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Proposed legislative changes for intermediaries
C/- Deputy Commissioner, Policy
Inland Revenue Department
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Via email: policy.webmaster@ird.govt.nz

Proposed legislative changes for intermediaries

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 176,000 members, working in over 100 jurisdictions and regions around the world, including over 3,500 members in New Zealand. We make this submission on behalf of our members and in the broader public interest.

We support Inland Revenue's (IR) review of the regulatory framework for tax intermediaries. We have responded to the questions set out in the Officials' Issues Paper (issues paper) in the attachment and make the following overarching comments.

The issues paper recognises the important role intermediaries play in helping taxpayers meet their compliance obligations, and we support measures to strengthen the regulation of these participants. The challenge is to strike the right balance between appropriate regulation, given the risks these participants can pose to the integrity of the tax system and avoiding unnecessary barriers that would limit their ability to continue performing this important role. Without their participation as intermediaries, compliance costs would likely rise, and vulnerable taxpayers may be more likely to remain or become non-compliant.

Tax intermediaries are central to tax administration. Because their advice and support can significantly influence clients' compliance, they play an important role in upholding the integrity of the tax system.

Although Part 7B of the Tax Administration Act 1994 (TAA) sets out the approval requirements for different types of tax intermediaries, it does not define the services each type may provide. In practice, tax intermediaries primarily help clients meet their payment and lodgement obligations. However, some intermediaries provide support requiring substantial technical capability and significant interaction with IR. Compliance support can extend to:

- resolving historic compliance failures, including existing disputes, arrears, filing failures,
- helping to facilitate debt recovery or operational difficulties with IR
- assisting vulnerable or distressed taxpayers
- translating complex tax administration requirements into workable practical steps, and
- reducing friction between taxpayers and IR.

The functions of the various intermediary categories, particularly tax agents, need to be clearly defined and limited to those with the appropriate education and/or experience to reflect their differing levels of risk and responsibility. This is especially important because comprehensive tax compliance services often include an element of 'tax advice' which is not defined in the TAA but is anticipated in respect of Digital Service Providers (DSPs) at Q2 of the issues paper.

The TAA currently does not define 'tax advice' or specify which categories of tax intermediary may provide it. If the categories of tax intermediaries are more regulated, this ambiguity would need to be addressed. This will become increasingly important as the functions of DSPs move from automation to utilising Artificial Intelligence (AI) in their interactions with both taxpayers, tax intermediaries and regulators.

We appreciate the recognition in the issues paper of the increased role of DSPs and we support formalising the role DSPs currently have as de-facto intermediaries. However, we are concerned an important opportunity is being missed by not examining DSPs' role as advisors specifically nor considering the role of AI in the services provided by intermediaries in general. This is particularly of concern given the rapid development of services of which DSPs are capable. We note the issues paper acknowledges the profound impact AI may have on tax administration, and we recognise that the issues paper focusses on known developments with future developments being monitored. However, we recommend that the following two issues are considered as a matter of urgency:

1. whether DSPs can be viewed as tax advisors, whether utilising AI or not, rather than providers of software only, and
2. the impact of any tax intermediary using AI in the provision of their services, DSPs in particular.

To strengthen public confidence in the service quality, conduct, and accountability of all tax intermediaries, we recommend refining the current intermediary categories in Part 7B of the TAA through clearer definitions, greater precision, and more consistent standards regarding:

  - the criteria for obtaining and maintaining each status
  - the scope of functions attached to each status
  - the definition of those functions, particularly in relation to tax advice

The tax crediting model set out in the issues paper needs more thought. The issue identified in the issues paper does need to be addressed; however, it is unclear how the model proposed would operate in practice and we recommend this matter is explored separately to the proposed legislative changes to tax intermediaries.

Note, all legislative references in this submission relate to Tax Administration Act 1994 (TAA).

If you have any queries please contact Belinda Zohrab – Regulation and Standards Lead at belinda.zohrab@cpaaustralia.com.au.

Yours sincerely

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Attachment − Questions for submitters

Chapter 3 - Digital services providers

Q1. Do you agree with creating a new category in Part 7B of the TAA for DSPs?

Yes. We support the establishment of a new category for DSPs within Part 7B of the TAA. As discussed in the issues paper, digital intermediaries already operate in the tax system. By including them in Part 7B, the Commissioner can regulate this additional group as tax intermediaries on the basis the Commissioner is empowered to appoint, refuse to appoint, remove or disallow a DSP the status of a tax intermediary.

We recognise that currently some DSPs act as a de-facto tax intermediary due to their approved access to Gateway services. We support the formalisation of this role by being recognised as a tax intermediary at Part 7B.

Q2. Should there be separate categories for those DSPs that solely provide software and those that provide advice in relation to tax liabilities?

Yes. Overall, tax intermediary categories should be based on function, reflecting the complexity and level of risk each function poses to the integrity of the tax system. While the current categories do this to some extent, they need to be more clearly defined according to the functions they are entitled to perform, for the reasons outlined below.

Existing categories impose different entry and ongoing requirements based on the services provided, how they are delivered, and the level of risk they pose to the tax system. The functions intermediaries may perform for clients also differ, although these services are not specified in the TAA. As the issues paper notes, DSP services vary significantly. DSP intermediaries should therefore be categorised broadly by the type of service provided and the level of risk it presents. For example, one category may be limited to software provision, while another may cover DSPs that remit tax payments to IR. Although these functions differ, they may present a similar level of risk. By contrast, purely automated DSP services, where the provider is not responsible for data entered into or generated by the software, or where the software is limited to handling taxpayer funds, pose much lower risks than DSPs that provide tax advice. It is this latter category that particularly concerns us.

Tax advice—whether generated by AI or provided by a natural person—is generally more complex and carries greater risk of tax avoidance and dispute. Until the implications of AI are addressed, we are reluctant to support a DSP category that provides advice on tax liabilities on the same basis as an existing tax agent. The current requirements for tax agents in s 124C(3) are designed for natural persons or the entities listed in s 124E. The legislation would therefore need to be amended to accommodate the more complex business structures of DSPs, which are not contemplated by the existing requirements in s 124. This is without the matter of

governance, conduct, discipline and sanctions of DSPs being considered. Accordingly, the requirements for approval as a DSP tax intermediary should be specified in the TAA, and limited to the functions DSPs are currently providing.

Q3. Do you agree with the proposed requirements for entry into and remaining in the category?

Yes, subject to the comments and qualifications in Q2. Our support is also qualified because the issues paper does not clearly define the requirements for entry into, or ongoing participation in, the proposed category. We would welcome further detail before commenting further.

Requirements for software-only DSPs should focus on technical and prudential standards, such as data security protocols, privacy policies, system integrity testing, and demonstrating solvency.

In contrast, if a category for DSPs that might provide advice were ever created, the entry requirements must mirror those for tax agents (e.g., mandatory professional body membership for key personnel). See further comments made at Q11.

Q4. What is the right way to achieve an appropriate balance between costs to Inland Revenue and benefits to the wider tax system?

Achieving an appropriate balance between IR's administrative costs and the benefits to the wider tax system is a central objective of the proposed reforms. A successful framework will reduce compliance costs, support innovation, and enhance the integrity of the tax system without imposing undue costs on IR. The statutory mandate set out at s 6A of the TAA requires IR to look beyond its own administrative costs and consider the total economic costs of the tax system, including those borne by taxpayers.

The issues paper proposes that in admitting new DSPs as tax intermediaries, their admission would "not cause net costs to the tax system". This test directly operationalises the s 6A duty. It is designed to guard against business models that would impose "undue administrative costs on Inland Revenue", such as requiring major changes to its systems. Crucially, the proposal requires these costs to be weighed against commensurate benefits, such as:

- lower compliance costs for taxpayers.
- better tax revenue collection for the Government.

An appropriate balance is achieved by treating IR's expenditure as a strategic investment in a more efficient tax system, rather than a cost to be minimised. This aligns with the Commissioner's statutory duty to consider taxpayer compliance costs when managing the tax system.

The primary goal is to foster a modern, digital ecosystem that reduces compliance burdens for all taxpayers. Given this is a public good the core infrastructure should be funded accordingly.

A general 'user pays' model should be avoided, as it would increase costs for taxpayers and may stifle participation and discourage innovation by creating unnecessary barriers. However, the framework should include a safeguard allowing IR to manage or recover exceptional costs from business models that place an undue administrative burden on the system without providing commensurate benefits to taxpayers or the government. This targeted approach balances the need for an open, innovative ecosystem with the duty to protect public resources.

Q5. What balance should there be between regulations in the legislation and those delegated to the Commissioner in the terms of use?

The legislation should refer to the functions the DSPs are authorised to provide and should remain high level to accommodate changes in technology, how tax intermediaries interact with IR's digital ecosystem, taxation and privacy laws, and IR's operational policies and practices. For efficiency, administrative matters and details relating to technology may be delegated to the Commissioner in the terms of use provided they do not limit or expand the functions provided for in the legislation.

Q6. Should existing DSPs (with access to Gateway services) be required to apply to be in this category or should they be automatically included?

For reasons of good governance and equity, existing DSPs with access to Gateway services should be required to apply for approval under a DSP category in Part 7B of the TAA, provided they do not offer tax advisory services.

Chapter 4 – Data consumers

Q7. Do you agree with creating a new category in Part 7B of the TAA for data consumers?

Yes. CPA Australia supports creating a new tax intermediary category in Part 7B for data consumers, limited to the first two circumstances described in Chapter 4 of the issues paper. In principle, we also support the third data-sharing circumstance in Chapter 4 of the issues paper, which would require a consumer data right scheme, but as noted in the issues paper further detail is needed and as such we cannot form a final view.

Q8. What factors would be important for Inland Revenue to consider when accrediting a data consumer?

Key considerations should include cyber security and limiting approved functionality to data viewing and data exchange. Safeguards should also prevent AI functionality from expanding beyond the intended scope. At a minimum, the accreditation requirements should include those set out in paragraph 4.11 of the issues paper.

Q9. Do you have any views about Inland Revenue making taxpayer data available to third parties if the taxpayer has consented to this access? In other words, do you have views about Inland Revenue entering into a consumer data right type arrangement with respect to a selection of data it holds?

Yes, provided the taxpayer has consented to the disclosure of their data to a third party under a data right type arrangement. As above, key considerations should include cyber security and restricting approved functionality to data viewing and data exchange. Consideration should also be given to requiring regular renewals of taxpayer consent.

Chapter 5 – Adjustments to existing categories in Part 7B

Q10. Do you agree with creating a new category in Part 7B of the TAA for bookkeepers?

Yes, but for the reasons outlined below, their services should be clearly defined and limited, with education and experience requirements that reflect the services they provide and the scope of their intermediary status.

Q11. Would replacing the 10-client rule as it applies to tax agents (and bookkeepers if that category were created) with mandatory membership of an approved professional body be an improvement over the status quo?

Yes. CPA Australia agrees that the present 10-client rule is a "weak indicator of the quality of advice or service that the person provides". We disagree that the rule is a sign of a "serious commitments to their tax advisory operation" nor does it "[justify] the services and privileges that Inland Revenue provides to these entities". In contrast, a framework for a diverse group of tax intermediaries should be risk-based and proportionate, ensuring regulatory requirements match the function and risk that an intermediary poses.

A prospective tax agent's (and potentially a bookkeeper's) quality of advice or service is better assessed by their education, qualifications, and verified relevant experience. Their commitment to a tax advisory practice, and the likelihood that they may adversely affect the integrity of the tax system, should also be independently evaluated.

By limiting entry to the tax intermediary categories of tax agent (and bookkeeper) to those with membership of an approved professional body, some or all of these requirements may be more readily met. The existing approved advisor group as defined at s 20B(5) and as set out in the issues paper have some or all of the following membership-entry requirements:

- relevant education prior to membership
- experience in the relevant service offering
- fitness as to character

as well as ongoing membership requirements including:

- continuing education requirements
- requiring a commitment to ongoing ethical obligations

In addition, some of these approved advisor groups provide disciplinary oversight over their members.

We agree with IR's view that professional membership better aligns with taxpayer expectations of professional advisers, and we support stronger legislative and regulatory requirements for attaining tax agent or bookkeeper status. Comprehensive requirements as set out above best replaces the arbitrary 10-client rule, ensuring that entities acting as tax agents operate under a uniform and high standard of professional governance, thereby enhancing confidence in the tax system.

To ensure independence and public confidence, the Commissioner should retain ultimate oversight, including the power to approve professional bodies against clear criteria and to review those approvals periodically. This would help secure the benefits of professional standards while reducing the risk of regulatory capture.

The Inland Revenue Authority of Singapore has a relationship framework with tax agents accredited by Singapore Chartered Tax Professionals. This framework offers a useful model for IR to consider. The Australian Tax Practitioners Board's requirements for recognised professional bodies, which while more complex than we would recommend for New Zealand's circumstance, provides a model for accrediting multiple professional bodies.

However, any criteria for admitting new intermediaries should avoid creating unintended barriers for smaller, niche, or community-focused providers that may serve particular taxpayer groups well.

Q12. For an entity, how should the number of members of an approved body be defined?

To ensure the highest level of accountability and professional oversight, the definition for an approved body should be clear and robust, and include substantial governance requirements. See comments at Q11. As a reflection of the size of the more substantial professional bodies in New Zealand, the number of members of an approved body should exceed 500 voting/fully paid-up members.

Q13. If such a change were made, would a three-year transition be adequate?

Possibly. This will depend on the criteria for approved professional body status and how easy it is for existing tax agents and bookkeepers to become members, if they are not already. Consideration should also be given particularly to long-established practitioners who are not members of a professional body, including whether a grandfathering period should apply for such intermediaries.

If a bookkeeper category were created, it would also be necessary to clarify how members of approved advisor groups would be classified. For example, would all members continue to receive tax agent status, as they do now, or would members of the two groups whose members mainly provide bookkeeping services be classified as bookkeepers, while members of the other three groups retain tax agent status?

Q14. Would it be better to apply the new requirement only to new entrants to the tax agents and bookkeepers' category?

No. Applying a requirement such as membership of an approved body only to new entrants to the tax agent and bookkeeper categories would be administratively simpler than other options for strengthening entry and retention requirements for tax intermediaries. However, the benefits of raising those standards in this way would take a long time to be realised. It would also create an uneven playing field, as only those intermediaries would be subject to a code of ethics and a self-regulatory or disciplinary process.

Q15. Are there alternatives or other changes that should be made to the tax agents or representatives (or bookkeepers) category to strengthen confidence in the quality of services provided by members of these groups?

Yes. Alternatives could include minimum education and experience requirements, a certificate of fitness, and an annual declaration confirming completion of continuing professional education requirements. These measures would better align with taxpayer expectations of professional advisers.

Likewise, the Commissioner's powers to suspend, refuse, or revoke that status should reflect the function performed, with higher-risk services subject to stricter accreditation and ongoing requirements.

Q16. Should the requirement to not adversely affect the integrity of the tax system apply to PAYE intermediaries and tax poolers?

Yes. There is no reason to exclude this requirement from any tax intermediary category.

Q17. Would you support the Commissioner's discretion to disallow a person being a nominated person being widened to cover any circumstance when the integrity of the tax system is at risk?

Yes. However, given the taxpayers who rely on this type of intermediary tend to be the most vulnerable, any widening of the Commissioner's discretion should include:

1. clear published criteria.
2. procedural fairness protections.
3. a right to challenge or review decisions.
4. recognition of the practical impact on vulnerable taxpayers.

Chapter 6 – Digital services providers as tax crediting agents

Q18. Does the tax crediting agent model described in this chapter reflect how DSPs currently operate in practice?

While some DSPs facilitate payments on behalf of taxpayers, the proposed model appears to formalise and significantly expand this function into a regulated "tax crediting agent" role. Current market practices are varied and operate without the specific legislative framework proposed. Some accounting software helps businesses estimate and set aside funds for tax, but the direct, regulated interface with IR to create recognised tax credits in-year represents a material evolution of current common practice. The proposal moves beyond simple payment facilitation towards a more integrated role in tax administration.

Q19. Are there other models or arrangements that we should be aware of?

No comment

Q20. Is the tax crediting agent model worth exploring further?

Yes. We support efforts to ensure that tax payments made with the intention of meeting anticipated income tax liabilities are treated as tax credits in the same manner that provisional tax payments are.

A properly designed crediting system could:

- improve compliance
- reduce terminal tax shocks
- reduce use-of-money interest exposure
- improve cashflow management, and
- encourage earlier engagement with tax obligations.

However, the approval framework must be practical and proportionate. Excessive complexity may discourage participation and reduce innovation.

Although the tax crediting model appears to address a genuine issue, it is unclear how it would operate in practice. We therefore recommend considering it separately from the proposed legislative changes for tax intermediaries. At first instance, we have the following questions:

- what are the barriers to the relevant taxpayers estimating their annual tax liability and making provisional tax payments accordingly?
- is the proposed model intended to replace the Accounting Income Method (AIM), and if so, how would it differ from AIM and the role of the AIM provider?

Q21. What are the key risks or limitations of the tax crediting agent model, and how could they be managed?

While CPA Australia supports recognising payments made in anticipation of income tax liabilities as tax credits, we do not support a DSP using taxpayer data to calculate those liabilities and issue payment instructions that would create those credits. That service amounts to tax advice and, for the reasons outlined above, the role of a DSP as a tax agent requires further consideration. As noted in our response to Q2, until the implications of AI are addressed, we are reluctant to support a tax intermediary category that provides advice on tax liabilities on the same basis as an existing tax agent.

Q22. What safeguards would be needed to ensure that tax credits only arise when appropriate?

See response to Q20.

Q23. What information should DSPs be required to provide Inland Revenue to support credit recognition?

See response to Q20.

Q24. What reporting frequency would be appropriate?

See response to Q20.

Q25. Should we consider extending the model to other obligations, such as student loans and/or GST?

See response to Q20.

Q26. What should the Commissioner consider when approving a DSP to act as a tax crediting agent?

See response to Q20.

Q27. What ongoing conditions or review mechanisms should apply to approved DSPs?

See responses above.

Q28. Is the potential for mismatches between in-year payments and end-of-year tax returns a significant issue, and how might it be addressed?

Yes, the potential for mismatches is a significant and inherent issue in any system of pre-payment of income tax. However, the existing provisional tax framework provides a robust and well-understood model for managing this.

Mismatches could be managed in a number of ways including:

1. **End-of-Year Reconciliation:** The standard income tax return process should serve as the final reconciliation. This will determine whether there is terminal tax to pay or a refund due, ensuring the correct final liability is met.
2. **Use-of-Money Interest (UOMI):** UOMI rules should apply to any under- or over-payments to ensure fairness and compensate the respective party for the time value of money, consistent with the existing provisional tax regime.
3. **Clear Communication:** It is crucial that IR and DSPs clearly communicate to taxpayers that these payments are instalments on account of a future liability and are not a final assessment of their tax position.

Q29. Do you see any distortions or risks for other business models outside of DSPs?

Yes, there is a risk of market distortion and unintended consequences for other intermediaries, such as tax agents and accountants.

The primary risk is that taxpayers may incorrectly perceive the tax crediting agent service as a substitute for professional tax advice. A taxpayer might rely on a software-generated payment calculation without understanding the underlying tax treatment of their income and expenses. This could lead to:

- **Increased Non-Compliance:** Errors in tax positions may go uncorrected for longer periods.
- **Competitive Disadvantage:** Traditional advisers providing holistic and necessary tax advisory services could be placed at a disadvantage compared to a lower-cost, transaction-focused DSP model.
- **Erosion of the Adviser Relationship:** The model could reduce a key touchpoint between businesses and their trusted professional advisers, who play a critical role in maintaining the integrity of the tax system.

To mitigate these risks, the role and limitations of a tax crediting agent must be clearly defined in legislation. The framework must explicitly state that this function does not constitute tax advice and should encourage collaboration between DSPs and professional advisers.

Chapter 7 – Treaty of Waitangi considerations

Q30. Do you agree that the proposals identified in this chapter would have direct impacts for Māori?

Q31. Do you agree that the impacts are articulated appropriately? If not, what impacts do you believe the proposals are likely to have for Māori?

Q32. Do you agree that Māori data sovereignty may be relevant to the matters raised in this document? If so, how could we consider Māori data governance in the design of the proposals?

We do not hold specific expertise regarding Te Tiriti o Waitangi | The Treaty of Waitangi, or on the application of Treaty principles. Notwithstanding our comments below, we emphasise that IR should consult specifically to seek guidance from those that have the expertise to provide appropriate advice regarding how the proposals need to align with specific Māori interests respecting Te Tiriti o Waitangi | The Treaty of Waitangi.

While the issues paper raises specific questions regarding the Treaty of Waitangi and impacts for Māori, these questions highlight fundamental principles of good tax administration that are critical for the trust and confidence of all New Zealanders in the tax system. Accordingly, we have commented generally on the underlying issues of data governance, protection of vulnerable taxpayers, and regulatory fairness, which are of universal importance.

1. Taxpayer Data Governance, Privacy, and Consent

The concept of data sovereignty, raised in Q32, speaks to a core principle that is relevant to every taxpayer in a digital age: the right to control one's own personal and financial information. Any new legislative framework that facilitates the sharing of taxpayer data with third parties—whether they are DSPs, data consumers, or other intermediaries—must be built on a foundation of trust.

For all taxpayers, this requires:

- **Explicit and Informed Consent:** Taxpayers must give clear, unambiguous, and easily revocable consent before their data is shared. They must understand who is accessing their data and for what specific purpose.
- **Robust Security:** All intermediaries with access to taxpayer data must be subject to stringent data security and privacy standards to protect against misuse or breach.
- **Purpose Limitation:** Data shared by IR should be used only for the specific purpose for which consent was given.
- **Transparency:** The system must be transparent, allowing taxpayers to easily see who has access to their information and to manage those permissions.

By embedding these universal principles of data governance into the framework, the system will protect the rights and interests of all New Zealanders.

2. Protecting Vulnerable Taxpayers

The issues paper correctly identifies that widening the Commissioner's discretion to disallow a "nominated person" could have a significant impact on taxpayers who rely on this form of support. This is a critical issue not just for Māori, but for many vulnerable taxpayers across New Zealand, including the elderly, new migrants, those with low financial literacy, or people experiencing significant personal distress.

As stated in our response to Q17, while we support measures to protect the integrity of the tax system, any expansion of the Commissioner's discretionary powers to deny the appointment of a nominated person must be balanced with robust safeguards. For all taxpayers who rely on nominated persons, these must include:

- clear and public criteria for when the discretion deny such an appointment will be exercised.
- strong procedural fairness protections, including the right for the taxpayer to be heard.
- a clear process for reviewing or challenging the exercise of the discretion.

These safeguards are essential to ensure that the most vulnerable members of the community are not inadvertently denied the support they need to meet their tax obligations.

3. Ensuring Regulatory Fairness and Neutrality

The issues paper notes a concern that the proposed "net cost to the tax system" test for new intermediaries could entrench a "status quo bias". This is a valid risk that applies across the entire market.

A fair and innovative tax ecosystem requires regulatory neutrality. The criteria for admitting new intermediaries must not create unintended barriers to entry for smaller, niche, or community-focused service providers who may offer valuable solutions for specific taxpayer segments. The framework should be designed to encourage innovation and competition, ensuring that the benefits of modernisation are accessible to all.