

Submission

to the

Deputy Commissioner,
Policy and Strategy, Inland
Revenue

on the

Making Tax Simpler:
Investment Income
Information Government
Discussion Document

19 August 2016
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
 - 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 “Making Tax Simpler: Investment Income Information” Government Discussion Document (**the Discussion Document**).
4. NZBA welcomes the opportunity to discuss any of our feedback directly with IRD officials and, as outlined in our feedback, we recommend regular meetings with the IRD going forward to develop the proposals of the Discussion Document in conjunction with the IRD. In this regard, please contact:

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Chair of NZBA Tax Working Group
GM, Tax – ANZ
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General Comments

5. We outline below our general comments on the proposals in the Discussion Document. We consider these general comments to be important to help ensure the success of the Government's and IRD's wider Business Transformation programme.
 - a. NZBA supports, in principle, the IRD's aim to make it easier for taxpayers to manage and comply with their tax affairs, pay the right amount of tax and receive correct social assistance entitlements real time.
 - b. However, NZBA wishes to stress that a careful balance must be struck between the proposals covering the tax position of as many New Zealand taxpayers as possible and managing the compliance burden to investment income payers so

that compliance costs do not become excessive. The extent of the additional reporting and administrative obligations will require further discussion with the IRD. We would have concern if an un-pragmatic outcome was sought to strive for a “utopia” of having every New Zealand taxpayer’s tax and social assistance obligations perfect every time, all of the time. Striving for such an approach is likely to create excessive compliance costs for investment income payers. We colloquially refer to such a balance as a “close enough is good enough” approach or applying the “80:20 rule”.

- c. Striking this balance cannot be done by the IRD in isolation. NZBA recommends a partnering approach between the banking industry and the IRD throughout this project to help ensure success of the proposals for the Government and IRD. It is the view of NZBA and its members that only by adopting such an ongoing partnering approach will it be possible to identify the many complexities and idiosyncrasies of the various systems and processes of each bank, as well as those of certain taxpayer types, that will likely arise from the proposals and then shape the proposals further into a workable outcome.
- d. The Discussion Document indicates the introduction of draft legislation into Parliament in 2017. The partnering we recommend with the IRD will need to span well beyond this timeframe. As such, we recommend that IRD Officials and Parliament be prepared to review such legislation over time to ensure it operates in a practical manner and remains fit for purpose. This forms part of good project management which can adapt to necessary changes as required.

Submissions

- 6. NZBA outlines below key submission points in respect of some of the specific questions raised in the Discussion Document. Our submissions are not in the order as raised in the Discussion Document but rather are ordered from broader comments on the proposals to the specific detail.
 - a. NZBA members will incur significant upfront cost to implement the proposals. The proposals will require significant systems and process change across multiple systems for each member to extract the data required on a regular basis. It may also be necessary for various members to create new systems to collate such data for transmission to the IRD, particularly in light of the proposed increased regularity that such data is to be provided.
 - b. NZBA members will also incur an ongoing increase in compliance cost from the proposals. The existing monthly payment of withholding tax will remain. In addition, members will be required to provide significant detailed data more regularly (monthly per the proposals). While newly developed systems may reduce what would otherwise be a very heavy compliance burden, integrity checks and reconciliations and managing reporting anomalies will be a key activity in filing this data. While the Discussion Document notes, at page 19, that the compliance burden should reduce due to no longer being required to file monthly withholding tax returns as the detailed reporting will replace such requirement, we note that this compliance obligation is a very minimal compliance burden. The compliance burden in filing the current monthly withholding tax returns does not come from filling out a form, it comes from collating the data required to populate the returns and performing integrity checks – this obligation will remain.

- c. NZBA considers at an implementation period of least 3 years after the date of enactment of any amending legislation will be required to meet the requirements to report the additional investor information more regularly. This time period is required to make necessary bank systems changes, build additional systems to hold and collate the information, test any system changes and also test the ability to transmit the data. In addition to these requirements, the New Zealand banking industry is currently facing significant other regulatory change which creates competing interests for resource and systems change. Imposing multiple changes to systems at one time presents a significant risk of systems compromise and failure which, if occurred, would be catastrophic to the New Zealand banking industry and economy.
- d. NZBA members would prefer to provide the investor customer data to the IRD on a quarterly rather than monthly basis. Providing such information quarterly will reduce the ongoing increase in compliance costs for investment income payers and provide greater time between filing to help ensure integrity of the data to be provided.
- e. NZBA recommends that the detailed information on investor customer data should be provided later than the 20th of the month following the relevant period. Given there will be no tangible decrease in the compliance burden from the existing monthly withholding tax payment obligations, more time should be provided to file the detailed investor information. We recommend such timeframe be, at least, the end of the month following the relevant period.
- f. NZBA would prefer that investment income payers file detailed investor customer information on a year to date basis. Generally, this better aligns with the systems of members and would greatly assist the amendment of prior errors.
- g. NZBA considers further work is required on how any errors identified by the IRD regarding investor tax rates that require correction will occur. The scope and extent of these obligations is not clear from the Discussion Document. If this obligation is not carefully managed, a significant compliance burden and error risk will arise for investment income payers, particularly if these corrections are fully aligned to customers' social assistance entitlements and are mandatory. More specifically, NZBA considers that any such errors should be communicated by the IRD to the investor in the first instance. If the IRD requires investment income payers to make changes to investor tax information, this should be mandated through legislation.
- h. Many members do not currently have existing systems capability to provide detail reporting on interest that is exempt from withholding tax. As such, systems changes would be required. If it was necessary to provide such information, it will be critical that doing so is incorporated into the overall reporting required for withholding tax and not via separate reporting or with excessive additional fields of data being required.
- i. In respect of the proposed non-declaration rate of 45%, NZBA members have differing capabilities for managing a withholding tax rate change. While it may be easy for some members, it will be difficult for others. Again, this points to the need for at least 3 years to implement any changes. It would also be useful for the banking industry and the IRD to combine resources to communicate to and educate New Zealand taxpayers of the implications of not providing IRD numbers - in order to minimise the impact to taxpayers/ bank customers and provide greater integrity of tax positions of New Zealand taxpayers. NZBA and its

members do not support the non-declaration rate to be a final tax for PIE income – doing so creates an unfair tax outcome.

- j. The provision of date of birth information should be required only where available. If providing such data becomes mandatory, a significant amount of “carve outs” will be required – for example, for trusts and partnerships where date of birth information would be problematic to obtain and, arguably, for no discernible benefit. Many, if not all, members will need to make systems changes to incorporate such data for reporting. Again, this points to the need for at least 3 years to implement the proposals in the Discussion Document. It will also be important that the requirement to provide such information, where it is held by an investment income payer, is a legislative requirement in order to manage customer privacy obligations.
- k. The requirement to provide additional data in respect of joint accounts is likely to be highly problematic and will require ongoing discussion between the banking industry and the IRD. While some members may have access to certain data about joint account holders, others may not. It will, therefore, be important for the IRD to canvass this topic across all investment income payers to identify constraints that exist and solutions that could be developed.
- l. NZBA does not support investment income payers being obligated to determine how joint account investment income should be split. Many customers are unlikely to be willing to provide such information to banks, customers circumstances can change (such as separation of the joint account holders) and the members’ systems will not be able to cope with such requirements. As such, the management of splitting joint account investment income should be managed between the investors and the IRD.
- m. NZBA also notes that providing additional data on certain joint accounts may present extreme difficulties. For example, the reporting of solicitor’s trust accounts has caused a significant problem for the banking industry with FATCA. Reporting the additional withholding tax information will only exacerbate these difficulties. Joint accounts for partnerships are also likely to be problematic, particularly as the division of investment income between partners can easily change. As the banking industry further explores the impacts of the proposals, more examples are likely to be identified. Such scenarios provide good examples for ensuring the proposals do not seek tax perfection or utopia such that significant compliance burdens are borne by investment income payers.
- n. NZBA considers that the proposed non-declaration rate should apply only to the primary joint account holder and not the secondary or any other joint account holders.
- o. Any requirement to provide detailed reporting in respect of Approved Issuer Levy (AIL) should, at least, exclude interest paid in respect of offshore debt issuances. Certain jurisdictions have laws which deny the ability to trace to holders of such instruments or only allow tracing where each holder consents to doing so (which we consider they would not). New Zealand banks would not be able to build such a consent obligation into its offshore debt documentation/ programmes as doing so would present a significant impediment to being able to issue such debt. Even if such legal impediments did not exist, such offshore debt issuances are often regularly traded in international debt markets. Ascertaining who holds such debt at appropriate times is likely to create an excessive and disproportionate compliance burden. New Zealand banks would only be able to meet such

reporting obligations by outsourcing such an obligation to foreign paying agents, who are highly unlikely to be willing to do so or even understand New Zealand's tax law requirements, presenting a risk of reporting errors and imposing onerous compliance costs.

- p. Any obligation on the banking industry to provide additional reporting on investors where AIL is imposed should not extend beyond nominee holders. The nominee should hold the detail of who their respective holders of debt are and therefore, should be the provider of such additional reporting.
- q. It should be acknowledged that some of the data required in the proposals may not always be easy to obtain for all customers. A common example would include customers who have inactive accounts (e.g. heading towards unclaimed monies), where information may be dated or not available (such as addresses). This is another example where the IRD and banking industry need to partner together to help ensure the proposals incorporate an appropriate level of flexibility.
- r. The requirement to provide end-of-year tax certificates to customers who have provided their IRD numbers should be removed.
- s. NZBA considers that any threshold for the self-correction of errors should be based on both a dollar value and a percentage to ensure the threshold is appropriate for both small and large investment income payers. Further, given the reliance on customers providing investment income payers with correct information and the increased regularity of reporting, any errors in investor tax information which may arise should not result in penalties or interest being imposed on the investment income payer.
- t. NZBA supports a database of holders of certificates of exemption being made available to investment income payers to ensure investment income payers are exempting only eligible taxpayers. Taxpayers who are exempt under other legislation should need to apply for a certificate of exemption in order to be treated as exempt from RWT.
- u. NZBA considers further work is required on the method for transmitting the additional data to the IRD. There is currently a lack of detail on how this will occur in the Discussion Document. However, such detail is critical to the design and implementation of any system and process changes for the banking industry. It will be critical that the banking industry and the IRD partner closely together on this matter to help ensure flexibility across our various members' differing technology capabilities. Ownership and security of taxpayer/ customer information will also be a very critical element to manage.