KPMG
10 Customhouse Quay
P.O. Box 996
Wellington
New Zealand

Telephone +64 (4) 816 4500
Fax +64 (4) 816 4600
Internet www.kpmg.com/nz

Towards a New Tax Administration Act
C/- Deputy Commissioner, Policy and Strategy
Policy and Strategy, Inland Revenue
P O Box 2198
Wellington 6140

19 February 2016

Dear Sir

KPMG submission - "Making Tax Simpler: Towards a New Tax Administration Act"

KPMG is pleased to make a submission on the Government Discussion Document, *Making Tax Simpler: Towards a New Administration Act* ("the Discussion Document").

We welcome the opportunity for continued engagement on Inland Revenue's Business Transformation project. A review of the existing tax administration framework is crucial to ensuring the future system operates as intended. The tax administration settings need to be adaptable to an ever changing world, particularly as technology evolves.

We provide below our high level comments on the Discussion Document. Our responses to the specific questions raised in the Discussion Document are contained in the Appendix.

Support for direction of reform

KPMG generally supports the direction of the tax administration reforms, including:

- Allowing the Commissioner greater administrative flexibility to "get to the right outcome". However, we believe the existing care and management powers already provide for this. We believe the issue is one of narrow interpretation of her powers by the Commissioner. A mind-set change and clear and effective guidance will be required to ensure that this flexibility is used. (We note that reports from Australia suggest that their equivalent proposal is expected to result in no exercise of the power.)
- Having a single Commissioner of Inland Revenue and Chief Executive, even though this may create tensions. We believe the onus, in resolving any conflicts, is for what is in the best interests of the tax administration to have priority over wider public sector considerations.
- Greater information sharing with other Government agencies, subject to appropriate safeguards, such as subjecting non-Inland Revenue officials in receipt of tax information to the same secrecy standards, and retention of the necessary and relevant standard for collection of information. We consider the standard should be that sharing information which advances the efficiency of the tax system as a whole is acceptable. Anything beyond

that needs careful and reasoned analysis to confirm that the tax system should be used to collect and share information.

- Pre-populated income tax returns. We note the success of this proposal will be heavily dependent on the design of other parts of the Business Transformation project (see below).

Business Transformation project needs to be considered as a whole

Given the size and impact of the project, we consider it vital to have a clear view of how each stage of Business Transformation fits within the project as a whole. In this regard, although the March 2015 Green Paper set out a high-level overview of the process, there is insufficient information on how the specific proposals relate to other parts of the project and other parts of the tax system.

Having an incomplete picture of the overall Business Transformation project makes it difficult for us to consider possible systemic issues as the proposals are inter-linked. An example, is the proposal for pre-populated tax returns, the success of which will depend on the design and ultimate implementation of the PAYE (currently under consultation) and withholding (still to be consulted on) proposals.

What's missing from the Discussion Document

This is further shown by what we consider to be critical areas of the Tax Administration framework which are yet be addressed. These include the rights and obligations of taxpayers and the Commissioner.

For taxpayers, what are taxpayers' responsibilities and liabilities (such as penalties) if returns are incomplete? In our view, there needs to be further thinking about what information will be considered final, when it will be considered final and what the consequences will be if the information is inaccurate at the supposed date of finality. We have previously noted that rights and obligations for a collection agent (such as an employer), an information provider and the taxpayer with the ultimate tax liability may need to be differentiated.

We also consider it important that there is a clear ability to correct errors. This will be doubly important as the system moves to real-time information and (possibly) payment collection.

For Inland Revenue, we strongly believe that a requirement for the Commissioner to act as a model "litigant" throughout the exercise of her powers is required. This contrasts with the position at present, whereby the Commissioner can (and has) taken inconsistent interpretative positions.

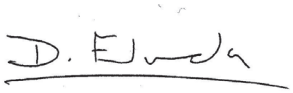
The current model separate, as internal functions, Policy Advice and legislative interpretation. Although there is support for such an approach, it can lead to the unfortunate position that Inland Revenue concludes that what Parliament intended to be achieved and what was advised to Parliament and taxpayers is not achieved. An alternative is to bind the Commissioner to Inland Revenue's policy statements (which Parliament has relied upon in enacting the law). Only taxpayers would be allowed to question whether the intention is actually achieved. This is, in our view, a fundamental question for taxpayer certainty. It is an important part of the Tax Administration framework.

The ability to achieve a correct assessment is also fundamental. The process by which an assessment is made and subsequently amended by the Commissioner needs to be considered. The future state needs to work in a real-time world so that in our view consideration of the framework is required earlier.

Further information

Please do not hesitate to contact us – John Cantin, on 04 816 4518, and Darshana Elwela, on 09 367 5940 – if you would like to discuss our submission in greater detail.

Yours sincerely



John Cantin
Partner

Darshana Elwela
National Tax Director

KPMG
10 Customhouse Quay
P.O. Box 996
Wellington
New Zealand

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Appendix – KPMG's detailed responses to the questions asked

	Questions	KPMG comment
2.1	Do you support giving the Commissioner the discretion to enable her to: • apply a policy-based approach to small gaps in the tax legislation; • deal pragmatically with legislative anomalies that are minor or transitory; • address cases of inequity at the margins; or • deal with cases in which a statutory rule is difficult to formulate?	We support the Commissioner having flexibility to "get to the right outcome". *Current position* We believe that this is what Sir Ivor Richardson sought to achieve in recommending the Commissioner have powers to exercise care and management over the tax system. Therefore, in our view, this discretion already exists under section 6A of the Tax Administration Act 1994. It is the Commissioner's self-imposed restrictive interpretation of her care and management responsibilities (in published statements) that is the current constraint. We believe this requires a mind-set change in the Technical and Legal areas of Inland Revenue, rather than a legislative valve. Even with a legislative valve, the current mind-set means that a clear set of rules as well as a culture change is required to allow a shift to occur. *Proposal* Any administrative flexibility needs to be balanced against the potential for corruption, inconsistency of approach and the usurpation of Parliament's role in making the law. Our view is that the proposed safeguards, for the most part, appear to achieve that balance.

		Nonetheless, there should be clear published guidelines as to how the discretion should be exercised by Inland Revenue. The guidelines for any enhanced care and management provisions should include the following matters: • *Taxpayers' existing rights and obligations:* The Commissioner's discretion should only be exercised when the policy behind the legislation in question is clear and the outcome is favourable to taxpayers. The power to impose any additional tax should only be exercised by Parliament, not the Commissioner. Also, the Commissioner's power should not undermine any ongoing or pending litigation. • *Fairness and equity:* It is imperative that all taxpayers, regardless of size and location, be able to access the Commissioner's approach in the same way. The availability of any administrative recourse should not be dependent on the size of, or resources available to, a particular taxpayer. • *Parliamentary sovereignty:* Parliamentary sovereignty should not be undermined, particularly through the use of a discretion to deal with cases in which a statutory rule is difficult to formulate. We consider that such a discretion should not be unrestricted. As proposed, the discretion is not subject to any limitation based on size or significance. This is in contrast to the three other proposed extensions to the Commissioner's power that are listed above. We submit that the proposed discretion should be subject to appropriate limitation, so that it does not give the Commissioner the power to legislate. Our support for the proposal is based on the tax administration operating in a way that makes the most effective use of its limited resources. In our experience, Parliament, Officials and taxpayers can spend

		disproportionate amounts of time and resources addressing small gaps and anomalies in the legislation. However, we are not seeking to diminish the role of the legislature. We believe there still needs to be a process to implement remedial legislative changes, but in a more efficient and timely way than at present. Any administrative discretion should ultimately only be a "stop-gap".
	Do you agree with the proposed legislative clarification of care and management for the non-tax functions?	The Commissioner's care and management powers should be the same for both tax and non-tax functions.
2.2	Are there any other issues relating to the Commissioner's role that should be taken into account?	*Dual role* On balance, we support the dual roles of the Commissioner and Chief Executive of Inland Revenue being carried out by the same person. By having responsibility for both roles, the person can appropriately weigh up the competing objectives of each role – to exercise care and management over the tax system while also having regard to the Government's public sector efficiency objectives. Our concern is how this trade-off is currently made. We believe the Commissioner may not be able solely to advocate based on what is best for the tax system. We believe an example of this is the recent legislative amendment to require evidence of a New Zealand bank account as a prerequisite for a non-resident obtaining an IRD number. From a purely tax perspective, such a requirement does not improve the efficiency or administration of the tax system. Further, it imposes additional compliance costs on taxpayers (and New Zealand banks). However, there are benefits to Government, as it removes the need for it to verify the identity of non-residents. In that situation, we believe the best interest from a "whole of Government" perspective has taken precedence over the administration of the tax system, to its detriment.

		The Commissioner is likely to face other "conflict of interests" in her dual role. She will need to weigh up what is best for the tax system against the interest of the wider government. Where there is a conflict between the two roles, we consider the outcome that is best for the tax system should take precedence unless there is a compelling reason why the other outcome should apply. Our comments are "in principle" comments. The Discussion Document provides no details of the conflicts that have actually arisen or how they have been resolved. It is possible that we may take a different view if past examples were disclosed. *Model litigant* Our cover letter raises the model litigant approach and the ability of the Commissioner to contradict her policy advice as areas which should be considered.
3.1	Do you agree with a more explicit collection power that covers remote access and bulk information datasets?	We agree in principle that the Commissioner's collection power should cover both remote access and bulk information datasets. This is necessary as taxpayers increasingly store information remotely and in "the Cloud". We are concerned, however, about how and when this power might be exercised, as this may impose undue compliance costs on third parties who maintain the bulk information datasets to comply with requests. From the Discussion Document, it is difficult to determine the type of situations that warrant Inland Revenue collecting bulk information datasets. It refers to the datasets primarily being collected for compliance, analytical or customer education purposes, which is vague at best. There are no specifics or examples given to enable submitters to evaluate the potential costs versus benefits.

		We also consider that taxpayers should be protected from having to produce or organise information in a form that reduces the cost of access for Inland Revenue. We acknowledge that technology has brought with it tools which allow extraction of information to report it in a particular way. However, taxpayers should not have to bear the cost of extracting and organising information in a particular way to meet a dataset request. We also note our response to 3.2 below.
3.2	Do you have any comments on the "necessary and relevant" requirement that is proposed to be retained?	We submit that the "necessary and relevant" standard should be retained to prevent Inland Revenue requesting information that is not required for a specific purpose. Further, Inland Revenue should be required to: • justify any request for information in accordance with that standard (i.e. to say why the information requested is necessary and relevant); and • say how that information will be used and be limited to the use of the information in that way. Inland Revenue already collects a significant amount of information from taxpayers. It appears that not all of this information is used at present. This suggests it is not necessary or relevant.
4.1	Do you agree with narrowing the coverage of secrecy to taxpayer-specific information?	We believe that narrowing the coverage of secrecy to taxpayer-specific information is sensible, if appropriate safeguard are implemented. The protection of taxpayer secrecy is key to maintaining the integrity of the tax system. Any information attributable to a specific taxpayer, even when the information is presented in a general way, should be protected – for example, when information is presented about a particular industry and the industry is dominated by one market player, taxpayer-specific

		information may effectively be revealed. In these cases, the secrecy provisions should continue to apply.
4.2	Do you think consent-based disclosure should be permitted, and should it be limited to within Government?	Consent-based disclosure should be permitted. While there are sound reasons to allow disclosure of taxpayer-specific information, if a taxpayer consents, in all cases, we believe on balance this should be limited to within Government. As outlined in the Discussion Document, allowing consent-based disclosure outside Government may allow private-sector institutions to effectively coerce taxpayers to disclose information about themselves. We also consider that taxpayer consent should be affirmative – i.e. Inland Revenue should not be able to deem consent if a taxpayer does not respond to a request for the information to be shared.
4.3	To what extent should Inland Revenue increase information-sharing with other Government agencies?	We support Inland Revenue sharing information with other Government agencies, if it is in the interests of efficient tax administration. Where the information sharing goes beyond that care does need to be taken. Sharing for efficient administration of Government should only occur if it is not detrimental to the tax system (see our comment above regarding IRD numbers and bank accounts). We understand there are public policy reasons for further sharing (beyond efficient tax administration) and acknowledge the work that Inland Revenue has already carried out with respect to Community attitudes. We consider that any further extensions should be guided by Community attitudes as well as a reasoned analysis on the impact on efficient tax administration. If information has been shared with other Government agencies, officers of those agencies should be subject to the same secrecy standards as Inland Revenue's officers.

4.4	Is there any commercial information that should be subject to additional protections?	Provided that taxpayer secrecy is maintained, then commercial information should be sufficiently protected already. What is unclear is the potential impact international information sharing agreements may have. It would be useful to have some concrete examples of the types of commercial information that may be shared, including with other tax authorities, so that full consideration can be given to this issue. We also submit that Inland Revenue should be able to share information that is publicly disclosed elsewhere, such as on the Companies Office website.
5.1	Will pre-populated tax returns make it easier for people to meet their tax obligations?	We consider that pre-populated tax returns will make it easier for people to meet their tax obligations. This is a clear example of how the design of other parts of the Business Transformation project – i.e. changes to PAYE, withholding taxes, etc – will impact on the tax administration proposals. A key deficiency of the current Personal Tax Summary ("PTS") process is that, other than employment income (and some scheduler payments), the onus is on the recipient to include other amounts from which tax has been withheld at source – e.g. interest and dividends. The proposed pre-populated return should include these amounts as a matter of course (and any other withheld at source type payments). However, there will also need to be space on the pre-populated return to include other types of non-withheld income – such as rental income or FIF income. (At present, individuals with these income types must complete an IR3 return, rather than a PTS.)

		We also note that since 1999 more than a million individuals would not have had to square-up or complete a tax return. These taxpayers will need to be educated on their new obligations and how to comply. We refer to our submission on the PAYE and GST Business Transformation proposals. We have noted the tension between precision and timeliness in that submission. The likelihood of corrections, due to hindsight, needs to be acknowledged and built into the system.
5.2	For taxpayers receiving pre-populated returns, do you agree with the proposed process for outlining the related obligations and responsibilities?	We see the main issue here as the consequences for failing to respond to a pre-populated return. Taxpayers need the right incentives to comply. Neither of the proposed solutions outlined in the document – the "deemed acceptance" system or the "default assessment" system – set out a clear, rational framework to deal with non-compliant taxpayers. If default assessments are the same as the tax liability per the pre-populated returns, then there is no difference between deemed acceptance and a default assessment. If default assessments arbitrarily increase the tax liability in the pre-populated return, this will inappropriately conflate penalties and assessments.
5.3	If the supply of regular information is automated through the use of business accounting systems, will the time at which the aggregate final figures are confirmed be an appropriate point of self-assessment?	We believe the more accurate question is whether this is an opportunity to reduce the time available to taxpayers to file their income tax returns. The answer depends on the accuracy of businesses' accounting systems – i.e. what post period adjustments and error corrections are necessary. The effect of these on the timing of tax returns needs to be considered. (Also, the word "confirmed" is open to interpretation. It is unclear what obligations confirmation will impose on businesses and to what extent they will need to complete reviews of the information or suffer the consequences from it being incorrect.)

		The existing penalties regime, the returns amendment process and the disputes process should be considered together with such a change.
5.4	For tax agents using Inland Revenue's current service offering, what services do you consider most important to facilitate your role in advising and assisting clients?	We value agent-specific services, such as the agents-only phone line and the ability to view and manage clients' tax affairs online. In relation to the latter, having access to tax information and being able to undertake necessary adjustments (e.g. for error correction and to effect transfers – see below), in real-time, would create significant efficiencies for agents and ultimately their clients.
5.5	What sort of services would you like to see Inland Revenue make available to tax agents or other tax service providers in the modern tax administration?	We would like to use online services to manage more of our clients' interactions with Inland Revenue. Examples include being able to: • transfer amounts between different tax accounts instantly, in a similar way to online banking (rather than requesting Inland Revenue undertake the transfers and notify when these have been completed); and • find and manage various Inland Revenue communications online. Examples include Inland Revenue approvals (e.g. for IRD numbers, GST numbers and changes of balance date), confirmations (e.g. buyer-created tax invoice or withholding tax exemption approvals) and taxpayer notifications (e.g. elections under the financial arrangement rules). • access use of money interest and penalties information and calculations in real time. Ideally, Inland Revenue's systems would provide real-time or near real-time updates.

5.6	What would you want considered in designing more digital service offerings for tax agents and other tax service providers?	See our response to 5.5.
6.1	Are the current options for taxpayers to seek Inland Revenue's view on specific issues working effectively?	We consider that the current options for taxpayers to seek Inland Revenue's view on specific issues work effectively, for taxpayers with the means. Options to get certainty, such as binding rulings, come at a cost. In the case of a binding ruling, there is a charge for both Inland Revenue's time and tax adviser time to help with the ruling application. In our experience the total cost can run to tens of thousands of dollars. This generally makes binding rulings uneconomic for small business. The Commissioner's published views are freely available, but non-binding, so provide arguably a lower level of certainty for affected taxpayers. We believe there needs to be a more cost-effective process for smaller taxpayers to seek binding views from the Commissioner. We refer in our cover letter to the role of the Policy and Service Delivery functions of the Commissioner as a model litigant. This raises the question of the status of the Commissioner's public statements. Further work is clearly needed to provide taxpayers with greater certainty of approach by the Commissioner.
6.2	If not, what are your views on how the provision of advice may be improved, taking into account any limitation on Inland Revenue's resources?	See our response to 6.1.
6.3	What suggestions do you have for how the time bar and record-keeping period rules could	*Reducing the time bar*

	be developed in the modernised tax administration?	We support the Discussion Document's alternative approach to reduce the time bar period for taxpayers. The approach will give finality earlier both to taxpayers and to Inland Revenue. However, if the time bar period for increasing tax is to be aligned with the period for refunding overpaid tax, we suggest that taxpayers be given the option to elect to take a shorter time bar period instead of simply having the shorter time bar period imposed on them. We also note that any changes to the time bar are contingent on the success of other aspects of Inland Revenue's modernisation project – in particular, the move to pre-populated returns and the development of better business and withholding tax processes – so we await further developments before expressing a final view on what form the time bar ought to take in the modern tax administration. *Interaction with PAYE proposals* We refer to our submission which suggests that finality is desirable in a real-time world. Given that Inland Revenue will be receiving information in an analysable form more quickly and that some imprecision can be tolerated, this supports the time bar period being shortened. *Fundamental issues* We consider there are gaps in the current time bar rule. Further, there is over-reach of the current provisions. Current gaps include: • imputation credits; • expenditure; and • a position that no withholding is required so no return is filed.

		These gaps need to be rectified. Current overreach is to apply the "omission of income from any source" rule when the time bar extension should be focused on fraud and wilful failures as opposed to technical positions being taken. *Record-keeping requirements* We note that the Discussion Document contemplates updating record-keeping requirements to reflect the costs of keeping records in a digital environment and the fact that Inland Revenue is likely to have more detailed records of its own, from interacting with business systems. The Discussion Document also raises the prospect of aligning record-keeping requirements with the time bar. For the reasons outlined below, we do not expect that the existing record-keeping requirements will need significant reform to be relevant in the modern tax administration. First, we note that record-keeping already imposes costs on businesses in both a digital and a non-digital environment. We expect digital record keeping will be more cost-efficient than keeping hard copy files. Secondly, interaction with business' systems may not by itself provide sufficient information to assess a taxpayer's tax liability. As we expect the onus will continue to be on the taxpayer to justify their position, if challenged by Inland Revenue, information will still need to be maintained. Thirdly, the time bar is not an absolute, so records kept beyond the time bar period will be necessary for determining tax liabilities in relation to matters that are not time-barred. Again, it will be to a taxpayer's detriment if they are not able to support the position that was taken.