26OIA2109

14 April 2026

Dear

Thank you for your request made under the Official Information Act 1982 (OIA), received on 20 March 2026. You requested the following:

> *Copies of briefing papers and advice provided by Inland Revenue officials to ministers between 1 January 2017 and 31 December 2025 which mention or discuss, in the context of cross border transactions, the taxation of royalties or licence fees included embedded royalties. For the purpose of this request, "embedded royalties" should be assumed to mean royalties or licence fees which are imputed in payments for goods or services regardless of how that payment is characterised or described in contractual documentation or otherwise.*

Information being released

Please find enclosed three documents in scope of your request I am releasing to you, detailed in the table on the following page. Some information has been withheld or refused under the following sections of the OIA, as applicable:

- 6(a) – the making available of that information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand,
- 6(b)(ii) – the making available of that information would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation,
- 9(2)(a) – the withholding of the information is necessary to protect the privacy of natural persons,
- 9(2)(f)(iv) – the withholding of the information is necessary to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials,
- 9(2)(g)(i) – the withholding of the information is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty,
- 9(2)(j) – the withholding of the information is necessary to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without

prejudice or disadvantage, negotiations (including commercial and industrial negotiations), and

- 18(d) – the information requested is publicly available.

Item	Date	Document	Decision
1.	04/09/2025	BN2025/370 - PepsiCo tax case in Australia	Released with some information withheld under sections 6(a) and 9(2)(a).
2.	18/09/2025	BN2025/384 - Overview of tax treatment of software and current policy issues	Released with some information withheld under sections 9(2)(a), 9(2)(f)(iv), and 9(2)(g)(i).
3.	27/11/2025	BN2025/471 - Meeting with Tax Justice Aotearoa	Released with some information withheld under sections 6(a), 6(b)(ii), 9(2)(a), 9(2)(g)(i), and 9(2)(j). Attachment refused under section 18(d).

As required by section 9(1) of the OIA, I have considered whether the grounds for withholding the information requested is outweighed by the public interest. In this instance, I do not consider that to be the case.

Information publicly available

I have identified two further documents in scope of your request, which I am refusing under section 18(d) of the OIA, as the information is publicly available.

Item	Date	Document	Website address
1.	March 2017	BEPS – Transfer pricing and permanent establishment avoidance	https://www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/publications/2017/2017-dd-transfer-pricing-pe/2017-dd-transfer-pricing-pe-pdf.pdf?modified=20200910083704
2.	07/04/2025	Multinational Enterprises – Compliance Focus 2024 (attachment to BN2025/471 – Meeting with Tax Justice Aotearoa)	https://www.ird.govt.nz/-/media/project/ir/home/documents/international/multinational-enterprises---compliance-focus-documents/compliance-focus-2024.pdf?modified=20250408040941

Right of review

If you disagree with my decision on your OIA request, you have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the OIA. You can contact the office of the Ombudsman by email at: info@ombudsman.parliament.nz.

Publishing of OIA response

We intend to publish our response to your request on Inland Revenue's website (ird.govt.nz) as this information may be of interest to other members of the public. This letter, with your personal details removed, may be published in its entirety. Publishing responses increases the availability of information to the public and is consistent with the OIA's purpose of enabling more effective participation in the making and administration of laws and policies and promoting the accountability of officials.

Thank you again for your request.

Yours sincerely

Sam Rowe
Policy Lead - International

Item 1

Inland Revenue
Te Tari Taake

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Briefing note

Reference: BN2025/370

Date: 4 September 2025

To: Revenue Advisor, Minister of Revenue – Angela Graham
Private Secretary, Minister of Revenue – Melissa Zhen

From: Matthew Gan

Subject: **PepsiCo tax case in Australia**

1. This briefing note provides a high-level summary of the recent Australian High Court judgment in *Commissioner of Taxation v PepsiCo, Inc and Commissioner of Taxation v Stokely-Van Camp, Inc* [2025] HCA 30, which has been closely followed by the tax community in New Zealand. It also highlights the potential significance of the case for New Zealand.

PepsiCo case

2. The PepsiCo litigation concerns the tax consequences arising from two exclusive bottling agreements (EBAs) between two related US companies, PepsiCo, Inc. (PepsiCo) and Stokely Van Camp, Inc. (SVC), and an unrelated Australian company, Schweppes Australia Pty Ltd (Schweppes). The litigation centred on the question of how payments under commercial contracts should be characterised for tax purposes, with a particular focus on embedded royalties.

3. Schweppes was the sole distributor of Pepsi, Mountain Dew and Gatorade in Australia under the EBAs with PepsiCo/SVC. Schweppes bought beverage concentrate, supplied by a PepsiCo subsidiary in Australia, and used PepsiCo/SVC formulas, trademarks and other intellectual property (such as bottle/can designs) to produce drinks for sale in Australia. The only payments by Schweppes were for the beverage concentrate to the PepsiCo subsidiary in Australia.

4. The primary issue was whether the payments made by Schweppes were, to any extent, a royalty and subject to royalty withholding tax. The taxpayer argued that contractually the payments were just for goods, being the concentrate, and so no royalty withholding tax was payable. The ATO argued that part of the payment was in substance for a right to use PepsiCo's trademarks and intellectual property (despite the contract stating otherwise) and so was subject to royalty withholding tax.

5. The case was heard in March 2023 in the Australian Federal Court. The judgment released in November 2023 found in favour of the ATO by concluding that part of the payments made by Schweppes under the EBAs was consideration for the use of, or right to use, the relevant trademarks and other intellectual property and subject to royalty withholding tax.

6. PepsiCo/SVC appealed the decision, and the case was heard before the Full Federal Court in May 2024. The judgment released in June 2024 overturned the original

decision by a 2-1 majority. The majority concluded in PepsiCo's favour that the payments were solely for the concentrate.

7. The ATO appealed the decision to the High Court of Australia and the case was heard in April 2025. The judgment released in August 2025 confirmed the Full Federal Court decision in PepsiCo's favour by a 4-3 majority. In particular:

   - The payments made by Schweppes did not include a royalty paid as consideration for the use of, or right to use, trademarks and other intellectual property licensed to Schweppes under the EBAs; and
   - Even if the payments made by Schweppes were found to have included a royalty component, such component was not income derived by, and was not paid to, PepsiCo and SVC, and was not subject to royalty withholding tax. This is because the payments for the concentrate were made to a PepsiCo subsidiary in Australia.

8. The ATO has acknowledged the High Court decision confirming that PepsiCo/SVC are not liable for royalty withholding tax. There is no higher court in Australia to which it can appeal the decision.

Significance of the PepsiCo decision for New Zealand

9. The PepsiCo majority decision is significant. It clarifies how commercial contracts should be interpreted and while, not binding on New Zealand, it is being reviewed with interest by the New Zealand tax community.

10. The High Court's decision shows that the positions of the Australian courts and the ATO are not always aligned. The judgments and relative closeness of the majority decisions also shows that in other circumstances the Australian courts may have found in the ATO's favour. It is not clear cut how a similar case to PepsiCo would be determined in New Zealand.

11. The High Court's decision also has immediate relevance for how Australia's domestic royalty withholding tax provisions are to be interpreted and applied. This is particularly relevant for software distribution arrangements, as the ATO issued a draft taxation ruling[1] in January 2024 taking a broad interpretation of when a payment under such an arrangement will constitute a royalty and be subject to withholding tax in Australia. In particular, the ATO consider that a payment for the distribution of goods or services may include an in-substance royalty component in some circumstances and so be subject to royalty withholding tax.

12. Private sector stakeholders contacted us at the time with concern over the draft ruling for New Zealand software companies distributing in Australia. They were concerned that the ATO may expect them to pay royalty withholding tax when they distribute software in Australia under the broad interpretation of a royalty in the ruling. This is a matter that we have been discussing with the ATO and Australian Treasury, 6(a)

13. The ATO deferred finalising its draft taxation ruling in light of the pending High Court case for PepsiCo. Now that the decision has been released, the ATO is considering what impact it may have on the draft ruling. We will continue to follow this with interest and engage directly with the ATO and Australian Treasury as needed.

[1] TR 2024/D1 | Legal database

14. The private sector has asked whether New Zealand will be taking a similar approach to Australia on software distribution arrangements. Inland Revenue is in the process of updating its guidance on the tax implications for non-resident software supplier payments derived from New Zealand, 6(a)

Matthew Gan
Principal Policy Advisor
9(2)(a)

Item 2

Inland Revenue
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Briefing note

Reference:	BN2025/384
Date:	18 September 2025
To:	Revenue Advisor, Minister of Finance – Carl Harris
CC:	Revenue Advisor, Minister of Revenue – Angela Graham Private Secretary, Minister of Revenue – Melissa Zhen
From:	Dan Doughty, Senior Policy Advisor, Inland Revenue Claire McLellan, Acting Policy Lead, Inland Revenue
Subject:	**Overview of tax treatment of software and current policy issues**

Background

1. At a meeting on 28 July 2025 between the Minister of Finance and the Minister of Revenue, the Minister of Finance asked for information on the various tax issues faced by different businesses using software.

2. We are reporting to the Minister of Revenue this week seeking approval to consult publicly on issues relating to software on the current Tax and Social Policy Work Programme (TSPWP). Stakeholders are likely to have strong and competing views on these issues, so we consider consultation is necessary to ensure these views are fully understood before developing options for resolving the issues.

3. This briefing note provides context on the different ways that businesses use software and the tax implications of those uses. It also comments on the tax treatment of software development relative to other sectors. A quick reference guide of this information is attached to this note. This briefing note also addresses at a high level how the tax treatment of software compares to other investments and summarises the policy issues with software that have been identified to date.

Summary of software uses for tax purposes

4. When describing the tax treatment of software, businesses can generally be grouped into one of two categories (with some overlap):

- **Developers** — businesses that develop software, either to sell outright or to licence or grant access to the software.

- **Users** — businesses that buy software for their own use, generally by paying for the right to use software from developers. Most businesses, including software developers, are software users.

Tax implications for developers

5. Software developers produce intellectual property in the form of software. The overall tax treatment for developers depends on what the developer does with the software. Generally, a software developer will do one of the following four things with software they develop:

   - sell the software outright to another business.
   - sell licences to the copyright in the software to another person (while retaining ownership of the software) or sell a copy of the software.
   - sell the right to access and use the software as a service to another person.
   - retain the software in-house and use it for their own purposes.

Deductibility of software development expenditure

6. In general terms, a software developer will be entitled to a deduction for the cost of development. The timing of the deduction will depend on what the developer does with the software:

   - If the software is treated as an intangible asset for tax purposes, the expenditure will be capitalised and depreciated over time.
   - If the software is trading stock (which may be the case if it has been developed for sale outright), the trading stock rules apply and the expenditure will be deducted when the asset is sold.
   - To the extent that the expenditure is treated as research and development (R&D) expenditure that is expensed for accounting purpose, the developer will be able to immediately deduct it.

7. 9(2)(g)(i)

Selling the software

8. These developers earn a profit by selling software they have developed to another person. They do not commercialise or otherwise use the software themselves. An example is a video game studio that develops the software for a video game, which is then sold to another person at the end of development.

9. In some cases, the software might be trading stock of the developer. This will be the case if the developer is carrying on a business of developing software, such as the video game studio. The sale proceeds from disposing of trading stock will be taxable income.

10. For some developers, the software will be treated as a capital asset. This is more likely to be the case if the software development is a one-off event. In this case, any profit from selling the software will generally not be taxable.

11. In situations where the software is treated as a capital asset and the software development expenditure was capitalised and depreciated, the developer may need to pay tax on sale if the depreciation deductions claimed exceed the value of the asset when it is sold (that is, there will be a clawback of the depreciation previously claimed).

Licencing the software or selling a copy

12. These businesses develop software that they will commercialise themselves, by selling a licence to use the copyright in the software to another person or by selling a copy of the software. An example would be an accounting software provider operating a platform that other businesses pay to commercially exploit the copyright according to the terms of the licence agreement.

13. The proceeds from selling licences or copies to other people will be taxable income.

14. The software itself will likely be a capital asset of the developer and would not give rise to taxable income if sold, other than a clawback of the depreciation previously claimed.

Granting access to use the software as a service (SaaS)

15. These businesses develop the software to use as a basis for providing on demand access for the use of the software over the internet in return for regular subscriptions from customers. The subscription payments received from customers will be taxable income.

16. The software itself will likely be a capital asset of the developer and would not give rise to taxable income if sold, other than a clawback of the depreciation previously claimed.

Develop for internal use

17. These developers are less common and develop software to be used to support their broader business. An example would be a business that normally develops software to sell, but who is currently developing separate software that will be used to develop the software they commercialise.

18. The business will pay tax on any profits generated from their broader business (including from using the software in their business). There are no direct tax consequences from owning and using the software.

Tax implications for users

19. Generally, there are two ways that a business becomes a user:

    - By paying another business to use software.

    - By purchasing software outright from another person.

Users paying to use software

20. Paying to use software is common practice and is how most businesses access software. There are two main ways this can occur:

    - **On-premises software:** The business purchases a copy of the software that they install on their own hardware. The user may only purchase the right to use that software for a fixed period.

    - **Cloud service models:** The business pays for access to software hosted on a server controlled by a cloud provider. This can range from simple subscription arrangements with limited rights (like access to a website), to more complex arrangements where the user is granted rights to use the software as a service (SaaS).

21. The tax treatment of payments for the use of software depends on the specific facts of each arrangement. In some situations, the user will be entitled to an upfront deduction for the payments made to use the software.

22. In many cases, however, the user will have acquired an intangible asset. The cost of that intangible asset will be depreciated over its useful life (the length of time before the software is expected to become obsolete). As discussed further below, the user may also be able to claim Investment Boost.

23. When entering into SaaS arrangements, a business may need to customise and configure the software before using it. For example, a manufacturer that enters into a SaaS arrangement for inventory management software will likely need to configure it for their particular products, production processes and timelines, warehousing locations, etc.

24. The expenses incurred customising and configuring software (C&C costs) are often treated separately to the cost of the licence to use the software. Depending on the specific facts, C&C costs are either capitalised and depreciated, or immediately deducted.

Users purchasing software outright

25. These businesses purchase software outright and often intend to commercialise the software themselves. This is less common than acquiring a right to use software. An example might include the publisher purchasing the rights to the video game made by the developer discussed above.

26. These businesses are treated as having acquired a new intangible asset for tax purposes, which is depreciated over its useful life. Generally, these businesses will be able to claim Investment Boost, because the asset is not FLIP.

27. The tax treatment of any income that the business derives will depend on how the software is ultimately used but will generally follow the same treatment as a developer who was using that asset for the same reason.

Overlay with other tax incentives

28. In addition to the tax rules that apply to software, both developers and users can access various tax incentives that are not strictly limited to software.

Research and Development Tax Incentive (RDTI)

29. The RDTI allows businesses to claim a tax credit equal to 15% of the value of eligible expenditure. Software developers can claim the RDTI if they meet all the eligibility criteria for the scheme. A cap of $25 million exists for eligible internal software development. Software developed with the sole or main purpose of improving internal administrative systems is ineligible for the RDTI.

Research and development loss tax credit

30. Businesses who are in tax loss or who have not yet started to make profits are also able to "cash out" 28% of their tax losses relating to R&D activity. Businesses that claim the loss tax credit are required to pay it back once they begin making a profit, and their tax losses are reinstated as the credit is repaid.

Investment Boost

31. Investment Boost allows businesses to immediately deduct 20% of the value of eligible new capital assets. Software developers who develop new software to use (either internally or to licence), or businesses that buy new software assets (either outright or licenced) to use, may be eligible for Investment Boost.

32. Investment Boost can only be claimed when the business is depreciating the software. When the business has fully deducted the cost, there is no need for them to claim Investment Boost.

33. Investment Boost cannot be claimed for "fixed life intangible property" (FLIP), which would be the case if a business purchased the right to use software for a period of four years or less.

34. We understand some stakeholders have raised concerns that businesses are unable to claim Investment Boost on their software licence investments. We do not consider this to be a significant issue, as software FLIP is already depreciable over a maximum of four years. We are not currently considering this issue but could undertake further work if you would like us to.

Game Development Sector Rebate (GDSR)

35. The GDSR allows businesses involved in video game development to claim a 20% rebate on eligible development expenses (capped at a rebate of $3 million). This rebate is not part of the tax system and is administered by the Ministry of Business, Innovation and Employment (MBIE). The amount is not taxable income for the business that receives it.

Tax treatment of software compared to other investments

36. We have undertaken initial work to understand the tax treatment of software businesses relative to other sectors. That work has involved initial high-level modelling for the effective marginal tax rates (EMTRs) of software development businesses.

37. 9(2)(f)(iv)

38. We do not currently have sufficient information to undertake more comprehensive analysis. As discussed below, our next step will be to consult with the sector to better understand actual commercial practices to inform further analysis of the appropriateness of the current tax settings, and options for change.

Policy issues under review

39. We are reporting to the Minister of Revenue this week seeking his approval to consult on two issues on the TSPWP from October 2025. We understand that stakeholders are likely to have strong and competing views. Consultation on the problems are required to better understand these views and develop options for resolving these issues.

Issue 1: Software development expenditure

40. This issue relates to businesses that develop software for commercial exploitation. The policy problem is that changes in technology and the way software is commercially exploited have created uncertainty over the correct tax treatment for this expenditure. This issue is not new.

41. 9(2)(f)(iv)

42. 9(2)(f)(iv)

9(2)(f)(iv)

Tax asymmetry for some developers

43. As described above, when software development expenditure is R&D expenditure and expensed for accounting purposes, it is fully deductible upfront for tax purposes. If the rights to the developed software are sold, this is treated as the sale of a capital asset and the proceeds are not taxed. This results in a tax asymmetry and has the effect that some software development is taxed inconsistently with other asset classes.

44. 9(2)(f)(iv)

Issue 2: C&C costs

45. This issue relates to taxpayers who incur customisation and configuration costs (C&C costs). Stakeholders have reported that the current law can result to inconsistent outcomes across taxpayers and high compliance costs.

46. 9(2)(f)(iv)

Additional issue – PepsiCo case

47. For the sake of completeness, stakeholders have also raised concerns with the tax treatment of businesses entering into cross-border licencing agreements (including for software) following a recent ruling from the Australian High Court involving PepsiCo. This is a recent development and a complex area of law, and it is not yet clear what the implications are for New Zealand.

48. We recently provided the Minister of Revenue's office with a briefing note that provides a high-level summary of the case and its potential impacts (BN2025/370 refers).

Consultation

49. The Treasury and MBIE were informed about this briefing note.

Claire McLellan
Acting Policy Lead, Inland Revenue
9(2)(a)

Quick reference guide for tax implications of software use

Software is acquired by a business by…	Then…	Resulting in the following tax treatment for…	
		Income	**Expenses**
Developing it internally	The business sells software outright to another business.	The software will often be trading stock of the business, so any income would be taxable.	If the trading stock rules apply, development expenses will be deductible when the software is sold.
		If the software is a capital asset, any profits from the sale of that asset will not be taxable.	If the expenditure is R&D under accounting standards, it will be deductible upfront. Otherwise, the business will depreciate the new software asset over its useful life.
	The software is used by the business for in-house purposes.	The business has no taxable income directly related to the software.	
	The business sells a licence to use the software, sells copies to end-users or grants access to use the software as a service.	All income earned from selling the licence or granting access to use the software will be taxable.	
Buying it from another person	The business purchases the software outright.	In all of these cases, the business has no taxable income directly related to the software.	The business has acquired a new asset that will be depreciated over its useful life. Many businesses will be able to claim Investment Boost.
	The business pays to use the software.		Regular payments to use the software will usually be deductible upfront. If the business has acquired a new asset, the cost will be depreciated over its useful life. Many businesses will be able to claim Investment Boost.
	The business spends money to customise and configure the software for its needs.		Depending on the facts, the business will either deduct all expenditure upfront or depreciate the new software asset over its useful life.

Item 3

Briefing note

Inland Revenue
Te Tari Taake

Reference	BN2025/471
Date	27/11/2025
To	Revenue Advisor, Minister of Revenue - Angela Graham Private Secretary, Minister of Revenue – Melissa Zhen
From	Sam Rowe, Policy Lead Kathleen Littlejohn, Senior Policy Advisor
Subject	**Meeting with Tax Justice Aotearoa 2 December 2025**

Purpose and background

1. The Minister has agreed to meet with Tax Justice Aotearoa (TJA) on 2 December 2025. TJA is a not-for-profit organisation that describes themselves as advocates for progressive tax reform. They are connected to global groups such as the Tax Justice Network and Global Alliance for Tax Justice. The group is one of Inland Revenue's regular stakeholders, meeting quarterly with us to discuss a range of issues. The Minister last met with this group on 15 July 2025.
2. This note provides background information and speaking points ahead of this meeting on the topics which Tax Justice Aotearoa proposed to discuss. The note focusses more heavily on the release of Tax Justice Aotearoa's "Big Tech, Little Tax" report as the main topic of discussion.

Topic 1: Tax Justice Aotearoa's "Big Tech, Little Tax" report

3. The "Big Tech Little Tax" Report (the "Report") is mostly focussed on the common tax models TJA believes are used by big tech companies in New Zealand to reduce their tax payable, and how Inland Revenue could address them under the current law. The Report identifies three common tax models:
   - The service fee model: the use of a "service fee" paid to an offshore associated group company to (the Report claims) extract most of the revenue derived from the New Zealand market. The Report states this model can be observed in the financial statements of the New Zealand subsidiaries of Amazon Web Services, Facebook and Google
   - The licence fee model: the Report claims this involves payment of a large percentage of the New Zealand entity's revenues to overseas group companies for software and cloud services that the New Zealand entity sub-license to third-party customers here. The Report states this can be observed in the most recent financial statements of Microsoft and Oracle.
   - The service company model: the Report claims this involves characterising the New Zealand operating subsidiary as the provider of basic marketing and support services to an overseas group company that makes sales to New Zealand customers. This means revenue from sales of goods or services to New Zealand customers is booked offshore. The Report states that this model appears to be used by Visa, MasterCard and some of the smaller digital providers.
4. The Report also submits that New Zealand should require increased transparency from multinationals about their tax affairs (such as by requiring public country by country reporting) and that we should consider taxing multinationals on "embedded royalties" in respect of goods and services supplied here.
5. Inland Revenue can make some general comments only from an operational perspective in respect of the Report. In doing so, we want to avoid potentially breaching taxpayer secrecy, and we also do not want to impact adversely any current or future Inland Revenue tax position in relation to taxpayers mentioned in the report.
6. 9(2)(g)(i)

9(2)(g)(i)

Background: Inland Revenue's Compliance Programme

7. Inland Revenue has a comprehensive compliance programme covering foreign-owned multinational enterprises (MNEs) with annual turnover of $30m or more. We have set out this programme in detail in last year's Multinational Enterprises Compliance Focus 2024 - Compliance Focus for Multinational Enterprises (a copy of this report is attached).

8. We monitor the tax performance of nearly 900 MNEs. This work is supplemented with targeted anti-base erosion campaigns, reviews and audits of over 550 MNEs including on issues such as financing, intangible property, losses, COVID-19 wage subsidies, distributors/wholesalers, manufacturing, services, and transfer pricing documentation compliance. In-depth reviews and audits are conducted by our specialist Transfer Pricing Network which comprises multi-disciplinary experts with extensive knowledge and external experience. Dispute resolution is facilitated by our independent Competent Authority function, which has a high success rate in the resolution of double taxation cases.

9. While it is superficially attractive to refer to broad summaries of transactions as contained in financial statements, a more detailed analysis of the facts and circumstances supported by the executed contracts is needed. Each case requires close and careful legal technical consideration.

9(2)(g)(i)

The Central Themes of the Report

Service and licence fees paid to offshore related parties are allegedly excessive

10. Whilst it is easy to assert that such fees are excessive, it is less easy to identify uncontrolled comparable transactions or profit margins to prove excessiveness (as is required to accurately transfer price the transaction). This is difficult for both tax administrations and taxpayers when benchmarking transaction and profit margins in shallow markets such as Australasia.

11. Inland Revenue monitor and follow up MNEs that we consider are leaving insufficient profits in New Zealand as a result of mispricing related party transactions. In this regard, reviews and investigations of tech companies are ongoing. Several tech companies have come forward as part of Inland Revenue's advance pricing agreement (APA) programme and taken an "all cards on the table" approach, entering APAs with Inland Revenue to resolve such matters on a mutually acceptable basis. Others have been reviewed and either subject to adjustments or cleared, and some are currently subject to in-depth audits.

9(2)(g)(i)

Treatment of service and/or licence fees as royalties

12. The primary approach taken in the paper follows closely developments in Australia on the application of withholding taxes on royalties. The Australian Taxation Office (ATO) has been using a "rights-based approach" that focuses on Australian copyright law to determine if a payment is a royalty, a stance that has also faced significant pushback from treaty partners, the private sector and professional bodies. The US Treasury has written to Australia highlighting that

the ATO's broad interpretation of "royalty" (which the US considers should exclude payments for the simple use of software) is inconsistent with internationally recognised OECD principles and the US/Australia double tax treaty. 6(a)

13. A secondary approach taken in the paper involves imputing a royalty element regardless of how the payments are characterised in contracts (this is also known as "embedded royalties"). However, the ATO was unsuccessful on this issue in the recent leading High Court of Australia decision in PepsiCo. Inc. v. Commissioner of Taxation and there is also a long line of legal precedent in New Zealand which does not support this approach.

14. The previous Government also considered changing the law to tax embedded royalties. However, the Government considered it was not administrable due to the difficulty in determining the amount of the embedded royalty in a payment for goods or services. We maintain this view. It would also be at risk of significant overreach – for example anyone who buys a licensed or branded product (from shoes to cars) would technically be paying in part for the product and in part for the embedded intellectual property, meaning they would theoretically need to withhold an amount of tax from the purchase price as a royalty.

9(2)(g)(i)

The Service company model

15. In relation to the Service Company Model, we note that this has previously been an issue in New Zealand to some extent. In theory, the foreign supplier is able to book its profits offshore using this model under our double tax agreements. These do not allow us to tax non-residents making sales here unless they have a permanent establishment – which is not created by a service company providing basic marketing and support services. However, in practice these service companies can sometimes go further and facilitate the sale of the non-resident's products to New Zealand customers. To capture such arrangements, we previously introduced a specific anti-avoidance rule (section GB 54). The Report refers to this rule, noting that it resulted in some companies booking sales revenue in New Zealand, but that companies have recently turned to other mechanisms to minimise tax liabilities.

16. The OECD also introduced a strengthened permanent establishment rule for double tax agreements which would create a permanent establishment for these arrangements. While we do not have this rule in the majority of our double tax agreements, we always look to include it in new double tax agreements. We do not think there is much more we can do to address this from a policy perspective, given the constraints imposed by our current double tax agreement network.

9(2)(g)(i)

Public country-by-country reporting

17. The Report recommends that New Zealand follow Australia and proceed with public country-by-country (CbC) reporting. The European Union have passed laws to require publication of country-by-country reports. The first reports are expected to be published in late 2026

18. Large multinational groups are required to provide tax authorities with country-by-country reports containing information on their activities and income tax paid in each country. Currently, Inland Revenue receives over 1,500 CbC reports annually from our treaty partners in our risk assessment process for major MNEs. Civil society stakeholders such as the Tax Justice Network have advocated for Governments to require multinationals to publish these reports so they can be scrutinised by NGOs, academics and journalists.

19. Previous Governments have considered public country by country reporting and there has been consideration of its merits between 2018 and 2020. The conclusion was that, while there were some potential benefits, the disadvantages meant that it was not appropriate for New Zealand. The Tax Working Group also did not recommend New Zealand adopt public country by country reporting in their 2019 Final Report. We have provided this information to TJN following earlier meetings on the subject.

20. We are not currently considering public country by country reporting for New Zealand. It would require policy resource, legislation, IT build and ongoing administration costs. We have limited resources and consider other tax policy projects are likely to have greater benefits. We are also aware of the commercial sensitivity of these CbC reports 6(a), 9(2)(j)

9(2)(g)(i)

Amendment of Companies Act to require filing of accounts publicly

21. The report also recommends that the Companies Act be amended to require all local subsidiaries of overseas-headquartered companies to file accounts publicly. This is a matter for MBIE to consider, as they administer the Companies Act. It does not impact Inland Revenue given the extensive powers available and used by Inland Revenue officers to collect accounts and other relevant information from MNEs.

Topic 2: Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

22. Some submitters on the Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Matters) Bill ("the Bill") considered that there is a clear double standard in the information provisions of the bill. Namely, privacy for wealthy individuals, from the repeal of section 17GB and the trust disclosure form, whilst removing privacy for all other New Zealanders, with the introduction of Ministerial agreements.

23. The vast majority of submitters were overwhelmingly against the information proposals in the bill, instead wanting section 17GB and trust disclosures to be retained and the Ministerial agreements proposal to be removed from the Bill.

Repeal of section 17GB

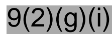
24. Tax Justice Aotearoa oppose the repeal of section 17GB. They consider the repeal would reduce transparency of the tax system. They consider the privacy concerns with section 17GB have been addressed though operational guidance provided by Inland Revenue. They consider options to limit the use of information collected under section 17GB would be preferable to repeal.

9(2)(g)(i)

Removal of the specifical reporting requirements for Trusts

25. The proposed amendments would repeal the specific legislative provisions for trust disclosures. The Commissioner of Inland Revenue is currently considering what information he will continue to collect from trustees under his general powers.

26. Amendments would also be made to the Order in Council that sets minimum requirements for preparing financial statements. This would ensure that the Order continues to apply to trustees currently filing returns under the specific disclosure provisions when those provisions are repealed.



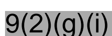
Information sharing provisions

27. Submitters on the Bill wanted more safeguards to protect the privacy of individuals' information and reiterated the comments from the Privacy Commissioner.

28. Some submitters commented that the further disclosure of taxpayer information erodes the obligations on Inland Revenue to preserve taxpayer confidentiality. They suggested that the department's collection powers should be suitably restricted to better balance the reduction in privacy protections for New Zealanders. Submitters were also concerned with the number of agencies Inland Revenue can disclose to.

29. Tax Justice Aotearoa submission made the following points in relation to Ministerial agreements:

    - Disclosing taxpayer information could undermine the tax system by creating compliance barriers, especially for taxpayers with illegal earnings and those unsure of their legal position.
    - The list of agencies that Inland Revenue can disclose info to is broad and can give the impression that information can go anywhere in the government.
    - They do not agree that Ministerial agreements should be in Ministerial hands.
    - They note the Privacy Commissioner's views that the agreements are unnecessary and disproportionate, and the existing information sharing mechanisms are sufficient.
    - TJA consider the Ministerial agreements proposal is rushed and poorly considered legislation which could have significant negative consequences, and recommend that it not proceed.
    - Officials will report to you shortly on the proposed changes to Ministerial agreements which will address some of the issues raised by submitters.



Topic 3: Government response to United Nations Tax Convention, following Nairobi negotiations

30. The UN Tax Convention aims to improve tax collection and taxing rights for developing countries. For this to be effective it would need worldwide uptake, particularly in major economies. Tax

Justice Aotearoa are strong supporters of the UN Tax Convention and regularly seek updates on it when they meet Inland Revenue policy officials and the Minister.

31. 6(a), 6(b)(ii), 9(2)(j)

32.

9(2)(g)(i)

Topic 4: Long term plans for revenue growth

33. Tax Justice Aotearoa are interested in discussing long-term plans to grow revenue in light of Inland Revenue's draft Long-Term Insights Briefing and Treasury's latest Statement on the Long-term Fiscal Position. Both of these documents highlight long-term fiscal pressures.

34. TJA provided a comprehensive submission on the draft Long Term Insights Briefing, focussed on ensuring any tax reform addresses progressivity shortcomings of the current tax system. They noted that broadening current tax bases or raising rates on these bases has limitations. For example, the wealthy can often avoid capital gains taxes by delaying realisation. They suggest that this motivates the need to consider a broader range of taxes such as wealth and inheritance taxes.

35. TJA warned against relying on the welfare system to achieve progressivity, where doing so can lead to high effective marginal tax rates for low-income people.

36. TJA expressed some support for hypothecated taxes. In particular, it suggested considering extending the ACC scheme into other areas.

9(2)(g)(i)

Sam Rowe
9(2)(a)
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9(2)(a)
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