elaborates on** the Commissioner's core function of the care and management of the taxes, as set out in subs (1); it is a subset of the Commissioner's care and management duty. It is also consistent with the fact that one of the considerations s 6A(2) specifically requires the Commissioner to have regard to is the importance of promoting compliance, especially voluntary compliance. As noted at [40], this goes to the heart of the "care" aspect of the Commissioner's care and management duty, which is concerned with protecting the integrity and effective functioning of the tax system as a whole.

Duty to collect over time the highest net revenue that is practicable

88. Section 6A(2) requires the Commissioner to "collect over time the highest net revenue that is practicable".

89. The phrase "highest net revenue" is not defined in the Act. The Organisational Review Committee defined these words as "actual revenue less administration (collection) costs".[19] It defined "administrative costs" as the "costs incurred by the tax administration in assessing and collecting taxes".[20]

18 ORC report at 8.2.

19 ORC report at 8.2 and footnote 2.

20 ORC report at 81.

90. The significance of the duty s 6A(2) imposes was discussed in *Fairbrother v CIR*. Young J noted the similarity between s 6A(2) and the obligation imposed by the United Kingdom care and management provision (recognised by Lord Diplock in *Fleet Street Casuals*). His Honour considered (at [26] and [27]) that s 6A(1) and (2) amounted to "statutory ratification" of the House of Lords' approach in *Fleet Street Casuals*. Consequently, there was no scope for an argument that the Commissioner was under "an absolute obligation to collect the right amount of tax" in the absence of explicit contrary statutory direction.

91. The duty to collect the "highest net revenue" means the Commissioner is obliged to maximise net revenue having regard to the relevant considerations in s 6A(2). Section 6A(2) requires the Commissioner to compare potential courses of action in terms of their effect on the amount of net revenue that he collects over time, from both the particular taxpayers concerned and all taxpayers.

92. In making this comparison, the Commissioner must consider the short-term and long-term implications of the available courses of action. This is required by the words "over time" in s 6A(2). The ORC discussed the meaning of the words "over time":[21]

> The requirement to balance short term and long term considerations, and to have regard to the importance of promoting voluntary compliance, will be important moderating influences in circumstances where the objective may otherwise prompt an unnecessarily vigorous and short-term approach to revenue collection.
>
> ...
>
> [1] *Over time* indicates the obvious need for the tax administration to balance short and longer term implications of possible strategies before deciding on any particular course of action. *Over time* is intended to capture the concept of net present value (a valuation technique common to business as well as governments) and appears to be the best short and nontechnical means of capturing the concept.
>
> [Emphasis in original]

93. These comments highlight that the practical effect of the words "over time" is that the Commissioner may adopt courses of action that have the effect of forgoing the collection of the highest net revenue:

- in the short term, if he considers that this will enable the collection of more net revenue in the longer term, and
- from particular taxpayers, if he considers that this will enable more net revenue to be collected from all taxpayers.

Factors the Commissioner must have regard to: s 6A(2)(a), (b) and (c)

94. In determining which course of action is consistent with the duty to collect over time the highest net revenue that is practicable within the law, s 6A(2) requires the Commissioner to have regard to three factors. These factors are:

(a) the resources available to the Commissioner; and

(b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and

(c) the compliance costs incurred by persons.

95. Section 6A(2) requires the Commissioner to consider and balance all three factors listed in s 6A(2). In *Raynel v CIR*, Randerson J outlined the exercise required by s 6A(2) (at [50] and [52]):

> [50] These qualifications to the Commissioner's duty mean that the Commissioner is not obliged to take steps to collect revenue regardless of issues of practicality, available resources, and costs incurred. Rather, the [Commissioner's] duty is to be approached on a pragmatic basis with proper regard to the likely benefits and the costs of achieving them.
>
> ...
>
> [52] ... But the considerations relevant to the exercise of the Commissioner's duty are not limited to issues of practicality, resources and costs. Importantly, the Commissioner is also required by section 6A(3)(b) [now s 6A(2)(b)] to have regard to the importance of promoting compliance (especially voluntary compliance) by all taxpayers with the Inland Revenue Acts.

96. The factors in s 6A(2) provide the framework within which the Commissioner evaluates the short-term and long-term implications of potential courses of action for dealing with particular situations. The word "and" after the first two factors indicates that the Commissioner must have regard to all of the factors when evaluating the available courses of action.

21 ORC report at 8.2 and footnote 1.

97. Section 6A(2) does not stipulate the weight to be given to each of the factors. The weight to be given to each factor will depend on the circumstances of the particular case. In *Raynel v CIR*, Randerson J stated (at [56]):

> It is difficult and undesirable to give precise guidelines to the Commissioner other than the statutory considerations themselves. It will be a matter for the Commissioner to carry out his duty, having regard to the relevant considerations as they apply in individual cases and circumstances.

98. Randerson J noted (at [73]) that decisions made pursuant to the "broad managerial responsibilities" given to the Commissioner "essentially involve the exercise of judgment within the statutory framework". Consequently, the Court would be "slow to interfere" with the proper exercise of the Commissioner's duties and discretions in relation to the recovery of outstanding taxes. For similar comments, see also *Rogerson v CIR* at [63].

99. In the following paragraphs, the three factors in s 6A(2) are discussed.

"Resources available to the Commissioner" (s 6A(2)(a))

100. This first factor reflects that the Commissioner has limited resources. It covers the financial, time, human (including technical knowledge and expertise) and information technology resources to which the Commissioner has access. This factor includes not only the resources "on hand", but also the opportunity costs of using these resources in terms of current and future competing demands for them elsewhere in the tax system.

"Importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts" (s 6A(2)(b))

101. This second factor consists of two interrelated parts: the promotion of compliance generally and the promotion of voluntary compliance in particular. Section 6A(2)(b) refers to the promotion of compliance by "all persons", which emphasises that s 6A(2) is concerned with the highest net revenue collected from the tax system as a whole.

102. The relationship between this factor and the amount of net revenue collected is obvious. Greater compliance results in more tax being collected. Greater voluntary compliance increases the net revenue collected by reducing the Commissioner's administration costs. As the Organisational Review Committee observed, the voluntary compliance model, on which the tax system is based, is the most cost-effective form of tax collection.[22]

103. As a rule, compliance, especially voluntary compliance, by all taxpayers will be promoted by the Commissioner ensuring taxpayers perceive that they will be required to comply fully with their tax obligations. In *Raynel v CIR*, Randerson J held (at [54]):

> Sections 6 and 6A(3)(b) [now s 6A(2)(b)] emphasise that there is a broader public interest in the integrity of the tax system and in ensuring that taxpayers meet their obligations. Taxpayers who comply with the requirements of the Inland Revenue Acts are entitled to expect that appropriate and (where necessary) firm action is taken against taxpayers who shirk their obligations. If not, complying taxpayers will justifiably perceive there is a lack of integrity in the system and an unfair burden is cast on those who conscientiously comply with their obligations. As well, as Master Lang pointed out, the voluntary compliance scheme which is central to the proper functioning of the Inland Revenue Acts will be placed in jeopardy unless all taxpayers know that the Commissioner will act firmly and resolutely with those who do not meet their obligations and have no reasonable excuse for doing so.

104. In some situations, the Commissioner might consider that this factor supports "firm action" being taken against non-complying taxpayers, such as by bringing enforcement and bankruptcy proceedings. These might be situations where there has been a flagrant and ongoing failure to comply and where recovery is dubious or likely to result only in a relatively minor proportion of the overall debt being recovered: *Raynel v CIR* at [55].

105. In other cases, the Commissioner might consider that such firm action does not need to be taken against non-complying taxpayers to collect over time the highest net revenue that is practicable. The ORC recognised this possibility:[23]

> The requirement to balance short term and long term considerations, and to have regard to the importance of promoting voluntary compliance, will be important moderating influences in circumstances where the objective [ie, to collect over time the highest net revenue that is practicable within the law] may otherwise prompt an unnecessarily vigorous and short-term approach to revenue collection.

106. It is not possible to identify the cases where the Commissioner would take this approach. At the very least, the

22 ORC report at 8.2 and Appendix D at [22].

23 ORC report at 8.2.

Commissioner would need to be satisfied that the circumstances of the non-compliance meant any failure to take firm action would not potentially undermine voluntary compliance by all taxpayers and taxpayer perceptions of the integrity of the tax system.

"Compliance costs incurred by persons" (s 6A(2)(c))

107. The third factor covers the costs to taxpayers in assisting the administration of the tax system. This factor does not include the cost of the tax liability. The ORC defined "compliance costs" as:[24]

> The costs to taxpayers of meeting their obligations under tax law and in meeting the requirements and practices of the tax administration.

108. Excessively high compliance costs can decrease the amount of net revenue collected by discouraging economic activity and endangering voluntary compliance.[25] However, the ORC recognised that taxpayers should expect to incur some compliance costs. This was because voluntary compliance systems (on which the New Zealand tax system is based) necessarily require taxpayers to incur some costs in meeting their obligations.[26]

109. In the Commissioner's view, s 6A(2)(c) requires him to have regard to whether the available courses of action would result in taxpayers incurring increased compliance costs. However, s 6A(2)(c) does not mean that taxpayers should not incur any compliance costs or that the Commissioner cannot take courses of action that increase taxpayers' compliance costs. Parliament contemplated that taxpayers would incur compliance costs as a result of them complying with their tax obligations, and due to the Commissioner exercising the powers conferred on him to ensure taxpayer compliance.

110. Section 6A(2)(c) will be primarily relevant in the development of systems and processes for administering the tax system. Consistent with this, the ORC stated:[27]

> The second place to tackle compliance costs is through the operational policies and procedures of the tax administration which have an immediate and direct effect on costs to taxpayers. Any steps that are taken ought to have regard to these considerations in the new proposed objective for IRD [that is, s 6A(2)] …

111. Section 6A(2)(c) will also be relevant with respect to dealing with specific taxpayers. For instance, the Commissioner might consider (having taken account of all other relevant factors) that different courses of action are equally open to him. In such a case, if one of those courses of action would result in the taxpayers incurring significantly more compliance costs, but all other things were equal, the Commissioner could take the view that he should not adopt this course of action because it would increase compliance costs unnecessarily.

"Within the law" and "despite anything in the Inland Revenue Acts"

112. The words "within the law" and "despite anything in the Inland Revenue Acts" in s 6A(2) were considered at [64] to [77]. It was concluded that the words "despite anything in the Inland Revenue Acts":

- make it clear the Commissioner is not required to collect all taxes owing (reflecting the reality of resourcing constraints); and
- confirm that the Commissioner has discretion in exercising his s 6A care and management responsibility to act in a way that overrides other provisions in the Inland Revenue Acts, but only to the extent such other provisions could be seen to require him to collect all taxes that are due regardless of the resources and costs involved.

113. As noted at [77], it was concluded that the words "within the law" temper only the Commissioner's duty to collect the highest net revenue. In other words, they ensure the Commissioner cannot exceed his powers in order to maximise revenue (for example, by acting contrary to legislative provisions to increase the amount of tax payable by a taxpayer).

Not overridden by a later enacted provision

114. It is worth noting that s 6A(2) is not overridden by a later enacted provision unless Parliament specifically intended the later provision to do so.

115. This has been illustrated in the context of cases that have considered the relationship between s 6A and s 176.

24 ORC report at 81.

25 ORC report at 1.8 and 11.1, and Appendix F at [51].

26 ORC report, Appendix F at [5] to [7].

27 ORC report at 11.3.

116. Section 176 provides that the Commissioner must maximise the recovery of outstanding tax from a taxpayer, but that he may not recover outstanding tax to the extent that this would be an inefficient use of his resources or would place a taxpayer (who is a natural person) in serious hardship.

117. The courts have confirmed that s 6A is the overriding legislative expression of the Commissioner's duty to collect over time the highest net revenue practicable within the law, and that s 176 is to be read along with s 6 and subject to s 6A.

118. In *Raynel v CIR*, the High Court held (at [63] to [67]) that s 176(1) and (2)(a) of the Act were not to be interpreted as overriding s 6A(2). Although s 176(1) and (2)(a) were enacted later than s 6A(2), there was no evidence that Parliament specifically intended the later provisions to override s 6A(2). Further, it was considered that interpreting s 176(1) and (2)(a) as overriding s 6A(2) would be inconsistent with the words "[despite] anything in the Inland Revenue Acts" in s 6A(2). Randerson J commented that it is not apparent why s 176 re-states the obligation to maximise recovery in a slightly different form from s 6A but considered it clear that s 6A is to prevail over s 176. See also *Clarke & Money v CIR* (2005) 22 NZTC 19,165 (HC); *Rogerson v CIR*.

Implications of conclusions on the scope of s 6A

119. Important implications of the Commissioner's conclusions on the scope of the care and management duty and the discretion that accompanies it are discussed at [121] to [143]. This discussion clarifies what the Commissioner can and cannot do under s 6A.

120. The important implications are that s 6A authorises the Commissioner to:

- make decisions about allocation of resources (see from [121]); and
- enter into settlements and payment agreements (see from [122]).

It does not authorise the Commissioner to:

- disregard the requirements for the lawful exercise of powers and discretions conferred by other provisions (see from [132]);
- alter taxpayers' obligations and entitlements – aside from in the context of entering into settlements (see from [136]);
- issue extra-statutory concessions (see from [**136**]);
- administratively remedy legislative errors and other deficiencies (see from [141]); or
- interpret provisions other than in accordance with statutory interpretation principles in the Legislation Act 2019 and court decisions (see from [143]).

Commissioner can make decisions about allocation of resources

121. It is clear that s 6A enables the Commissioner, who is necessarily operating within the constraints of limited resources, to make decisions about how he allocates those resources. A decision about resource allocation could relate to a specific taxpayer, a particular industry or an area of possible non-compliance. Common situations where the Commissioner exercises his care and management discretion in making resource allocation decisions are day-to-day resource allocation decisions (including things like audit strategy and call centre capacity) and entering into settlements[28] (discussed further from [122]).

Commissioner can enter into settlements and agreements

122. The courts have held that, under s 6A(1) and (2), the Commissioner can enter into:

- settlements where taxpayers dispute the interpretation of law or facts on which their liability has been assessed (*Accent Management Ltd v CIR* (HC), *Accent Management Ltd (No 2)* (CA), *Auckland Gas Co Ltd v CIR*, *A-G v Steelfort Engineering* and *Fairbrother v CIR*); and
- agreements as to the payment of outstanding tax, penalties and interest (*Raynel v CIR*).

28 Which may also involve an element of overriding particular provisions in the Inland Revenue Acts.

123. The courts have emphasised that settlements are made when the taxpayer's obligations and entitlements are legitimately disputed and, therefore, the Commissioner will need to undertake litigation to collect the full amount of tax he considers owing. The courts have recognised that the Commissioner may consider, in light of the litigation risk, that the resources required could be better used elsewhere to maximise the net revenue collected. In *Accent Management Ltd v CIR (No 2)* (CA), William Young P held (at [15]):

> This [the Commissioner's ability to enter settlements] represents an undoubted shift from the approach adopted in [*Brierley Investments*]. The change in policy is justified by recognition that the Commissioner has limited resources and the function of collecting "over time the highest net revenue that is practicable within the law". Major tax litigation is expensive and places a heavy strain on the human resources available to the Commissioner. The Commissioner must be permitted to make rational decisions as to how those resources can be best deployed. Further, "sensible litigation, including settlement, decisions" must necessarily allow for litigation risk.

124. The courts have held that the Commissioner can settle litigation on a basis that does not necessarily correspond to his view of the correct tax position if he considers that doing so is consistent with ss 6 and 6A(2): *Accent Management Ltd v CIR (No 2)* (CA); *Wire Supplies Ltd v CIR* [2007] NZCA 244 and *Foxley v CIR* (2008) 23 NZTC 21,813 (HC). The courts have accepted that the Commissioner can give effect to settlements by way of an amended assessment.

125. In holding that the Commissioner is authorised to enter settlements, the courts have given effect to a key outcome intended to be achieved by enacting s 6A. The ORC report shows it was specifically contemplated that s 6A would authorise the Commissioner to enter settlements:[29]

> One significant implication from the objective [of the care and management discretion] is that IRD will be entitled to enter into compromised settlements with taxpayers, rather than pursue the full amount of assessed tax, in cases where there are legitimate differences of view about the facts in dispute and the costs of litigation are high.

126. The courts have not specifically considered whether the Commissioner can settle tax disputes before litigation, or the formal disputes process has started. The Commissioner considers that, in principle, there is no impediment to his doing so. The Commissioner may consider that settling will enable his resources to be better used to maximise the net revenue collected. The Commissioner's position and responsibilities before litigation or the formal disputes process has started are not inherently different from his position and responsibilities during litigation. However, the litigation process often results in him possessing more information than he did before the process. Accordingly, the Commissioner will consider settling before litigation or the formal disputes process has started only if satisfied he has sufficient information on which to make an informed decision. As with his other powers, the Commissioner will prescribe which officers have the delegated authority to decide whether to settle.

127. The case law is clear that the Commissioner can enter settlements with taxpayers if he considers doing so is consistent with ss 6 and 6A(2). It is not possible to list all the factors the Commissioner may consider in deciding whether to settle. Ultimately, the decision must be determined by consideration of all factors relevant to the particular case. However, the following, non-exhaustive, list identifies some factors the Commissioner could consider relevant (depending on the circumstances of the particular case):

- the resources required to undertake litigation;
- the alternative uses of those resources;
- the amount of the tax liability at stake;
- an assessment of the litigation risk (for example, the likelihood of the Commissioner succeeding);
- the implications of the Commissioner succeeding (in whole or part) if litigation is undertaken;
- whether settling or litigating would better promote compliance, especially voluntary compliance, by all taxpayers;
- the amount the taxpayer would pay if the Commissioner were to settle;
- whether the subject matter of the dispute might be determinative of, or have broader application to, other situations;
- whether the Commissioner would be prepared to settle on an equivalent basis with other taxpayers in a similar position;
- the uncertainty in the tax system that might be created should the subject matter not be authoritatively determined by the courts; and
- the likely effects on taxpayer perceptions of the integrity of the tax system of settling or litigating.

29 ORC report at 8.2.

128. The factors listed above are not exhaustive. Some factors may be irrelevant, and additional factors may be relevant given the circumstances of any particular case. It is for the Commissioner to decide on the appropriate weighting given to the relevant factors in a particular case. See further the Commissioner's **Operational guidelines: Section 6A settlements**.[30]

129. Tax disputes sometimes involve several taxpayers. The Commissioner may need to decide whether to settle with each taxpayer individually. In such situations, the Commissioner is not required to settle or to settle on the same terms with all taxpayers involved in the litigation: *Accent Management Ltd v CIR* (HC) at [79] to [86] and *Accent Management Ltd v CIR (No 2)* (CA) at [20] to [22]. However, the Commissioner is aware that consistency of treatment of taxpayers in the same circumstances is an important consideration under ss 6 and 6A(2). Accordingly, in tax disputes involving several taxpayers, the Commissioner will generally settle on an equivalent basis with those taxpayers he considers share the same circumstances. By contrast, the Commissioner may settle on a different basis with those taxpayers he considers are in different circumstances. Different circumstances might include, for example, the taxpayer's willingness to settle, the timing of the settlement offers in relation to the progress of the litigation proceedings, the state of the case law at the time, and the Commissioner's perception of the culpability of the taxpayers involved: *Accent Management Ltd v CIR (No 2)* (CA) at [21]. Because settlements reflect the circumstances of the particular litigation and of the taxpayers, they are not necessarily indicative of how the Commissioner will deal with similar issues in the future.

130. In deciding whether to settle litigation, the Commissioner will act consistently with the **Protocols between the Solicitor-General and Commissioner of Inland Revenue**.[31] This means the Commissioner will consult with the Solicitor-General, who is responsible for the conduct of Crown litigation; and that litigation settlements will be jointly approved by Crown Law and Inland Revenue (except matters in which Inland Revenue solicitors represent the Commissioner). The Commissioner may also consult the Solicitor-General before entering a pre-litigation settlement if the subject matter is central to a significant dispute in litigation.

131. Finally, where the Commissioner has entered into a settlement or agreement, he will not resile from it except if the:

- Commissioner is acting pursuant to a condition in the settlement or agreement that allows him to resile from it;
- taxpayer has failed to adhere to the settlement or agreement; or
- settlement or agreement was entered into on account of misrepresentations by the taxpayer or the taxpayer failed to make full disclosure before the settlement or agreement was entered into.

Commissioner cannot disregard the requirements for the lawful exercise of the powers and discretions conferred by other provisions

132. As noted at [120], one implication of the above conclusions on the scope of the care and management duty is that s 6A does not authorise the Commissioner to disregard the requirements for the lawful exercise of the powers and discretions conferred on him by other provisions. If the requirements for the lawful exercise of a particular power or discretion are not satisfied, s 6A does not authorise the Commissioner to exercise that power or discretion nonetheless.

133. Similarly, s 6A does not allow the Commissioner to disregard express legislative directions or prohibitions on how he must or must not act. Accordingly, s 6A does not allow the Commissioner to, for example:

- exercise search and seizure powers, or to retain seized property, other than in accordance with the provisions governing the exercise of these powers (*Singh v CIR* (1999) 19 NZTC 15,050 (HC));
- recover outstanding tax inconsistently with s 176(2)(b), which prohibits the recovery of outstanding tax to the extent it would place the taxpayer, being a natural person, in "serious hardship" (*W v CIR* (2005) 22 NZTC 19,602 (HC) at [24]); or
- write off outstanding tax inconsistently with s 177C, which prohibits the writing-off of outstanding tax in certain circumstances (*Raynel v CIR* at [61], *Clarke & Money v CIR* (2005) 22 NZTC 19,165 (HC) at [25] and *Rogerson v CIR* at [51]).

This is consistent with the conclusion that the words "within the law" ensure the Commissioner cannot exceed his powers in order to maximise revenue (see from [72]).

30 Operational Guidelines: Section 6A settlements (Inland Revenue, August 2023).

31 Protocols between the Solicitor-General and Commissioner of Inland Revenue (Inland Revenue, July 2009).

134. In the same way, s 6A does not allow the Commissioner to carry out courses of action that are unlawful under another enactment or rule of law. For example, s 6A does not authorise the Commissioner to decide not to respond to information requests within the period required by the Official Information Act 1982.

135. While s 6A does not authorise the Commissioner to carry out actions that he does not have the power to do (such as writing off tax inconsistently with s 177C or any other provision), the Commissioner could decide not to allocate the resources required to collect outstanding tax from a particular taxpayer. This would involve the exercise of the managerial discretion as to the allocation and management of resources. If the Commissioner were to make such a decision, he would not be writing off the outstanding tax but rather only deciding not to take the steps required to collect the tax. The taxpayer's liability to pay that tax would remain despite the Commissioner's resource decision, and the tax would remain outstanding.

Commissioner cannot generally alter taxpayers' obligations and entitlements

136. The Commissioner considers s 6A does not generally allow him to alter taxpayers' legislative obligations and entitlements. With the exception of entering into settlements, the Commissioner can only alter taxpayers' obligations and entitlements if authorised by another provision. For example, s 6A does not authorise the Commissioner to:

- collect more tax than imposed by the legislation;
- amend taxpayers' assessments other than in accordance with the statutory assessment basis (*Vestey v IRC (Nos 1 and 2)* [1979] 3 All ER 976 (HL));
- contract with taxpayers as to their tax liability in future years (*Al Fayed v IRC* [2006] BTC 70 (CSIH)); and
- grant legislative entitlements to taxpayers who are not eligible under the legislation (*R (on the application of Wilkinson) v IRC* [2005] UKHL 30).

137. Similarly, the Commissioner cannot advise taxpayers that they are not required to comply with their tax obligations. The Commissioner could not, for example, direct taxpayers to assess themselves other than in accordance with the statutory assessment basis. Taxpayers' obligations are imposed on taxpayers by the legislation, and the tax liability is payable independently of its assessment: *CIR v Lemmington Holdings* (1982) 5 NZTC 61,268 (CA); *Reckitt and Colman (NZ) Ltd v Taxation Board of Review* [1966] NZLR 1,032 (CA) and *Westpac Banking Corp v CIR* [2009] NZCA 24. Section 15B summarises those obligations, and states:

> **15B Taxpayer's tax obligations**
>
> A taxpayer must do the following:
>
> (aa) if required under a tax law, make an assessment:
>
> (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
>
> (a) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
>
> (b) pay tax on time:
>
> (c) keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws:
>
> (d) disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose:
>
> (e) to the extent required by the Inland Revenue Acts, co-operate with the Commissioner in a way that assists the exercise of the Commissioner's powers under the tax laws:
>
> (f) comply with all the other obligations imposed on the taxpayer by the tax laws.

138. Therefore, if the Commissioner were to inform taxpayers they were not required to comply with their tax obligations, he would be purporting to suspend the operation of the Inland Revenue Acts and such a statement would arguably imply that "what was being done was lawful and had legal effect" (*Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC)).

139. While the Commissioner cannot purport to alter taxpayers' obligations and entitlements, s 6A does authorise him to decide not to allocate the resources required to collect the full amount of taxes imposed, when doing so is consistent with ss 6 and 6A. If the Commissioner were to make such a decision, with the result that not all taxes are collected, he is not dispensing with the provisions imposing the tax liability. The Commissioner's resource allocation and management decisions are administrative acts that do not affect the underlying tax liability. Taxpayers are obliged to pay the full amount of tax imposed regardless of whether the Commissioner decides to allocate resources to collect it.

140. Consistently, this also means that s 6A does not allow the Commissioner to make extra-statutory concessions, as doing so amounts to acting outside the law.

Commissioner cannot administratively remedy legislative errors and other deficiencies

141. Section 6A does not authorise the Commissioner to administratively remedy legislative errors and other deficiencies. Similarly, it does not authorise him to avoid or reduce the undesirable effects of legislative obligations imposed on taxpayers or the Commissioner.

142. Sections 6C to 6G of the TAA (the remedial powers) were enacted in 2019 and provide mechanisms to temporarily give effect to the intended purpose or object of a provision, within tightly prescribed rules. In the Commissioner's view, this supports the view that section 6A does not provide an independent administrative ability to correct legislative errors.

143. This is consistent with the position the House of Lords has taken with respect to the United Kingdom care and management provision (see, for example, *Vestey v IRC* and *R (on the application of Wilkinson) v IRC*). Only Parliament can remedy legislative errors and deficiencies.

Commissioner cannot interpret statutory provisions other than in accordance with statutory interpretation principles

144. Another important implication of the Commissioner's conclusions is that s 6A does not justify his interpreting other provisions in the Inland Revenue Acts other than in accordance with statutory interpretation principles. For instance, the Commissioner cannot prefer one interpretation over another competing interpretation on the basis that it will result in the highest net revenue being collected over time. The other provisions in the Inland Revenue Acts must be interpreted only according to the principles of statutory interpretation in the Legislation Act 2019 and court decisions.

Examples | Tauira

145. The following examples illustrate the principles set out in this Interpretation Statement. The examples are not intended to state definitively what the Commissioner would do in particular scenarios. Instead, the examples are intended to assist readers' understanding of the Commissioner's view on:

- what he can and cannot do under s 6A(1) and (2);
- the decision-making process required by s 6A(2); and
- the application of the relevant factors in ss 6 and 6A(2).

Example | Tauira 1: Decision whether to audit

The Commissioner has decided not to audit plumbers this year, due to their high degree of voluntary compliance and the low likelihood of identifying any undisclosed income. The Commissioner becomes aware of information that shows XYZ Plumbers has not declared $100,000 of income. In the normal course of events, XYZ Plumbers would not be audited because of the Commissioner's decision not to audit plumbers this year. Can the Commissioner decide to treat XYZ Plumbers like all the other plumbers by not auditing it?

146. The Commissioner could exercise the resource allocation discretion and not allocate the resources required to audit XYZ Plumbers. However, before the Commissioner would decide not to allocate the resources required to audit, he would consider whether doing so is consistent with ss 6 and 6A(2). In particular, he would need to bear in mind the requirement of s 6A(2) to "collect over time the highest net revenue practicable", while also having regard to the factors at s 6A(2)(a)-(c). On the facts of this example, it would seem unlikely that the Commissioner would be acting consistently with ss 6 and 6A(2) by not auditing a taxpayer he has reason to believe has not declared a substantial amount of income.

Example | Tauira 2: Deciding whether to audit where taxpayer discloses undeclared income

A taxpayer informs Inland Revenue that he has discovered an invoice representing income that he has inadvertently excluded from his tax return. The taxpayer wants Inland Revenue to agree not to audit the income year for which the return was filed and states he will undertake to pay any tax liability and shortfall penalty resulting from the adjusted income amount immediately.

147. In this example the Commissioner could decide:

- to audit the taxpayer; or
- not to allocate the resources required to carry out the audit and instead amend the taxpayer's assessment to include the additional income and accept from the taxpayer the payment for the increased tax liability and any shortfall penalties incurred.

148. In determining which of the above options is consistent with s 6A(2) and s 6, the Commissioner would take account of the fact that accepting the taxpayer's voluntary disclosure and taking no further action would require fewer resources than would be required to carry out the audit (s 6A(2)(a)). This factor would need to be balanced against the risk that the excluded income indicates that the taxpayer has not been complying with his tax obligations and so could have other undeclared income. In considering this factor, the Commissioner would take account of the taxpayer's compliance history.

149. The Commissioner would also have regard to the likelihood that auditing would increase the taxpayer's compliance costs (s 6A(2)(c)). However, the Commissioner would give little weight to this factor. Taxpayers who file incorrect assessments should expect to incur additional compliance costs as a result of being audited and reassessed.

150. The Commissioner would have regard to the importance of promoting compliance, especially voluntary compliance, by all taxpayers (s 6A(2)(b)). The Commissioner might consider that auditing would promote compliance, because it will better ensure that the taxpayer has complied fully. Alternatively, the Commissioner could take the view that auditing would not promote voluntary compliance by taxpayers. This would be on the basis that the risk of being audited might discourage taxpayers from voluntarily disclosing to Inland Revenue inadvertently excluded income. On the other hand, the possibility of being audited might lead to timelier, and accurate, voluntary disclosures.

151. The Commissioner's decision whether or not to audit the taxpayer would be made after weighing up the above considerations.

Example | Tauira 3: Use of "care and management" instead of an existing statutory power

Can care and management be used instead of an existing power? For example, if a taxpayer did not satisfy the definition of "serious hardship" in s 177A could the Commissioner write-off that taxpayer's outstanding tax on the basis of hardship under s 6A(1) and (2) rather than under s 177C?

152. No: The Commissioner can only write off the debt on the basis that it cannot be recovered due to "serious hardship" only if this is authorised by s 177C. A tax debt cannot be written off under s 6A(1) and (2). In enacting the debt and hardship provisions, including s 177C, Parliament has specified when a write-off is permitted.

153. However, ss 6 and 6A will be relevant to the Commissioner's decisions on when to apply resources to the collection of outstanding tax.

Example | Tauira 4: Exercising statutory discretions

The Goods and Services Tax Act 1985 provides that goods can be zero-rated if they are exported within 28 days. The 28-day period can be extended if specific conditions are satisfied and the supplier applies for an extension. The Commissioner's view is that the section requires an application every time an extension is sought. As part of considering an application the Commissioner also decides if the other requirements are satisfied.

Due to constraints of international shipping, a certain industry can only export its goods every two months, and therefore regularly seek an extension, which imposes compliance costs. They have asked the Commissioner to state that taxpayers in that industry who have in the past received extensions will not be required to make applications and can instead automatically zero-rate supplies that are exported within 60 days.

Can the Commissioner inform these taxpayers that they need not apply to obtain extensions, but rather can automatically zero-rate supplies that are exported within 60 days?

154. No: Sections 6A(1) and (2) do not allow the Commissioner to exercise the powers and discretions contained elsewhere in the Inland Revenue Acts if he has not satisfied the requirements for their lawful exercise.

155. The section in the Goods and Services Tax Act 1985 only provides the Commissioner with the discretion to extend the 28-day period if he considers that all the requirements are satisfied and the exporter has applied. If the taxpayer has not made the application, the Commissioner cannot lawfully decide to extend the 28-day period.

156. Section 6A does not permit the Commissioner to alter the requirements of the section, even when doing so might be seen as reducing both the Commissioner's administrative costs and taxpayer compliance costs.

Example | Tauira 5: Issuing binding rulings

A taxpayer applies for the Commissioner to issue a private ruling under s 91E of the Tax Administration Act 1994. The Commissioner proceeds to draft the private ruling in accordance with his view of the correct interpretation of the relevant taxation law. Before the ruling is issued, the Supreme Court delivers a judgment on the relevant taxation law. As a result of the Supreme Court's decision, the Commissioner now considers the interpretation contained in the draft ruling to be incorrect.

The taxpayer considers the Commissioner's previous interpretation more commercially advantageous to it than the new correct interpretation. It asks the Commissioner not to redraft the ruling in light of the Supreme Court's decision and instead to issue the ruling immediately.

Do ss 6A(1) and (2) authorise the Commissioner to issue a binding ruling other than in accordance with his view of the correct interpretation of the taxation laws?

157. No: Sections 6A(1) and (2) do not allow the Commissioner to exercise the powers and discretions contained in the Inland Revenue Acts if he has not satisfied the requirements for their lawful exercise. This means that s 6A(1) and (2) do not authorise the Commissioner to disregard the requirements and limitations on his ability to issue binding rulings contained in the Inland Revenue Acts.

158. If the Commissioner issued binding rulings that did not reflect his view of the correct tax position, he would be invalidly exercising his authority to issue binding rulings. Section 91E gives the Commissioner the authority to issue binding private rulings "on how a taxation law applies or would apply to a person and to the arrangement … for which the ruling is sought". Section 91EH(1)(c) provides that a private ruling must state "[h]ow the taxation law applies to the arrangement and to the person". This means that the Commissioner must, at the time of issuing the ruling, consider that the ruling contains the correct interpretation of the relevant taxation law. In this example, the draft ruling contains an incorrect interpretation of the relevant taxation law. Therefore, if the draft ruling was issued without amendment, it would not be stating "how the taxation law applies to the arrangement and to the person".

Example | Tauira 6: Anticipated legislation change

A Bill before Parliament provides that all goods and services supplied by a particular industry will be zero-rated for GST purposes. Can the Commissioner decide not to pursue GST that has not been paid by taxpayers in that industry because he expects the Bill will be enacted?

159. Yes: The Commissioner could decide, at this point of time, not to allocate the resources required to pursue the unpaid GST that would not be owed if the Bill were enacted, on the basis that he considers that those resources could be better used elsewhere to maximise the net revenue collected. This would involve the Commissioner exercising his managerial discretion as to the allocation and management of his resources recognised by the "care and management" responsibility.

160. Before the Commissioner could decide not to pursue unpaid GST, he would need to determine that it would be consistent with s 6A(3) and s 6. If the Commissioner is satisfied that the legislative change will be retrospective (ie. the supplies made in the preceding three-month period would qualify to be zero-rated), he might take the view that not pursuing the GST would minimise both his administrative costs and the taxpayers' compliance costs, because it would avoid the need for the GST to be refunded after the Bill is enacted.

161. The Commissioner could not inform taxpayers that they are not obliged to pay the outstanding GST owing under the legislation in force. Similarly, the Commissioner could not advise taxpayers to assess themselves other than in accordance with the legislation in force. If the Commissioner were to do that, he would be purporting to alter taxpayers' obligations. Section 6A(1) and (2) do not authorise the Commissioner to do this.

Example | Tauira 7: Relationship between section 6A(2) and the Commissioner's recovery obligations

Taxpayer A has a history of serious non-compliance, involving repeated failures to pay outstanding tax, comply with the Commissioner's information requests and to adhere to instalment arrangements. The Commissioner identifies two alternative courses of action for dealing with taxpayer A: he can enter into another instalment arrangement with her or, alternatively, bankrupt her.

Taxpayer A considers that another instalment arrangement is required by s 176(1). Section 176(1) provides that "the Commissioner must maximise the recovery of outstanding tax from a taxpayer". Taxpayer A argues that an instalment arrangement would maximise the recovery of outstanding tax from her, because it means she can continue to operate her business and thereby generate sufficient income to pay the tax. In taxpayer A's view, bankrupting her would not maximise the recovery of outstanding tax, because she would no longer be earning any income.

The Commissioner takes into account taxpayer A's arguments but also takes into account that taxpayer A has failed to adhere to past instalment arrangements. The Commissioner considers that this indicates that taxpayer A cannot be relied on to adhere to another instalment arrangement, so it is likely that another instalment arrangement would also not be followed. The Commissioner also considers which approach is consistent with s 6A(3) and s 6. Having done this, the Commissioner concludes that he should commence bankruptcy proceeding against taxpayer A.

The taxpayer considers that the Commissioner has incorrectly applied the law. She argues that only s 176(1) is relevant and, accordingly, the Commissioner should not have considered s 6A(2) and s 6. Is the Commissioner required to consider s 6A(2) and s 6 along with s 176(1)?

162. Yes: The Commissioner has correctly applied the law. Under s 176(1) the Commissioner is required to maximise the recovery of outstanding tax from a taxpayer. To act consistently with s 176(1), the Commissioner must compare the amount that each course of action would likely recover from the taxpayer concerned.

163. In addition, the Commissioner must comply with s 6A(2) and s 6 when acting under s 176(1). Section 6A(2) applies in "collecting the taxes committed to the Commissioner's charge" and, therefore, when the Commissioner seeks to recover outstanding tax under s 176(1). Section 6 applies to all aspects of the Commissioner's administration of the tax system and must be complied with "at all times". Accordingly, the Commissioner must compare the available courses of action as to their consistency with his:

- duty to collect over time the highest net revenue that is practicable and having regard to the three factors in s 6A(3); and
- obligation to use best endeavours to protect the integrity of the tax system.

164. On the facts of this example, the Commissioner has concluded that bankrupting taxpayer A is more likely to maximise the recovery of outstanding tax from taxpayer A. Taxpayer A's history of serious non-compliance strongly suggests that she cannot be relied on to adhere to another instalment agreement.

165. Under s 6A(2), the Commissioner has taken into account that entering an instalment arrangement would preserve taxpayer A's ability to earn income. However, the Commissioner considers that bankrupting her is required to promote compliance, especially voluntary compliance, by all taxpayers (s 6A(2)(b)), and to protect the integrity of the tax system, particularly taxpayer perceptions of that integrity (s 6(2)(a)). Given taxpayer A's history of serious non-compliance, a failure to take firm action against her could reduce other taxpayers' expectations that they will be required to comply and, in turn, this could undermine voluntary compliance.

Example | Tauira 8: Statutory prohibitions on the Commissioner

The Commissioner is satisfied that s 176(2)(b) applies to taxpayer B. Section 176(2)(b) provides that the "Commissioner may not recover outstanding tax to the extent that … recovery would place a taxpayer, being a natural person, in serious hardship". The term "serious hardship" is defined in s 177A. Can s 6A(2) and s 6 authorise the Commissioner to collect the outstanding tax despite s 176(2)(b)?

166. No: Section 176(2)(b) prohibits the Commissioner from recovering outstanding tax to the extent it would cause "serious hardship" to the taxpayer. Section 6A(1) and (2) do not authorise the Commissioner to disregard express legislative directions or prohibitions on how he may or may not act.

167. Section 6A(2) does not override s 176(2)(b) by virtue of the words "despite anything in the Inland Revenue Acts". There is no inconsistency between s 176(2)(b) and s 6A(2). Section 176(2)(b) does not require the Commissioner to collect all taxes regardless of the costs and resources involved. Consequently, s 6A(2) does not authorise the Commissioner to act inconsistently with s 176(2)(b).

Example | Tauira 9: Unfair legislative outcomes

A provision in an Inland Revenue Act can be clearly interpreted and involves no ambiguity, but when it is applied it results in taxing income twice. It is accepted that this outcome is unintended, but the principles of statutory interpretation do not permit the Commissioner to adopt an interpretation that would avoid this result. Can the Commissioner apply the provision in an alternative manner to avoid taxing income twice?

168. No: Section 6A(1) and (2) do not authorise the Commissioner to interpret or apply the legislative provision in a manner that is inconsistent with the statutory interpretation principles contained in the Legislation Act 2019 and court decisions. If the legislation interpreted according to those statutory interpretation principles has the effect of imposing double taxation, the Commissioner cannot assess the taxpayers on some other basis in order to avoid that effect: *Vestey v IRC*.

169. In this situation the Commissioner would likely recommend to the Government that the provision be amended in order to remove the double taxation effect, to both give effect to what was intended and as it may be necessary in order to protect the integrity of the tax system. The Commissioner would also likely consider whether the remedial provisions in ss 6C to 6G can apply.

170. Depending on whether any subsequent amendment to the legislation is intended to be retrospective, the Commissioner may decide not to apply any resources to enforcing the current provision that gives rise to double taxation. Such an approach would be available under s 6A(2) having regard to administrative costs likely to be incurred by Inland Revenue and the compliance costs likely to be incurred by taxpayers on enforcement that will end up needing to be reversed once the legislation is amended.

Example | Tauira 10: Legislative anomalies

The Commissioner considers the original purpose and intent of a legislative provision is clear. However, based upon the ordinary and unambiguous meaning of its text, the provision's effect is inconsistent with what is thought to be its purpose and intent. Can the Commissioner depart from the ordinary meaning of the provision and instead apply it in a way that gives effect to its purpose and intent?

171. No: The Commissioner cannot decide that, because the provision results in an outcome that was not intended, he will interpret or apply the provision in a way that is not supported by statutory interpretation principles contained in the Legislation Act 2019 and court decisions.

172. The Commissioner would likely recommend to the Government that the provision be amended. He may consider this necessary in order to protect the integrity of the tax system. The Commissioner would likely also consider whether the remedial provisions in ss 6C to 6G can apply.

Example | Tauira 11: Interpreting ambiguous legislation

Can care and management be used in determining the meaning to be applied to a provision that is ambiguous — such as when two constructions of a provision are available, based upon the ordinary meaning of the words employed?

173. No: Care and management is not a principle to be used to resolve ambiguity in legislation. Legislation must be interpreted according to the statutory interpretation principles contained in the Legislation Act 2019 and court decisions.

174. The Commissioner could recommend to the Government that the provision be amended in order to remove the ambiguity. He may consider this necessary in order to protect the integrity of the tax system. The Commissioner may also consider whether the remedial provisions in ss 6C to 6G can apply.

Example | Tauira 12: Unworkable legislation

Due to an error drafting the legislation for a new tax deduction, the Income Tax Act has failed to provide a workable method to calculate the amount of the deduction. This means that taxpayers will be required to pay more tax than was intended. Does the "care and management" responsibility allow the Commissioner to "fill the gap" by supplying the calculation method?

175. No: The "care and management" responsibility does not authorise the Commissioner to remedy legislative errors and other deficiencies: *Vestey v IRC; R (on the application of Wilkinson) v IRC; NZ Film Services Ltd v CIR* (1984) 6 NZTC 62,062. The Commissioner must apply the law according to the statutory interpretation principles contained in the Legislation Act 2019 and court decisions. The Commissioner can "bridge a hiatus" to make the legislation work as Parliament intended only to the extent he considers the courts would do so: see *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 530.

176. In such a scenario the Commissioner would likely recommend to the Government that the provision be amended to provide the calculation method, because he would consider this necessary in order to protect the integrity of the tax system. The Commissioner would also consider whether the remedial provisions in ss 6C to 6G can apply.

177. Depending on whether any subsequent amendment to the legislation is intended to be retrospective, the Commissioner may decide not to apply any resources to enforcing the current provision. Such an approach would be available under s 6A(2) having regard to administrative costs incurred by Inland Revenue and the compliance costs incurred by taxpayers.

Example | Tauira 13: Minor non-compliance by taxpayers

A non-resident company proposed to re-purchase and cancel a percentage of its shares. A statement published in a Tax Information Bulletin states that, based on several assumptions, any payment received by shareholders will not constitute a dividend for New Zealand tax purposes. It is later discovered that a minor assumption has not been met. As a result, a significant number of the New Zealand shareholders may have derived a small dividend. The average amount of tax payable on any such dividend is likely to be less than one dollar and may be zero in some cases.

Can the Commissioner decide not to reassess the taxpayers to include any additional tax liability?

178. Yes: The Commissioner could decide not to allocate resources to reassessing the taxpayers if he considers that doing so would be consistent with s 6A(2) and s 6.

179. On the facts of this example, reassessing the taxpayers would result in the taxpayers' liability being determined according to law (s 6(2)(b)) and is consistent with taxpayers' responsibilities to comply with the law (s 6(2)(d)). Reassessing could promote compliance, especially voluntary compliance, by all taxpayers (s 6A(3)(b)). It might emphasise to taxpayers that they will be expected to comply fully and encourage them to carefully follow the Commissioner's published items.

180. However, the costs that would be incurred (both by the Commissioner and the taxpayers) by reassessing are likely to be greater than the additional tax collected (s 6A(2)). Before the Commissioner could reassess the taxpayers, he would need to allocate resources to gathering information, answering taxpayer queries and reviewing taxpayer compliance. In some cases, it might require the Commissioner entering the disputes process. The Commissioner could take the view that reassessing would not significantly promote taxpayer compliance, given that the non-compliance here is due to the mistake of the company and not the taxpayers. The Commissioner could also take the view that, since the non-compliance is one-off, minor and inadvertent, he does not need to take firm action against the taxpayers so as to protect taxpayer perceptions of the integrity of the tax system (s 6(2)(a)).

181. Therefore, on the facts of the example, the Commissioner would likely consider that s 6A(2) and s 6 support him deciding not to allocate resources to reassessing. It should be noted that the taxpayers would still be liable for the unpaid tax even though they will not be reassessed at this point of time. Consequently, if the Commissioner were to audit and reassess any of the taxpayers at a later date, he may be required to include the unpaid tax (subject to any statutory provision preventing this).

Example | Tauira 14: Duty to maximise the net revenue collected

The Commissioner has audited HIJK Ltd, a large multi-national corporate taxpayer that has several hundred New Zealander employees. The audit indicates that the company's tax liability for the last three years is greater than it has been assessed for. HIJK Ltd informs the Commissioner that if it is required to pay this increased tax liability, it will no longer be competitive for it to operate in New Zealand and consequently it would end its New Zealand operations.

Can the Commissioner decide not to amend HIJK Ltd's assessment on the basis that it will "collect over time the highest net revenue" by ensuring that HIJK Ltd continues to operate in New Zealand?

182. No: The Commissioner would not be acting consistently with s 6A(2) and s 6 if he were to decide not to reassess HIJK Ltd so to ensure that it continues operating in New Zealand.

183. The duty to maximise the net revenue collected in s 6A(2) does not allow the Commissioner to forgo collecting the full amount of tax owing on the basis that doing so might encourage taxpayers to remain in New Zealand. Tax obligations are imposed directly on taxpayers by the Inland Revenue Acts. Accordingly, only Parliament can address concerns that tax obligations are detrimental to New Zealand's economic activity.

184. On the facts of the example, not reassessing is inconsistent with "[t]he responsibilities of taxpayers to comply with the law" (s 6(2)(d)). If the Commissioner does not reassess, HIJK Ltd will not be required to discharge the tax liability Parliament has imposed on it. Not reassessing would undermine taxpayer perceptions of the integrity of the tax system (s 6(2)(a)) and would not promote compliance, especially voluntary compliance, by all taxpayers (s 6A(2)). Other taxpayers will consider it unfair that HIJK Ltd is not required to comply when they are required to do so. If the Commissioner were to not reassess, other corporate taxpayers might consider that they too could avoid their tax obligations by threatening to cease New Zealand operations.

Example | Tauira 15: Treating taxpayers differently

An audit of four taxpayers in the same industry revealed that these taxpayers had assessed themselves on the basis of an incorrect interpretation of the law. Two of these taxpayers have been reassessed, with the result that their assessed tax liability has increased. The other two taxpayers' assessment have not yet been amended.

Subsequent information indicates that the practice is widespread in the industry and may affect thousands of taxpayers. The Commissioner has decided that these industry-wide taxpayers will not be audited at this time due to resource constraints. In addition, the industry as a whole has agreed to change its practices in future.

Can the Commissioner decide to:

(a) reverse the two reassessments that have already been made; and

(b) not reassess the remaining two audited taxpayers.

Reassessed taxpayers

185. With respect to the two taxpayers who have already has their assessments amended, the Commissioner cannot further amend the assessments to reflect the earlier incorrect interpretation of the law. Doing so would mean that the Commissioner would not be validly amending the assessments under s 113 of the TAA. Section 113 provides that the Commissioner "may from time to time, and at any time, amend an assessment as the Commissioner thinks necessary in order to ensure its correctness" and s 6A(2) does not allow the Commissioner to do other than correctly apply the law.

Audited, but not reassessed, taxpayers

186. Notwithstanding the duty in s 6A(2) that the Commissioner "collect over time the highest net revenue that is practicable" it is a valid exercise of the managerial discretion in s 6A(2) for the Commissioner to decide where his resources are applied. Therefore, the Commissioner could decide that it would be better to apply the resources that would be necessary to amend the assessments elsewhere.

187. However, in doing so the Commissioner would need to bear in mind the resources that would actually be required, whether it would result in the taxpayers complying fully with their tax obligations and the likely effect that it would have on voluntary compliance, and taxpayers' expectations that they will be required to comply with their obligations. This will also ensure that the Commissioner is meeting his duty to protect the integrity of the tax system.

188. In this scenario, it has already been identified that the two taxpayers' assessments are not correct and amending the assessments would likely be an effective use of the Commissioner's resources. This will depend on the circumstances, and it is up to the Commissioner to decide whether it is a good use of his resources on a case-by-case basis.

Example | Tauira 16: Taxpayer reliance on incorrect Inland Revenue advice

A taxpayer called Inland Revenue to ask whether a specific transaction was subject to GST. The taxpayer was incorrectly advised that the transaction was not subject to GST and she based her assessment on this advice.

Later, as a result of auditing the taxpayer, Inland Revenue became aware of the transaction and concluded that the taxpayer is required to pay GST . The taxpayer informs Inland Revenue of the earlier advice she received and asks that she not be reassessed because she relied on this advice.

Can the Commissioner decide not to reassess the taxpayer and instead accept her assessment?

189. The Commissioner does not have to stand by incorrect advice unless it has been made as a binding ruling, and the Commissioner can choose to reassess the taxpayer. However, the Commissioner can decide not to apply resources to amending an assessment, even when he is aware that it is incorrect, when doing so is consistent with s 6A(2). The effect of doing so though will not be to accept that the assessment is correct. Even though the taxpayer's incorrect tax position was based on incorrect advice from Inland Revenue, the taxpayer is still required to pay the correct amount of tax.

190. In deciding whether it is an appropriate use of resources to amend the assessment, the Commissioner would take into account a number of factors, including the resources that would actually be involved, the effect on voluntary compliance and whether it was reasonable for the taxpayer to rely on the advice from Inland Revenue.

191. In this scenario, the Commissioner may decide to reassess the taxpayer to ensure that the correct amount of tax has been assessed. It is unlikely that the taxpayer would be liable to any shortfall penalties.

Example | Tauira 17: Settling litigation

X Ltd proposes to Inland Revenue that a tax dispute set down for a court hearing be settled on the basis that X Ltd pays an agreed proportion of the tax claimed in the Commissioner's Notice of Proposed Adjustment. Would it be a valid exercise of the "care and management" responsibility for the Commissioner to settle on this basis?

192. Yes: The Commissioner could settle with the taxpayer if he considers that doing so is consistent with s 6A(2) and s 6. The courts have held that ss 6A(1) and (2) authorise the Commissioner to settle tax disputes rather than undertake litigation.

193. In determining whether to settle, the Commissioner would have regard to the factors identified in paragraph 127 above, and any other relevant factors.

194. For more information, see the Commissioner's Settlement Guidelines.

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Appendix: Legislative history

A1. Aspects of the legislative history of s 6A and s 6 were summarised from [23] of this Interpretation Statement. This Appendix sets out the legislative history in more detail, including discussing two reports that lead to the enactment of s 6A and s 6: the Valabh report (named for the chair of the committee)[32] and the Organisational Review Committee (ORC) report.[33]

A2. The courts have treated these reports as relevant legislative history when considering ss 6A and s 6: *Westpac Banking Corp v CIR; ANZ National Bank Ltd v CIR* [2008] NZSC 24; *Auckland Gas Co Ltd v CIR* (1999) 19 NZTC 15,027 (CA); *Fairbrother v CIR* (2000) 19 NZTC 15,548 (HC) and *Accent Management Ltd v CIR (No 2)* (2007) 23 NZTC 21,366 (CA). The origins of s 6A in the United Kingdom (UK) legislation and case law are noted in [A12] to [A16].

32 First Report of the Working Party on the Re-organisation of the Income Tax Act 1976 (Inland Revenue, July 1993).

33 Organisational Review of the Inland Revenue Department (report to the Minister of Revenue (and on tax policy, also to the Minister of Finance), Organisational Review Committee, April 1994.

Valabh report (1993)

A3. In June 1993, the Valabh Committee was asked to:[34]

> Report to the Minister of Revenue on the appropriate statutory independence of the position of the Commissioner of Inland Revenue and its relationship with the role of the Minister in specifying priorities in, and the nature of, tax administration and enforcement given the Commissioner's accountabilities and responsibilities under the Public Finance Act [1989] and the State Sector Act [1988].

A4. In the Valabh report, in setting the scene for recommending a care and management discretion, the committee noted that the Income Tax Act imposed the obligation to pay income tax and that the Commissioner's statutory functions were directed to the quantification of that liability. It considered that, in its "extreme form", the law obliged the Commissioner to "assess and recover all taxes which are due".[35] The committee considered this was an unrealistic obligation that did not match Inland Revenue's practice. Moreover, the committee considered that any such obligation sat uncomfortably with the appropriation and financial accountability requirements of the State Sector Act 1988[36] and Public Finance Act 1989. These Acts required departments to focus on the "efficient, effective and economic production of their outputs, the funding for which is appropriated by Parliament".[37] The Commissioner was required to act consistently with both enactments.

A5. Consequently, the Valabh Committee recommended there should be "legislative recognition of managerial discretion to determine priorities and enter into sensible settlements". It considered that the UK care and management provision provided "a useful model". This recommendation was accompanied by a note of caution:[38]

> Such a change in the legislation would have to be presented and implemented with due care. It would be important to emphasise for instance that the taxes *are* committed to the Commissioner's *charge*. Taxpayers may try to take advantage of an apparently increased discretion, and there could be some prospect of greater variability in decisions. Taxpayers are above all entitled to decisions which are correct and consistent. As well, there is always scope for abuse in the administration of the tax system. ... It is important that the professionalism and impartiality of those charged with administering the tax system is not called into question. This could happen if the discretion were extended beyond the limited scope suggested by the Working Party and if the administrative arrangements do not involve adequate guidelines and other safeguards. [Emphasis in original]

Organisational Review Committee report (1994)

A6. In light of the recommendations in the Valabh report, the ORC was set up to investigate the optimal organisational arrangements for the tax system. In its 1994 report, the ORC reviewed and made recommendations about the tax administration structure.

A7. Relevant to this Interpretation Statement is the ORC's observations on the Commissioner's obligation to collect taxes. The ORC stated:[39]

> **IRD's legislative objective is not achievable (refer Section 8, Objective of tax administration)**
>
> An interpretation of the legislation is that IRD is required by the Inland Revenue Department Act to 'administer' the Act and, amongst other things, to collect 'all' the tax. For many practical reasons, this objective is impossible to achieve. But there is a clear general expectation that IRD will collect the most revenue that it can within certain limitations. Other factors affecting the ability to meet requirements under [the] legislation are also relevant such as the exercise of good management, and the need for trade-offs between factors such as compliance costs and information requirements.
>
> ...
>
> ... The Review Committee agrees with the view of the Valabh Committee that this is not a realistic objective. Clearly, the Commissioner, like other chief executives, is subject to resource constraints imposed by Parliament. So the Commissioner cannot be expected to collect *all* taxes. The objective of the tax administration function of IRD therefore should be changed to match these current needs and situation. [Emphasis in original]

34 Valabh report at 1.
35 Valabh report at 6.
36 The State Sector Act 1988 has since been repealed and replaced by the Public Service Act 2020.
37 Valabh report at 14.
38 Valabh report at 8.
39 ORC report at 7.2.2 and 8.2.

A8. The ORC agreed with the Valabh Committee's recommendation that the Commissioner's managerial discretion should be legislatively recognised:[40]

> It is not possible for the Chief Executive of IRD, operating within limited resources, to ensure that every cent of due taxes is collected. Explicit recognition of the management of limited resources in the efficient and effective collection of taxes is required.

The ORC considered that the Commissioner's responsibility for the "management of limited resources in the efficient and effective collection of taxes" was encapsulated by the term "care and management". It defined this term as, "Managerial discretion as to the use of independent statutory powers in a cost-effective manner".[41] The ORC recognised that the Inland Revenue Department Act 1974 (now repealed) would need to be amended to recognise any care and management responsibility. It considered that it was uncertain whether s 4 of the 1974 Act, which provided that the Commissioner was charged with the "administration" of the Inland Revenue Acts, "implies that care and management of limited resources overrides the more specific tasks and duties of the Commissioner defined in the Inland Revenue Acts".[42]

A9. Further, the ORC considered that the protection of the integrity of the tax system was important due to both the constitutional basis on which taxes are collected and the fundamental strategy of voluntary compliance.

A10. Consequently, the ORC recommended its draft s 4 of the Inland Revenue Act 1976 be enacted. It considered that draft s 4 recognised the Commissioner's managerial discretion and, at the same time, subjected this discretion to safeguards and guidance. The relevant components of the draft s 4 were:

(1) Every Minister and Officer of any Department having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts will at all times use their best endeavours to protect the integrity of the tax system.

(2) Without limiting the meaning of "the integrity of the tax system" it reflects:

(i) taxpayer perceptions of that integrity;

(ii) the rights of taxpayers to have their liability determined fairly, impartially and according to law;

(iii) the rights of taxpayers to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other taxpayers;

(iv) the responsibilities of taxpayers to comply with the law; (v) the responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers; and

(vi) the responsibilities of those administering the law to do so fairly, impartially and according to law.

…

(4) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

(5) In collecting the taxes committed to the Commissioner's charge and notwithstanding anything in the Inland Revenue Acts the Commissioner will collect over time the highest net revenue that is practicable within the law having regard to:

(i) the resources available to the Commissioner;

(ii) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and

(iii) the compliance costs incurred by taxpayers.

…

(9) For the purposes of this section "tax" includes any revenue or entitlements covered by the Inland Revenue Acts and "taxpayers" and "taxes" shall be construed accordingly.

These components of the draft s 4 are almost identical to ss 6 and 6A(1) and (2).

A11. The Valabh and ORC reports suggest that the purpose of s 6A(1) was to introduce a care and management discretion in New Zealand similar to that which existed in the UK (discussed from [A12]). Given the broad nature of the discretion, both committees recommended it would need to be carefully implemented with adequate guidelines and safeguards.

40 ORC report at 9.4.2.

41 ORC report at 81.

42 ORC report, Appendix D at 24–25.

United Kingdom legislation and case law

A12. Both the Valabh Committee and ORC referred to the UK care and management provision. At that time, this provision was in s 1 of the Taxes Management Act 1970:

> 1(1) Income tax, corporation tax and capital gains tax shall be under the care and management of the Commissioners of Inland Revenue (in this Act referred to as "the Board"), and the definition of "inland revenue" in section 39 of the Inland Revenue Regulation Act 1890 shall have effect accordingly.

A13. The House of Lords considered s 1 of the Taxes Management Act 1970 in *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 All ER 93 (HL) (known as *Fleet Street Casuals*). In that case, casual workers in the printing industry had "engaged in a process of depriving the Inland Revenue of tax due on their casual earnings". The casual workers had falsified their identities and addresses when collecting their pay, so Inland Revenue could not assess and collect tax due from them.

A14. To end this revenue loss, the UK Revenue entered an arrangement with the casual workers, union and employers. By the terms of this arrangement, the:

- casual workers would register with the Revenue in respect of their employment in order for future tax to be deducted at source or otherwise assessed and to co-operate with the Revenue in settling their taxes for the previous two-year period; and
- Revenue agreed not to investigate tax liability of these casual workers in years before the past two years.

A15. The respondent sought a writ of mandamus to compel the UK Revenue to act contrary to this arrangement by discharging its statutory duty to assess and collect all taxes owed by the casual workers. In considering the application, the House of Lords held in *Fleet Street Casuals* that the Revenue had a "wide managerial discretion" under s 1(1) of the Taxes Management Act 1970. Lord Diplock stated that this discretion was inherent in the phrase "care and management" (at 101):

> the Board are charged by statute with the care, management and collection on behalf of the Crown of income tax, corporation tax and capital gains tax. In the exercise of these functions the board have a wide managerial discretion as to the best means of obtaining for the national exchequer from the taxes committed to their charge the highest net return that is practicable having regard to the staff available to them and the cost of collection.

It is worth observing that s 6A(2) is very similar to the duty Lord Diplock stated was imposed by s 1 of the Taxes Management Act 1970 (which is equivalent to s 6A(1)).

A16. Their Lordships held that the arrangement was within the managerial discretion conferred by s 1 of the Taxes Management Act 1970. Without the arrangement, attempting to collect the taxes from the casual workers would have been unlikely to produce any substantial sums of money (at 99–100 per Lord Wilberforce; at 101 per Lord Diplock). Moreover, the arrangement was likely to lead to a greater collection of revenue, because it brought the casual workers into the taxation system, so enabled their future income to be taxed. As Lord Roskill stated (at 121):

> To my mind it is clear beyond argument … that what was done was a matter of taxes management, and I can see no shadow of dereliction of duty by the [Revenue], or any suggestion of improper or unlawful conduct on their part. On the contrary, what they did seems to me to have been a matter of administrative common sense. Instead of wasting public time and money in seeking to collect taxes from persons whose names were unknown and whose ability to pay was therefore equally unknown, they made an arrangement which enabled taxes not hitherto able to be collected or in fact collected, collectable in the future at a cost to the general body of taxpayers of foregoing the collection of that which in reality could never have been collected.

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 25/22: Do the purchase price allocation rules alter the tax book values of Farmland Improvements and listed horticultural plants under subpart DO?

Issued | Tukuna: 15 December 2025

Under subpart DO, a purchaser of farmland with Farmland Improvements and listed horticultural plants who carries on a farming business on the land is allowed an annual amortisation deduction of the diminished values of the improvements and plants. The opening tax book values for the purchaser is the seller's tax book values for the improvements and plants at the beginning of the income year of the sale, less any deductions the seller is allowed in that income year for listed horticultural plants that cease to exist or cease to be used to derive assessable income. This Question We've Been Asked considers whether the purchase price allocation rules alter this treatment. It concludes that they do not.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss DO 4, DO 5, GC 21, GC 22, sch 20, part A

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

Question | Pātai

When the sale of farmland includes Farmland Improvements and listed horticultural plants, do the purchase price allocation rules in ss GC 20 and GC 21 alter the purchaser's opening tax book values for the improvements and plants as specified under subpart DO?

Answer | Whakautu

No. The purchase price allocation rules in ss GC 20 and GC 21 do not override the rules in subpart DO that specify the tax treatment of Farmland Improvements and listed horticultural plants. Under subpart DO, if the purchaser carries on a farming business on the farmland the purchaser assumes the seller's tax book values for the improvements and plants in the year of the sale and continues the annual amortisation deduction of the improvements and plants.

Key terms | Kīanga tau tāpua

Farmland Improvements refers to the 13 farming improvements to land listed in sch 20, part A (see the Appendix to this question we've been asked). Vines planted mainly for the purposes of producing grapes for wine production are a "non-listed horticultural plant".[1] A non-listed horticultural plant is a Farmland Improvement (sch 20, part A, clause 9). See further explanation under the term "listed horticultural plant" below.

Listed horticultural plant is defined in s YA 1 as horticultural plant, tree, vine, bush, cane or similar plant that is cultivated on land and is a type listed in a determination made by the Commissioner.[2] The definition of "listed horticultural plant" explicitly excludes vines planted mainly for the purposes of producing grapes for wine production. Wine grape vines, therefore, fall within the definition of "non-listed horticultural plants".

Farmer means a person who carries on a farming or agricultural business. The word farmer is used for convenience and does not indicate what activities are farming or agricultural activities. For example, a farmer may be an orchardist.

1 "Non-listed horticultural plant" is relevantly defined in s YA 1 as a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land and is not a listed horticultural plant.

2 See DET 24/01: Amortisation rates for listed horticultural plants *Tax Information Bulletin* Vol 36, No 4 (May 2024): 153.

Amortisation deduction is a deduction for expenditure on an asset which spreads the expenditure over a period of time (usually over the estimated useful life of the asset).

Explanation | Whakamāramatanga

Introduction

1. The purchase price allocation rules in ss GC 20 and GC 21 apply when a transaction includes the disposal of two or more of six specified classes of property. The purpose of the purchase price allocation rules is to ensure the seller and purchaser of a class of purchased property treat each class of property as bought and sold for the same amount. A comprehensive commentary on those rules is in the July 2021 *Tax Information Bulletin*.[3]

2. Under subpart DO, if the purchaser of farmland carries on a farming business on the land, the purchaser can assume the seller's tax book values for Farmland Improvements and listed horticultural plants in the year of the sale and continues the annual amortisation deduction of the improvements and plants.

3. This Questions We've Been Asked (QWBA) considers whether the purchase price allocation rules alter the purchaser's opening tax book values of Farmland Improvements and listed horticultural plants under subpart DO.

Subpart DO

4. The rules in subpart DO specify the tax treatment of Farmland Improvements and listed horticultural plants when the land (on which a farming business has been carried on) is sold.

5. Under ss DO 4 and DO 5, an amortisation deduction is allowed for the expenditure incurred on Farmland Improvements and on planting listed horticultural plants, respectively, if the requirements of those provisions are met.

6. Relevantly, a farmer, who owns the land on which a farming or agricultural business is carried on, is allowed the deduction for expenditure incurred by them "or by another person", such as a previous owner or a lessee (s DO 4(2)(b) and s DO 5(2)), in each income year except in the income year in which the farmer sells the land (ss DO 4(2)(d) and s DO 5(3)(a)). Where listed horticultural plants cease to exist or cease to be used to derive assessable income in the year the farmer sells the land, the farmer is allowed a deduction for the net diminished value of the plants that cease to exist or be used to derive assessable income in that income year, provided the farmer has no deduction under s DO 6 for replacement planting (s DO 5(6)).

7. The words "or by another person" mean a purchaser of farmland that includes Farmland Improvements or listed horticultural plants can assume the amortisation deduction from the point the seller ceases being allowed the deduction under s DO 4 or s DO 5 (ie, in the year of the sale and purchase). The purchaser (the new landowner) is allowed the annual amortisation deductions if they carry on a farming or agricultural business on the land (that is, the purchaser is a farmer) and the Farmland Improvements or listed horticultural plants benefit their business in the income year for which the deduction is allowed.

8. The purchaser's opening tax book values for the Farmland Improvements and the listed horticultural plants are the unexpired portion of the seller's tax book values for the improvements and plants (that is, the seller's tax book value at the start of the year of sale), less any deductions the seller is allowed in that income year for listed horticultural plants that cease to exist or cease to be used to derive assessable income under s DO 5(6).

The purchase price allocation rules do not alter the treatment under subpart DO

9. The purchase price allocation rules in ss GC 20 and GC 21 apply where a person disposes of two or more of the following six classes of property (classes of purchased property) to a purchaser:[4]

    - trading stock, other than timber or a right to take timber;
    - timber or a right to take timber;
    - depreciable property, other than buildings;

3 New legislation: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 *Tax Information Bulletin* Vol 33, No 6 (July 2021): 3 at 28–38.

4 Sections GC 20(1) and GC 21(1).

- buildings that are depreciable property;
- financial arrangements; and
- purchased property for which the disposal does not give rise to assessable income for the seller or deductions for the purchaser.

10. Where the sale of farmland includes the disposal of two or more of the six specified classes of purchased property, the purchase price allocation rules apply only to the specified classes of purchased property disposed of as part of the sale.

11. However, the purchase price allocation rules do not affect the tax treatment of the expenditure incurred on Farmland Improvements and listed horticultural plants when sold with land.

12. The purchase price allocation rules require the seller and purchaser of two or more specified classes of purchased property to use the same market values when taking their tax positions in relation to the purchased property in their first tax returns following the transaction. Market values agreed or determined under ss GC 20 and GC 21 are not relevant for Farmland Improvements or listed horticultural plants. This is because ss DO 4 and DO 5 stipulate the purchaser assumes the seller's tax book values in the year of sale for Farmland Improvements and listed horticultural plants and, given the seller does not have depreciation-recovery income or loss for Farmland Improvements and listed horticultural plants, the value for the seller is irrelevant.

13. Irrespective of whether the purchase price allocation rules apply, any purchase price allocation recorded in a document by the seller and purchaser in respect of the Farmland Improvements or listed horticultural plants that differs to the seller's tax book values (in the year of sale) do not alter the purchaser's opening tax book value for the amortisation deductions under subpart DO. The purchase price for those improvements and plants is irrelevant to their tax treatment.

14. As a practical matter, the purchaser must obtain from the seller the tax book values of the Farmland Improvements or the listed horticultural plants for the income year in which the land is sold. Without this information, the purchaser is unable to establish the current year opening tax book values of the improvements and plants.

Examples | Tauira

Example | Tauira 1 – The purchase price allocation rules do not prevent deductions

Charlie and Cooper own a piece of farmland on which they carry on an olive growing business. The farmland consists of olive trees and Farmland Improvements (drained swamp, aeroplane landing strip and non-listed horticultural plants). The tax book value of the olive trees is $50,000 and the tax book value of the Farmland Improvements is $200,000. Items of depreciable property are also on the land with an aggregate adjusted tax value of $500,000.

Charlie and Cooper enter into an agreement for the sale and purchase of the farmland with Brooke and Bailey for the purchase price of $5 million. The agreement allocates $4.7 million to the land and $300,000 to the depreciable property. The agreement also states that Charlie and Cooper will provide Brooke and Bailey with the net diminished values of the olive trees and Farmland Improvements. Brooke and Bailey will take over the olive growing business.

Despite the purchase price allocation rules applying to some items in the sale, Brooke and Bailey, as the new owners of the farmland, having received the necessary tax book value information from Charlie and Cooper, can continue the annual amortisation deductions of the expenditure on the olive trees and Farmland Improvements, starting in the income year of purchase. The opening tax book values of the olive trees and the Farmland Improvements are $50,000 and $200,000, respectively. In practical terms, the value of the olive trees and Farmland Improvements is included in the $4.7 million value allocated to the land and does not need to be separated in the purchase price allocation. Even if the parties had agreed an amount in the purchase price allocation for the olive trees and the Farmland Improvements, the opening tax book values of the items for Brooke and Bailey would remain as $50,000 and $200,000, respectively.

Appendix: Legislation

15. Schedule 20, Part A, is as follows:

Schedule 20

Expenditure on farming, horticultural, aquacultural, and forestry improvements

	Improvement	Percentage of diminished value of improvement allowed as deduction
	Part A Farming	
1	unless clause 2 applies, preparation of the land for farming or agriculture, including cultivation and grassing	5
2	regrassing and fertilising all types of pasture in the course of a significant capital activity that relates to a type of pasture with an estimated useful life of more than 1 year	45
3	draining of swamp or low-lying lands	5
4	construction of access roads or tracks to or on the land	5
5	construction of dams, stopbanks, irrigation or stream diversion channels, or other improvements for the purpose of conserving or conveying water for use on the land or for preventing or combating soil erosion, other than planting or maintaining trees, whether or not on the land, for the purpose of providing shelter to the land	5
6	construction of earthworks, ponds, settling tanks, or other similar improvements mainly for the purpose of the treatment of waste products in order to prevent or combat pollution of the environment	5
7	sinking of bores or wells for the purpose of supplying water for use on the land	5
8	construction of aeroplane landing strips to facilitate aerial topdressing of the land	5
9	planting of non-listed horticultural plants on the land (see **section 44C** of the Tax Administration Act 1994)	10
10	erection on the land of electric power lines or telephone lines	10
11	construction on the land of feeding platforms, feeding yards, plunge sheep dips, or self-feeding ensilage pits	10
12	construction on the land of supporting frames for growing crops	10
13	construction on the land of structures for shelter purposes	10

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss DO 4, DO 5, GC 21, GC 22, YA 1 ("listed horticultural plant", "non listed horticultural plants") sch 20, part A

Other references | Tohutoro anō

New legislation: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 *Tax Information Bulletin* Vol 33, No 6 (July 2021): 3

taxtechnical.ird.govt.nz/tib/volume-33---2021/tib-vol-33-no6

DET 24/01: Amortisation rates for listed horticultural plants *Tax Information Bulletin* Vol 36, No 4 (May 2024): 153

taxtechnical.ird.govt.nz/tib/volume-36---2024/tib-vol36-no4
taxtechnical.ird.govt.nz/determinations/miscellaneous/2024/det-24-04

LEGAL DECISION – CASE SUMMARY

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 26/01: Court approves proposal under the Insolvency Act 2006 despite Commissioner's objection.

Decision date: 17 October 2025

Case

Commissioner of Inland Revenue v Pronk and Garnham [2025] NZHC 3087 [17 October 2025]

Legislative References

Insolvency Act 2006 (**the Act**), ss 5, 29, 231, 274 and 325 through to 339 (Subpart 2 of Part 5)

Tax Administration Act 1994 (**the TAA**), ss 6, 6A, 176, 177, 177A, 177B and 177C

Companies Act 1993, ss 227 through to 234 (Part 14), 236 and 302

Legal terms

Bankruptcy, proposal, related creditors, hardship provisions, statutory obligations, integrity of the tax system, proposal regime, relief regime

Summary

This case involved a proposal submitted on behalf of Mr Michael Robert Garnham (**Mr Garnham**) under Subpart 2 of Part 5 of the Act during bankruptcy proceedings commenced by the Commissioner of Inland Revenue (the **Commissioner**). If accepted by a majority of Mr Garnham's creditors, and approved by the High Court, the proposal would bind the Commissioner and Mr Garnham would avoid bankruptcy.

The Commissioner voted against the proposal during the creditors meeting and opposed the provisional trustee's application for the High Court to approve the proposal.

Despite the Commissioner's objection, the Court approved the proposal.

Impact

The judgment highlights the conflict between the proposal regime under the Act and the relief provisions of the TAA.
As the case turns on its specific facts it has limited precedential effect. However, it may be persuasive, as there are few decisions considering proposals where the Commissioner is a creditor. The Commissioner may be bound by any future Insolvent's proposal (even where he has already declined relief under the TAA) if the requirements of s331 of the Act are satisfied. However, the findings in relation to the Commissioner's objection pursuant to s333(3) of the Act will have little to no impact as they are fact specific.

Facts

In October 2023, the Commissioner served a bankruptcy notice on Mr Garnham and subsequently filed a creditor's application in the Wellington High Court seeking an order adjudicating Mr Garnham bankrupt.

Over the next 11 months Mr Garnham made three hardship applications to the Commissioner under the TAA. The first two hardship applications were declined by the Commissioner for several reasons, including concerns that accepting the applications would not promote the integrity of the tax system or voluntary compliance. The Commissioner requested further information in relation to the third hardship application, however, that information was not provided and the application was declined.

On 15 April 2024, Mr Garnham filed a judicial review application of the decision to decline the first hardship application. That application was subsequently discontinued, and this proceeding continued.

In November 2024, Mr Garnham submitted a proposal under the Act and the High Court directed that bankruptcy proceedings and the proposal proceedings be case managed together. The bankruptcy proceedings were adjourned to consider the proposal.

The proposal offered a total contribution of $380,000 to satisfy the debts of all creditors and would be paid by one of Mr Garnham's family trusts. The Commissioner was the only preferential creditor ($300,000 of the total tax debt of approx. $900,000 was preferential debt).

The creditor's meeting in relation to the proposal was held in February 2025 and the Commissioner made a postal vote to decline the proposal. Seven out of the 10 listed creditors in the proposal attended the meeting and voted. The required majorities (being a majority in number and over three quarters in value of the total debts) were met.

In March 2025, the provisional trustee applied to the Wellington High Court for approval of the amended proposal pursuant to section 333(1) of the Act. The Commissioner opposed the approval.

Issues

The issues in this case were as follows:

1) Was the Commissioner bound by Subpart 2 of Part 5 of the Act;
2) Alternatively, were the terms of the proposal not reasonable and/or not calculated to benefit the general body of creditors for the purposes of s 333(3)(b) of the Act;
3) Alternatively, was the proposal not expedient for the purposes of s 333(3)(c) of the Act; and
4) If it was found that a ground under section 333(3) was met, should the Court exercise its residual discretion to refuse to approve the proposal.

Decision

Issue 1: The Commissioner is bound by Subpart 2 of Part 5 of the Act

Associate Judge Skelton did not accept the Commissioner's argument that *Commissioner of Inland Revenue v Wilson* [2017] NZCA 100 [31 March 2017] (CA) (***Wilson***) was authority for the proposition that the hardship provisions of the TAA prevailed over the proposals regime in the Act. He determined that the Commissioner was bound by Subpart 2 of Part 5 of the Act because: section 5 of the Act binds the Crown and there was nothing in the Act suggesting that the Commissioner could not be bound by a proposal; *Wilson* related to bilateral proposals, not multi-creditor proposals like the present case; prior High Court cases had determined that the Commissioner could be bound by an analogous compromise regime under Part 14 of the Companies Act 1993; A finding that the Commissioner was not bound would create significant difficulties for the proposals' regime under the Act; and the Commissioner's argument was inconsistent to his own position in relation to proposals put forward under Subpart 2 of Part 5 of the Act in cases before and after *Wilson*.

Issue 2: The terms of the proposal were reasonable and geared to benefit the general body of creditors (s 333(b) of the Act)

The Court considered the Commissioner's arguments under this ground (including the argument that creditors other than the CIR and the provisional trustee were likely to receive nothing or much less than what was promised in the proposal). Arguments in support of the proposal included that: creditors were unlikely to receive any distribution if Mr Garnham is adjudicated bankrupt; the related party trust would be under no obligation to contribute funds and the related party creditors will be entitled to submit claims in the bankruptcy.

AJ Skelton weighed the various competing factors relevant to this ground and determined that the proposal was reasonable and geared to benefit the general body of creditors.

Issue 3: It was expedient to approve the proposal (s 333(3)(c) of the Act)

Again, AJ Skelton noted the Commissioner's arguments under this ground, including: that the related party creditors had effectively determined the outcome of the proposal and had voted for the proposal on grounds other than maximising commercial return; that approving the proposal would undermine the integrity of the tax and insolvency regimes; and that Mr Garnham had an extensive history of financial mismanagement and was an ongoing risk to the revenue. He weighed this up against other competing factors and concluded that, on balance, it was expedient to approve the proposal.

Issue 4: Conclusion on Commissioner's objection under s 333(3)(b) and (c) of the Act

AJ Skelton determined that: a) the terms of the proposal were reasonable and geared to benefit the general body of creditors; and b) it was expedient to approve the proposal.

REGULAR CONTRIBUTORS TO THE TIB

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.

Policy

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.