



24 October 2025



Dear 

Thank you for your request made under the Official Information Act 1982 (OIA), received on 3 October 2025. You requested the following:

I understand the IRD has been undertaking a Penny and Hooper (based on the case reported as Penny v Commissioner of Inland Revenue [2011] NZSC 95; [2012] 1 NZLR 433; (2011) 3 NZTR 21-014; (2011) 25 NZTC 20-073 project for the past two years where personal service income earners are identified, and their affairs subject to audit if the IRD considers that they are not flowing out enough income to be taxed in their own names.

Please could you provide the following information for the most recent iteration of this project: On an aggregated basis (i.e. in a way that protects private information)

1. *The number of audits undertaken where amendments to tax positions resulted from an adjustment that used the Penny and Hooper cases as authority or similar cases using the general anti-avoidance rule as authority for the adjustment;*
2. *The number of audits still unresolved, and the number of audits completed;*
3. *The extra tax collected as a result of these audits;*
4. *The amount shortfall penalties imposed as a result of these audits;*
5. *The professions of those involved and the amount of income as a % of overall income the IRD required to be taxed in the professional's own name. For example:*
 - *Type of taxpayer*
 - *Number of employees (if known)*
 - *Percentage income taxed*
 - *General medical practice*
 - *Medical specialist - Ophthalmologist*
 - *Medical specialist - Orthopaedic surgeon*
 - *Medical Specialist - Urologist*
 - *Medical Specialist - Oral Surgeon*
 - *Medical Specialist - list as relevant*
 - *Lawyer*
 - *Accountant*
 - *Other service providers listed by category as relevant*

Question one

In April 2021, the top personal marginal tax rate was increased from 33% to 39%, creating a misalignment in tax rates across entity types. It was made clear by Ministers that if analysis

indicated high income earners were circumventing the rate through greater use of trusts, the Government would move to address this issue.

Inland Revenue issued RA 21/01 *Diverting personal services income by structuring revenue earning activities through a related entity such as a trading trust or a company: the circumstances when Inland Revenue will consider this arrangement is tax avoidance* to discourage customers from taking aggressive positions.

We have taken a risk-based approach and have identified a broad range of industries where there is a higher risk of personal services income being diverted. Lower income allocations were identified in our 2023 analysis, particularly for medical professionals, engineers, and accounting professions. We focused our initial audit activities on these industries and identified 840 potential cases of income diversion. Further analysis was completed, and 84 audits were undertaken.

As at 17 October 2025, this has resulted in 32 cases with income tax adjustments made for diverted personal services.

Further analysis has been undertaken of the 2024 and 2025 years which has identified further industries. We have opened audits across a range of industries.

Question two

As at 17 October 2025, we have 40 active audit cases and have closed 80 audit cases.

Question three

Of the 80 audits completed, we have identified \$17,408,232.83 of income inappropriately diverted from the primary service provider. The tax shortfall reflects the tax differential between the rates originally applied to that income (generally 33%) and the correct rate (39%). The extra tax collected as a result of the audit activity to date is \$1,044,493.97.

Question four

At all times we have encouraged the taxpayers to be voluntarily compliant, as a result we have received a number of pre and post audit disclosures. This resulted in a 75% or 40% reduction in shortfall penalties for pre or post audit disclosure with an additional 50% reduction in those penalties for previous behaviour if the customer had not been recently liable for a penalty.

We have applied shortfall penalties to 17 audits, the total penalties collected after allowable deductions is \$135,515.

Question five

Due to the low numbers of individuals in these professions we have not provided the breakdown you requested. To provide this level of detail would risk identifying the individuals. This part of your request is considered sensitive revenue information under section 18 of the Tax Administration Act 1994 (TAA) because it is reasonably capable of being used to identify a person. As such, this is refused under section 18(c)(i) of the OIA, as making the requested information available would be contrary to the provisions of a specified enactment, namely

Inland Revenue's confidentiality obligation in section 18 of the TAA. Disclosure of this information does not fall within any of the exceptions to the confidentiality obligation listed in sections 18D to 18J of the TAA.

Consistent with the *Penny and Hooper* cases, the income generated by the individual should be taxed in the hands of the individual. However, the Commissioner also recognises that the commercial realities, such as other profit drivers, of the business could reflect a lower percentage leading to a lower allocation percentage. To justify a lower allocation percentage a taxpayer needs to provide factors for reduction that are outlined in RA 21/01.

The professional allocation percentages you requested do not exist, each percentage is based on the specific facts of the cases.

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



Sanjay Thakker
Group Lead, Small & Medium Enterprises