

Privacy Commissioner's Submission to the Finance and Expenditure Select Committee on the Taxation (Income Tax Rate and Other Amendments) Act 2020

1. I am pleased to provide a submission on the Taxation (Income Tax Rate and Other Amendments) Act ("the Act" or "the Bill" as it then was), having participated in the policy process leading up to the Act.
2. The Act amended the Income Tax Act 2007 and the Tax Administration Act 1994 ("TAA") to:
 - 2.1. introduce a new top personal income tax rate of 39% on annual income that exceeds \$180,000;
 - 2.2. increase the minimum family tax credit threshold for the 2020-21 and later tax years;
 - 2.3. introduce increased disclosure requirements for trusts; and
 - 2.4. explicitly empower the Commissioner of Inland Revenue ("the Commissioner") to collect information for tax policy development purposes.
3. As requested, I submit on the Act's provisions relating to the collection, storage, access to, correction of, use, or disclosure of personal information, specifically sections 33 and 35 of the TAA.

Privacy Commissioner's mandate

4. The Privacy Act 2020 is New Zealand's primary source of privacy law and governs the collection, use, storage, and disclosure of personal information. It also provides a statutory mandate under section 17 for my Office to examine wider developments or actions that may affect individuals' privacy.

Inland Revenue's consultation with the Office of the Privacy Commissioner

5. In the weeks leading up to the Bill's enactment, Inland Revenue consulted with my Office at various stages in respect of two draft proposals to amend the TAA.
6. First, clause 35 of the proposed Bill proposed to insert sections 59BA and 59BAB. The draft section 59BA sought to introduce the requirement for a trustee to provide a return of all income derived by the trustee as trustee of a trust in the form prescribed by the Commissioner set out in subsection (2).
7. The draft section 59BAB provided that the Commissioner may require a trustee to provide a return that relates to the trust after the end of the 2013-2014 income year, that would be required to be provided under section 59BA if the period began after the end of the 2020-21 income year.
8. Inland Revenue considered that this information collection measure would help it to:

- 8.1. understand how trusts might be used to structure out of the new top income tax rate;
and
 - 8.2. remedy any deficits in the information held by the Commissioner.
9. After assessing the proposed sections 59BA and 59BAB, I thought they posed a low privacy risk. The current sections 59BA and 59BAB inserted into the TAA do not differ substantially from the draft clauses on which my Office was consulted: therefore, my opinion remains the same.
 10. Secondly, Inland Revenue proposed to insert an additional subsection into section 17B explicitly empowering the Commissioner to require the provision of information and documents from persons solely for the improvement, researching, or reform of the tax system.
 11. I recommended that any information collected in accordance with section 17B(1)(c) must not be used or disclosed for any purpose other than the improvement, researching or reform of the tax system. Furthermore, that the information be used:
 - 11.1. in a form in which the individual concerned is not identified; or
 - 11.2. for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.
 12. I also recommended that Inland Revenue at least substantially incorporates this restriction on use and disclosure in s17B.
 13. Ultimately, section 33 of the Act inserted the standalone section 17GB into the TAA, rather than, as was proposed, amending section 17B. Section 17GB does not differ substantially from what my Office was consulted on, save that it prohibits the Commissioner from using, as evidence in proceedings against a person, information provided by that person in response to a notice under this section (section 17GB(2)).

Recommendation

14. While I am pleased to see the prohibition under section 17GB(2), I reiterate my comments made at paragraph 12. I recommend an express prohibition on the use or disclosure of information collected under section 17GB for any purpose other than the improvement, researching or reform of the tax system. Furthermore, that the information collected for improvement, researching or reform of the tax system be used:
 - 14.1. in a form in which the individual concerned is not identified; or
 - 14.2. for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.
15. This would align the provision with the equivalent “statistics and research” exceptions in the Privacy Act 2020.

Conclusion

16. I trust my comments in this submission will be of use to the Committee in its considerations and that my recommendations are given due regard.
17. I do not seek to speak to this submission but would be pleased to appear before the Committee should it be of use.

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a series of loops and a final horizontal stroke.

John Edwards
Privacy Commissioner

4 March 2021