Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

# The Commissioner's duty of care and management – section 6A of the Tax Administration Act 1994

## Reading guide

The accompanying draft Interpretation Statement is an update of IS 10/07: "Care and management of the taxes covered by the Inland Revenue Acts – section 6A(2) and (3) of the Tax Administration Act". It arises out of a review of the existing statement, that was issued in 2010, to ensure that it is up to date.

There is no material change to the Commissioner's interpretation of section 6A. However, section 6A, along with section 6, are important provisions governing the day-to-day operation of Inland Revenue and the exercise of the Commissioner's powers under the Inland Revenue Acts. It was therefore considered appropriate that the statement be brought up to date, and in doing so confirm that Commissioner's interpretation has not changed.

The item has been updated for legislative changes and case law since its publication.

In 2019 what was section 6A(1), which provided that the chief executive of Inland Revenue is also the Commissioner of Inland Revenue, was moved to a new section 5B. What were sections 6A(2) and 6A(3) were renumbered as sections 6A(1) and 6A(2). New headings and subheadings were also added. It can also be noted that since the 2010 statement was published, the remedial powers in sections 6C-6G have been enacted. None of these changes have altered the Commissioner's interpretation of section 6A.

The revised statement now includes reference to four cases decided since 2010 that refer to section 6A, but which do not alter our existing view on care and management. Those cases are:

- *CIR v Ben Nevis Forestry Ventures Ltd* (2014) 26 NZTC 21-082 (HC)
- *CIR v Michael Hill Finance (NZ) Ltd* (2016) 27 NZTC 22-056 (CA)
- *P v CIR* (2015) 27 NZTC 229 (HC)
- *Peebles v A-G* (2014) 26 NZTC 21-107 (HC)

Changes have also been made for readability and adopting the same format as newer interpretation statements. There has also been some restructuring. In particular, the discussion of s 6 and the relationship between s 6 and s 6A has been brought forward. The legislative history has now been summarised in the body of the item, with the more detailed discussion moved to an Appendix.

Additionally, some of the example have been amended for accuracy, or removed if they do not represent current practice. Referring to the examples in IS 10/07:

- Example 2 has been removed. The example said that the Commissioner could inform a non-compliant industry that IR would not audit previous years if they met their tax obligations in current and future years. The example did not provide adequate guidance, in that it notes that section 226B of the TAA, which specifically provides for business group amnesties, may apply instead. The example is also potentially inconsistent with other statements in the interpretation statement, and we do not want this example to create an expectation that IR would, as a matter of practice, give such an undertaking.

- Example 5 (now example 4) has been amended as it previously referred to a legislative requirement to apply in writing, and whether the Commissioner can remove the written application requirement. The requirement to apply in writing has since been removed.

- Example 7 has been removed as it related to requirements under the Estate and Gift Duties Act 1968 which have been repealed.

- Examples 11, 12 and 14 (now examples 9, 11 and 12) have been amended to note that the new remedial provisions in sections 6C to 6G of the Tax Administration Act may apply.

- Example 19 (now example 16) has been redrafted to more concisely reflect the Commissioner's view that despite reliance on incorrect Inland Revenue advice, a person's tax liability will be based on a correct interpretation of the law.

- Example 20 (now example 17) includes reference to the Commissioner's Settlement Guidelines for more information.