

Submission

to the

Finance and Expenditure Select Committee

on the

Taxation (Annual Rates 2017-18, Employment and Investment Income, and Remedial Matters) Bill

5 July 2017

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback on the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill (**the Bill**). NZBA's submission below focuses on the investment income requirements and the bank account opening requirements to obtain IRD numbers within the Bill.
4. NZBA would appreciate the opportunity to make an oral submission to the Finance and Expenditure Select Committee (**Committee**) on this Bill. Please contact Antony Buick-Constable, Policy Director and Legal Counsel at NZBA on 04 802 3351 regarding times for appearing before the Committee.
5. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact:

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General Comments

6. We outline below our general comments on the Bill. We consider these general comments to be important to ensure the success of the Government's and Inland Revenue's wider Business Transformation programme including, in respect of the Bill, the investment income requirements. This is equally the case for the changes in respect of opening bank accounts to obtain IRD numbers.
 - a. NZBA supports, in principle, the purpose of the investment income requirements being to ensure tax administration (e.g. income tax and social assistance positions) for New Zealanders is simpler, more certain and reduces compliance costs.
 - b. However, to achieve this purpose, NZBA strongly recommends ongoing partnering between the banking industry and Inland Revenue to ensure there is certainty on the detail of the investment income requirements and to ensure they can be implemented in a complete and timely manner. At present, further clarity and certainty on the requirements within the Bill is needed. It will take some members significant time to alter systems to enable implementation of the requirements. It will therefore be important that such clarity and certainty is obtained swiftly to ensure the systems development required by the banking industry to implement the requirements occurs in a timely and cost effective manner.
 - c. NZBA supports the Commissioner having discretion to provide IRD numbers to offshore persons without offshore persons having to first open a bank account. NZBA would welcome the opportunity to work with Inland Revenue to develop guidance regarding when such discretion will be applied.

Submissions

7. NZBA outlines below key submission points in respect of the investment income requirements and the bank account opening requirements to obtain IRD numbers within the Bill.

Investment Income

- a. NZBA supports removal of the obligation to provide annual tax certificates in scenarios where customers have provided IRD numbers. However, NZBA notes that its members are likely to still provide certificates for customers to allow customers to verify their annual interest income and withholding tax for their personal tax requirements.
- b. NZBA agrees with the thresholds for amending errors being the greater of \$2,000 or 5% of a payer's annual Resident Withholding Tax (**RWT**) or Non-resident Withholding Tax (**NRWT**) and also agrees with the notification of such errors occurring outside the monthly electronic filings. NZBA recommends this threshold for error correction be extended to include PIE investment income.
- c. NZBA supports the creation of an electronic database of certificates of exemption from RWT which will allow banks to confirm a customer's exemption status without the need to obtain the certificate itself. However, NZBA queries the need to report detailed investment income information regarding interest paid to holders of certificates of exemption. By creating an electronic database of

certificates of exemption, Inland Revenue should have increased certainty of accuracy of tax positions without the need to impose additional compliance burdens on banks to report detailed information which, NZBA considers, is unlikely to provide any benefit to Inland Revenue. As an example, most large corporate organisations hold certificates of exemption, however any interest income they receive will be a minor part of their overall profit and will not be traceable for Inland Revenue to cross check against information provided by banks.

- d. NZBA does not support bringing forward the filing date for RWT and NRWT annual reconciliations from 31 May to 15 May, effective from the filings required in May 2019. Banks will be in the process of developing the necessary systems change to implement the required additional information flows on a monthly basis during such time. As some of the resources required to develop the new systems is likely to be the same as those involved in the annual reconciliations, this increases the risk of errors occurring in the annual reconciliation if a compressed timeframe is imposed for such filings.
- e. The Bill requires a person, who pays non-resident passive income and chooses to apply the Approved Issuer Levy (**AIL**) regime in relation to domestic debt, to provide information about the holder of that debt. While in most cases it will be possible to identify the holder, this may not always be the case for wholesale debt, where information on the individual holders is often held by nominees who hold the debt on behalf of other persons. It is likely to be extremely difficult and, in some cases, impossible (for example due to offshore privacy laws), to trace beyond the nominee. NZBA recommends that if a nominee holds the debt, such reporting should not go beyond the nominee.
- f. Further clarification is required in respect of reporting joint account holder information, particularly in the case of entity customers (e.g. trusts, partnerships and companies). Identifying “*controlling persons*” of certain entities for Automatic Exchange of Information purposes has caused a significant compliance burden for financial institutions and uncertainty for customers. If it were to become necessary to identify such persons for the purposes of the investment income proposals compliance overload is likely to occur for financial institutions and such customers.
- g. The Bill currently requires the provision of information on joint account holders and date of birth information “if held”. NZBA submits that the Bill be amended so that this information is only provided if it is already held and reasonably accessible. While some information may be easily obtainable, it could, for example, be held by banks in paper format. It would be extremely difficult to identify the existence of such information and then ensure this information was reported electronically.
- h. NZBA recommends that flexibility is provided to report the investment income either on a cumulative basis (i.e. year to date) or on an isolated basis (i.e. month by month) and also to provide the investment income information in either a combined format or in various separate formats (e.g. PIE income information can be sent separately from interest income information). Such an approach allows the provision of information to align with how banks manage such data within their existing systems and processes and therefore mitigate compliance costs of implementing any systems solution to report this information monthly.

- i. NZBA recommends Inland Revenue partner with the banking industry to develop communications to New Zealanders on the upcoming changes. This is, perhaps, most critical in respect of the increase in the non-declaration rate for RWT to 45% from 1 April 2020. Carefully planned and unified communications should promote the provision of IRD numbers which will aid in Inland Revenue's requirements and minimise the number of New Zealanders impacted by the increased non-declaration rate.
- j. NZBA recommends Inland Revenue partners with the banking industry to explore an ability to share information for customers who have not provided IRD numbers. For example, if a bank has a customer who has not provided an IRD number, could Inland Revenue share the IRD number of that customer if known? While this would require amendment to privacy laws and Inland Revenue's secrecy laws, it would result in a mutually beneficial outcome for Inland Revenue, banks and bank customers (i.e. New Zealand taxpayers).
- k. The Bill does not contain any detail on whether Inland Revenue will request banks to correct taxpayer information in bank's systems and, if so, how. This may arise, for example, if Inland Revenue identify incorrect RWT rates being utilised by a customer based on the full ambit of information they hold about that customer. Clarity is required as to how Inland Revenue may require banks to correct information (which would need to include automated corrections) and what communications are made to the customer/ taxpayer. NZBA's view is that communications would need to come from Inland Revenue as they have made the decision to alter an RWT rate based on information it holds (which would not be held by banks).
- l. NZBA requests clarity and certainty that the onus of proof over the accuracy of information lies with customers. Banks are reliant on information provided by customers and will not always be in a position to confirm accuracy or ensure it remains current. The Bill is silent on this matter, but it is an area of detail that requires clarification.

Bank account opening requirements to obtain IRD numbers

- m. NZBA supports amendment to the requirements for offshore persons to open bank accounts prior to obtaining IRD numbers in certain circumstances. Such amendment occurs through repeal of section 24BA of the Tax Administration Act 1994 with replacement by way of new section 55B which provides the Commissioner discretion to allocate a tax file number to an offshore person without the need to first have a bank account. NZBA would welcome the opportunity to work with Inland Revenue to develop guidance on when the Commissioner will apply her discretion. NZBA considers such guidance should incorporate flexibility to provide for her discretion to be applied to new scenarios as and when they may arise in the future.