



KPMG
10 Customhouse Quay
PO Box 996
Wellington 6140
New Zealand
T: +64 4 816 4500

Our ref: 180226BEPSsupSub

The Chair
Finance and Expenditure Committee
Parliament Buildings
Wellington
By email: fe@parliament.govt.nz

5 October 2018

Dear Sir

**KPMG oral submission – Taxation (Annual Rates for 2018-19,
Modernising Tax Administration, and Remedial Matters) Bill ('the Bill')**

We are unfortunately unable to speak to our submission in person on the hearing date.

As discussed with the Select Committee staff, we have prepared a script of the matters we wanted to highlight. This is attached.

We will be unable to answer questions in person (which we appreciate is more helpful to the Committee) but would be happy to answer any questions that the Committee may have by email to John Cantin at jfcantin@kpmg.co.nz or Darshana Elwela at delwela@kpmg.co.nz.

We trust that this will assist the Committee in its consideration of the Bill.

Yours sincerely

John Cantin
Partner

Darshana Elwela
Partner

KPMG Oral Submission Notes for the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill ("the Bill") (in substitution for appearance before the Committee)

Thank you for the opportunity to speak to our submission. We want to highlight a couple of those submissions.

Automatic action (refunds and tax to pay) and Inland Revenue advice on tax codes

I will start by appealing to your self-interest as a Member of Parliament. Imagine in a couple of years there are two emails in your inbox. The first reads:

Dear [Member of Parliament]

....

Last year Inland Revenue sent me an email. They told me to change from a secondary tax code to a 20% code to avoid being over taxed. I thought that was nice of them and changed my secondary code to 20%.

I received an email last week that said I now owe them \$1,000. I called them. After waiting a long time I spoke to someone who said they couldn't help me. I owed the money because I had, because of a bonus, earned more than they thought I would. According to them, I had less tax deducted than I should have.

This can't be right. I did exactly as they told me to do. What's going on?

Please help as I don't have that sort of money to spare.

Yours sincerely

Your constituent/party voter

The second reads:

Dear [Member of Parliament]

Six months ago I received a very welcome refund to my bank account from Inland Revenue. I wasn't expecting it so I checked. They told me that they had all of my information and the refund was right. I didn't need to do anything, which is great.

I spent the refund on some presents for the kids.

Yesterday I received a letter asking why I hadn't included some income in my return.

You see, I have a builder mate who I help out from time to time. He pays me some cash and buys the odd beer. Turns out that Inland Revenue have audited him. He told them he had paid me to do some jobs for him.

That means I will have to pay back the refund and more. I can't afford to.

I can't see how this can be fair, Inland Revenue shouldn't have sent the refund.

Can you please help?

Your constituent/party voter

PS some smart aleck at the pub says you were on the Select Committee that approved the law changes. You will be able to clear this up for me, won't you?

Both of these examples seem to us to be plausible results of Inland Revenue's use of data and technology to make it easier for individuals to comply with their end of year tax obligations.

We support that use and the broad objectives.

However, our concern is that there is a fundamental shift in the role of Inland Revenue. It will move from an enforcer of the rules to a combined advisor/enforcer role in the new world.

Problems such as those in the examples are unlikely to cause a reaction under current rules. Inland Revenue instructions have the force of law rather than being advice.

If under the new rules Inland Revenue advises (in the tax code example) or acts on its own (in the automatic refund example), the perception will be that it should know what it's doing and so is right. Individuals will not readily distinguish between an Inland Revenue recommendation and instruction or that there remains a disclosure requirement for "other" income.

Our concern is that the enabling legislation does not deal with the Commissioner's dual role in the new world and the risk this creates for taxpayers, the Commissioner and ultimately Parliament.

We have highlighted this due to our experience from consultations to implement the recently enacted Investment Income Reporting rules. There are practical and technical issues arising about taxpayer rights and obligations under the new investment income reporting rules. These and similar issues will arise for the proposed year-end obligations for individuals.

We submit that the Committee should gain comfort that examples such as ours will be fairly and properly dealt with - that there remains a duty of care to taxpayers – by the legislation and by Inland Revenue. (As an aside, we believe that very few taxpayers will be able to actually understand the legislation nor attempt to. It will therefore be important that Inland Revenue communicates the requirements of taxpayers clearly and simply).

We have two other short comments:

- Inland Revenue's Business transformation has, understandably, been implemented in a modular way. However, there is no published overall view of how it will work. The different components have been included in different Tax Bills, making it difficult to see all of the effects. The Select Committee should consider how this all fits together and whether it makes sense holistically.

- Although Inland Revenue has no doubt considered the effects of the changes on its resource requirements, we note there is a potentially large effect. We understand there are some 500,000 secondary tax codes in operation. The promise of the new system is that individuals will be able to correct to align with the right rate in “real time”. Inland Revenue’s data and advice will be critical to that. Even if it tries to stagger its activity, by only suggesting changes for a limited number, demand may increase as pub talk (and Members of Parliament discussing the change) lead other taxpayers to ask Inland Revenue to fix their rate. The Select Committee should confirm the resourcing impact and ensure Inland Revenue can deliver on the promise.

Proposed section 6B and the status of Commentary to a Tax Bill

Proposed section 6B in the Tax Bill allows certain actions to correct “legislative errors” if they are contrary to the policy intent.

In our written submission, we discussed proposed section 6B and also the status of the Commentary to a Tax Bill. These two issues are linked.

Taxpayers will attempt to determine the policy intent from consultative documents, Cabinet papers, the Commentary to the Bill, the Officials’ Report on the Bill, the Select Committee Report as well as the legislation itself.

If the Commentary is simply guidance then it should not be used to support the policy intent.

One way to think about this is to consider a real life example. During the Select Committee phase of the BEPS Bill, Inland Revenue identified an “error” in the Bill and therefore in the Commentary.

If instead of the amendment having been made you assume:

- the error had not been identified
- the bill was enacted as drafted
- Inland Revenue subsequently identified the error

would section 6B have applied to allow an appropriate action pending a legislative correction?

The debate would have been over whether there was a clear policy intent which allowed action to be taken. Whether the Bill Commentary would have been available evidence in that debate depends on its status. (As our submissions on that error illustrate the policy intent was not easily determined despite Officials’ response to those and other submissions.)

As we have submitted, the Select Committee does need to take a view on this to provide some certainty. Ideally, it should take a view on all evidence that can be used in determining the policy intention.

As an aside, it may also be instructive to ask why that policy does not inform the interpretation of a relevant provision in the first place (i.e. why is it only specifically relevant when applying proposed section 6B).

We welcome any questions from the Committee.