

OPERATIONAL STATEMENT

Authority to Act for Tax Agents and other Intermediaries and Nominated Persons

Issued: 6 July 2022

OS 22/03

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This statement prescribes the manner by which a tax agent or a representative can obtain the authority to act from their clients.

All legislative references in this Statement are to the Tax Administration Act 1994 (TAA), unless specified otherwise.

START DATE – This Statement applies from the date of issue

Introduction

This Statement prescribes the manner by which a tax agent or a representative can obtain the authority to act from their clients.

Schedule 7, part B, clause 15 of the Tax Administration Act 1994 (TAA) allows the Commissioner to make available sensitive revenue information to the agent of a taxpayer, where that taxpayer has authorised the agent in a manner as the Commissioner prescribes.

A third-party provider, such as a tax agent or a representative, who obtains the authority to act from a client in accordance with this Statement is considered an agent of that client under Schedule 7, part B, clause 15.

As an agent, the tax agent or representative must hold authority from their client in order to link to the client's accounts and to give the agent or the agency the legal permission to deal with Inland Revenue on their client's behalf. The authority to act can either be in a written form or in electronic form.

Linking to a client means the agent will be granted direct online access to their client's tax accounts for which they have authority to act, where they will have the ability to view and update a client's records and information. It is, therefore, important for Inland Revenue to ensure that a tax agent or representative has obtained proper authorisation for that access.

This Statement sets out information about:

- who may give an authority to act;
- what the authority to act should cover;
- the requirements for obtaining authority to act electronically;
- the requirement to keep a record of the client's authority and identity verification documents; and
- Inland Revenue's process for auditing these documents.

Application of the statement

1. This Statement applies from 6 July 2022.

2. The guidelines apply to:
 - third-party providers who are listed as a tax agent under s 124C; and
 - persons who have been approved as a representative under s 124D; and
 - persons nominated to act on behalf of another in relation to the first person's tax affairs or social policy entitlements and obligation under s 124F.

These people will collectively be referred to as "**intermediaries**" or "**nominated persons**" in these guidelines.

3. New clients and any existing clients of an intermediary requiring a new authority to act on or after the application date should follow the requirements in these guidelines.
4. These Operational Guidelines replace the IR1059: *Authority to Act guidelines for intermediaries*, as well as Pages 2-3 of the IR1025: *Correspondence guidelines* and finally, the 'Process for tax agents to obtain electronic authorities to act', published in *Tax Information Bulletin* Vol 23 No 9 November 2011.

Discussion

Who can give Authority to Act

Individuals

5. An authority to act must be obtained from the person to whom the information belongs.
6. An authority to act for an individual does not extend to that person's related entities, for example a company of which the client is a shareholder/director. If an intermediary is acting for their client's personal tax affairs as well as the affairs of their related entities and obtaining authorities to act at the same time, they may use a single authority to act for all entities. All of the entities and their respective IRD numbers that the authority is intended to apply to must be clearly listed in the authority to act. If it is not clearly listed, then separate authorities to act will be required for each entity.

Non-individuals

7. An authority to act for a non-individual must be provided by a person or persons with the requisite authority to bind that non-individual.
 - **Companies:** A person or persons who hold(s) the authority to bind the company to an agreement must provide the authority to act. This would normally be a director or a manager.
 - **Ordinary partnerships:** The authority to act must be signed by a partner or by a person who has the delegated authority to bind the partnership.
 - **Limited partnerships:** The authority to act must be signed by a general partner or a person who has the delegated authority to bind the limited partnership.
 - **Trusts:** The authority to act must be signed by all trustees, or by the trustee or trustees who have been authorised by the other trustees to act on all of their behalf.
 - **All other entities:** A person or persons with the requisite authority must sign the authority to act.
8. The rules governing the particular entity will determine how many persons need to sign the authority to act. For example, if one person holds the delegated authority to sign on behalf of the other members of the non-individual then only that person needs to sign. The person signing the authority to act must ensure that they are authorised by the non-individual to appoint the intermediary.
9. Where there has been a change to the ownership of a non-individual entity such that the person who provided the original authority can no longer bind that entity a new authority to act should be provided. (**Note:** Where there has been no change in ownership, a new authority to act would not be necessary merely because the person who signed an authority leaves that entity.)

Children under 16

10. Children under the age of 16 need a parent or guardian to complete the authority to act on their behalf. When a child of an existing client turns 16 and they become a client, the child will need to complete their own authority to act.

Incapacitated persons

11. Incapacitated or cognitively impaired customers, including children, receiving income, often from ACC to employ carers, will have tax obligations. These obligations can be met by a parent or guardian who has been given the appropriate authority to act.
12. However, if that nominated person subsequently dies or is otherwise incapacitated the process for providing an alternative authorised person with the necessary authority to act may not always be straight-forward. This is because the incapacitated customer may lack the legal capacity to nominate another person under s 124F.
13. Often the death or incapacity of an authorised parent or guardian will result in an “automatically” appointed guardian for the incapacitated customer with whom IR can liaise with regarding the customer’s tax affairs (or who may affirm the continuing role of a nominated agent). However, in limited circumstances this will not occur.
14. In those limited circumstances the court will appoint a guardian (or take guardianship itself). Thereafter the IR should address itself to whomever the court has appointed (who may affirm the continuing role of a nominated person).
15. To the extent there is a period between the death or incapacity of a sole guardian and the appointment of another guardian for a child, during that period the IR should liaise with the person taking responsibility for the day-to-day care of the child. This would not breach the confidentiality obligations on IR.
16. There may be a gap between the death or incapacity of a parent or guardian and the appointment of a new guardian. For example, where:
 - there is a sole parent or guardian who dies without naming a testamentary guardian; or¹
 - where the parent/guardian is incapacitated to such an extent they can no longer fulfil their obligations, but the testamentary guardian does not take the role.²
17. In such situations the court will appoint a guardian or become the guardian itself (most likely using an agent of the court). However, this does not happen automatically

¹ Or where both parents/guardians die at the same time or in close proximity.

² It is assumed the guardian has not prepared an enduring power of attorney dealing with the guardianship.

without the intervention of the court and the process may take some time. In the meantime, the customer will continue to have tax obligations to meet.

18. Upon getting an application for guardianship the court may make an order for an interim agent of the court to act on its behalf in guardianship matters in order that the court can then consider a more permanent solution. That person or agency will be a *de facto* guardian until guardianship can be legally resolved. For IR this means that there is a person to deal with in respect of the incapacitated person's tax affairs.
19. This means that in the limited circumstances:
 - where a sole guardian dies or is incapacitated; **and**
 - there is no 'replacement guardian' (appointed as testamentary guardian or under an enduring power of attorney); **and**
 - the Court has not yet appointed a guardian or an agent of the Court (where the court itself is the guardian); then
 - Inland Revenue will adopt a pragmatic approach and deal with the person who is fulfilling the duties of a *de facto* guardian and parent.
20. In the above circumstances, Inland Revenue is prepared to recognise the practical realities of the circumstances and recognise that the person is acting with apparent authority in a situation where no other person has actual authority. This will mean getting that person to deal with the tax issues or to appoint or affirm a nominated person Inland Revenue can deal with. Because Inland Revenue is liaising with the *de facto* guardian to carry into effect the revenue law, this would be a permitted disclosure of sensitive revenue information under s 18D.

Deceased persons

21. If a client passes away, the intermediary must obtain a new authority to act from an authorised person for the estate, such as the administrator or executor.

Deceased intermediary

22. If an intermediary who holds an authority to act on behalf of a client, passes away, that authority to act will end with the intermediary's death if the authority is given to a specified intermediary. On the other hand, where the authority to act is given to an

intermediary's business or partnership, which will continue after the death of one of the intermediaries, it is likely that the existing authority to act will continue.

Verifying the identity of the person giving authority

23. The identity of the person providing the authority to act must be established to a high degree of confidence to ensure that they are entitled to provide that authority. That is, the intermediary must be satisfied that the information they are authorised to access belongs to that person or that the person can authorise access of information on behalf of a non-individual (for example a director/shareholder of a company).
24. It may sometimes, depending on the circumstances, be prudent for an intermediary to check that they have been properly appointed. An intermediary may wish to verify a signatory's authority as part of the identity verification process, for example, by obtaining and holding a copy of the trustee resolution that gives authority to a particular trustee to act on behalf of the other trustees.

Information needed on the authority to act

25. For Inland Revenue to be satisfied that sufficient authority to act has been obtained, the following must be clearly addressed in the authority:
 - The client's full name and IRD number.
 - The authority to act must be dated and signed by the client.
 - Where the client is a non-individual entity, the name and the position of each signatory in the non-individual entity must be clearly stated.
 - The full name of the intermediary.
 - Where the intermediary is in the name of an individual, the authority should also include the words "and staff or contractors", as applicable.
 - The tax accounts the intermediary will be acting on behalf of the client for or state "ALL" if the client gives authority to act for ALL tax accounts. (Note: a tax account can include student loan and social policy entitlements, however an intermediary cannot link to Child Support, Paid Parental Leave or KiwiSaver accounts).

- Authorise the intermediary to obtain the client's information from Inland Revenue through all channels, including Inland Revenue's online services.
26. If applicable, the authority to act should also:
- Authorise the intermediary to sign tax returns on behalf of the client.
 - Specify the time for which the authority to act endures. If no timeframe is specified, then the authority will apply until it is terminated.
 - Specify how and when the authority to act can be terminated by either party.
 - State that authority is given for any refunds and other credits to be released to the intermediary's trust account.
 - Authorise the intermediary to adjust, correct and finalise the client's pre-populated or final account.
 - State whether the intermediary or the client is responsible for checking the correctness of the pre-populated or final account.
27. The authority to act must also make clear that if a client has been delinked or the nature of an existing authority changes for any reason, a new authority to act needs to be obtained before the intermediary can re-link and access the client's information.
28. Examples of circumstances a new authority to act is required for existing clients are:
- The client requires the intermediary to act for a tax type that was not originally authorised for.
 - Client engages the services of another intermediary and unknowingly ceases the old intermediary's authority.
29. An intermediary may also want to ensure that a client understands that linking to a tax account will allow the intermediary to have full access to the information held by Inland Revenue, and may have the ability to modify client details, relating to the tax accounts they are linked to.
30. Please note: A client's agreement to the intermediary's terms and conditions or contract may not necessarily mean the client has given authority to act for Inland Revenue's purposes. The authority to act clauses must be explicit in the agreement or agreed to separately.

Group of taxpayers

31. Where a group of related taxpayers are onboarded at the same time, Inland Revenue will accept one authority to act document for all of the related taxpayers, **only** if the following additional requirements are complied with:
 - The name and IRD number of the individual and/or entities are clearly listed in the authority to act document.
 - The authority to act is signed by all applicable individuals and persons with the requisite authority to bind the non-individual entities.
 - The positions of the signatories in the non-individual entities must be clearly stated.
32. Any new related entities or individuals that the intermediary will act for in the future will require a new authority to act and cannot be retrospectively added to an existing authority.

Onboarding clients electronically

33. With many businesses conducting more of their services online, an intermediary may choose to onboard clients electronically, without meeting a client face to face.
34. The information requirements for an authority to act in [25]-[32] may be met electronically, such as using an online electronic platform, provided that all required information is clearly set out in the electronic authority to act and that the authority to act is readily accessible for review when requested by Inland Revenue.
35. It is important that new clients are aware and understand what they are authorising the intermediary to do. To that end, an intermediary may choose to adopt a “tick box” approach to ensure that the clauses of the authorisation are read and explicitly agreed to.
36. Where this approach is used, the intermediary must make clear as a minimum all the following points for Inland Revenue to be satisfied that sufficient authority to act has been obtained.

The authority to act must:

- authorise the intermediary to obtain the client's information from Inland Revenue through all channels, including IR's online services;
- state the name of the tax agency and/or individual intermediary's name, plus whether staff or contractors may be acting on behalf of the client;
- state what tax accounts the intermediary will be undertaking on behalf of the client (the online intermediary may wish to specify "ALL" tax accounts to ensure full understanding of the client's tax position);
- specify the time for which the authority to act endures and how and when the authority to act can be terminated by either party;
- state to the client that linking allows the intermediary to have full access to information held by Inland Revenue and ability to modify client details relating to the tax accounts they are linked for;
- state where correspondence for linked tax accounts will be directed, either to the online intermediary or the client;
- state that authority is given for any refund credits to be transferred to the agency's trust account prior to refund to the client (if applicable);
- authorise the online intermediary to prepare, submit and sign tax returns on behalf of the client.

Each point above must have its own "tick box" so the client is fully aware of the agreement they are entering into when authorising authority to act to the intermediary.

The authority to act points must be agreed to separately from the online intermediary's terms and conditions or contract agreement. A copy of the client's authority to act must be held on file along with the verification of identity.

Electronic signature

37. Inland Revenue will accept an electronic signature on an authority to act obtained electronically if the electronic signature meets the following requirements:
- the electronic signature must adequately identify the signatory and adequately indicates the agreement to the authority to act;

- the means of creating the electronic signature must be linked to the signatory and to no other person;
- the means of creating the electronic signature was under the control of the signatory and of no other person; and
- any alternation to the authority to act or to the electronic signature after the time of signing must be detectable.

Process for verifying the identity of the person giving authority when onboarding electronically

38. When the onboarding process is done entirely online, it is important that the identity of the person giving authority is verified. Inland Revenue must be satisfied that the information to be accessed belongs to the person giving the authority, or that the person can authorise access of information on behalf of a non-individual (for example, a director of a company).
39. Inland Revenue acknowledges that many of the intermediaries will already have identity verification obligations under the Anti Money-Laundering and Countering Financing of Terrorism Act 2009 (AML-CFT Act). Inland Revenue will accept the identity of the person providing the authority will have been established to a high degree of confidence where the intermediary has completed the customer due diligence in accordance with their obligations under the AML-CFT Act.
40. If an intermediary that does not have due diligence obligations under the AML-CFT Act then they must follow the process set out below in [41]–[51] to verify the identity of their client.

Use of online identity verification provider

41. An intermediary should use an online electronic identity verification provider to verify the identity of a client. The identity verification provider must be reliable and independent and compliant with the AML-CFT identity verification requirements.
42. If an online identity verification provider does not meet the AML-CFT Act requirements (because the intermediary does not have due diligence obligations under the AML-CFT Act), the provider used must be reputable and be authorised to verify at least five

points from a current New Zealand driver's licence or a current New Zealand passport. They must also be able to confirm that the driver's licence/passport is a valid one and has not been reported stolen or cancelled. The points for verification must include:

Driver's licence	NZ Passport
First name	First name
Middle name (if given)	Middle name (if given)
Last name	Last name
Driver's licence number	Passport number
Version number	Expiry date

43. For the identity to be accepted as verified, all five points must match. The third-party verifier is required to send the intermediary a confirmation report advising whether verification has been successful. The confirmation report must state accepted or rejected next to each key point and include the name of the third-party verifier, and the time and date the verification report was requested and completed.
44. The confirmation report is to be held on file by the intermediary as verification of the client's identity. The intermediary must be able to provide a hard copy of the verification report at the request of the Commissioner.
45. Where a confirmation report comes back as unsuccessful, a second attempt may be made. If in the second instance a confirmation report comes back as unsuccessful, the intermediary must then request and keep a copy of the client's photo ID.
46. As the intermediary does not receive an actual copy of the client's photo identification using this process, a bank account match must also be completed. The client must provide the intermediary with a bank account under the name submitted as part of the identity verification. Joint bank accounts are acceptable, where the joint account name includes that provided during the verification process. Details of bank account name and number must be held on file alongside the verification report of client identity. The process of bank account matching reduces the risk of identity fraud.

47. The following are acceptable forms of photo ID:
- New Zealand passport.
 - New Zealand driver's licence.
 - Overseas passport issued by a foreign government.
 - New Zealand certificate of identity (issued by Ministry of Business, Innovation and Employment or Department of Internal Affairs).
 - New Zealand firearms licence or dealer's licence.
 - New Zealand 18+ card or Kiwi Access card.
 - International Drivers' Permit (issued by a member country of the UN Convention on Road Traffic).
48. If the client is a child under 16 years of age, the child's parent or guardian is required to provide the following documentation:
- proof of their own identity as parent or guardian by providing one legible copy of an identity document which must contain a photo as listed in paragraph 47, plus either
 - The child's New Zealand full birth certificate or overseas birth certificate, or
 - a legible copy of a document which shows the relationship between them and the child, such as a birth certificate or adoption papers.

Requirement to keep record of the client's authority to act and identity document

49. The intermediary must keep a copy of the client's authority to act and identity document.
50. Client authorities to act that are obtained electronically must be kept in a manner that allows Inland Revenue to readily access and review that authority and the identification documents of the person who provided the authority.
51. Please refer to Standard Practice Statement [SPS 21/02: Retention of business records in electronic format, application to store records offshore and application to keep records in Languages other than English or te reo Māori](#) (or any subsequent replacement) for the standards to which records must be kept.

Consequence of not obtaining sufficient authority to act

52. The authority received by the intermediary must be adequate for them to act for the client's tax affairs and social policy entitlements and to receive information held by Inland Revenue (for example, if the intermediary is dealing with the client's PAYE then the client's authority must cover PAYE).
53. Not obtaining sufficient authority to act means that the intermediary is unable to receive the client's information from Inland Revenue.
54. Accessing a client's information without authority or in breach of the authority could result in the removal of the intermediary from the list of tax agents or the cancellation of the intermediary's representative status.

Inland Revenue may audit authority to act documents

55. From time to time, Inland Revenue will ask to view a sample of the authorities to act from an intermediary to ensure the requirements set out in these guidelines are met. Samples will be selected at random.
56. Part of this review may include viewing samples of the identity documents held and to ensure that reasonable checks have been undertaken to establish the identity of the person giving authority, as well as checking if an electronic signature had been submitted in accordance with these guidelines.
57. If an authority to act is held by an intermediary but does not meet the requirements of these guidelines, adequate time will be given to the intermediary to correct this. However, if no authority to act is held for a client at all, that client will be delinked.

Please note - the following is a template of an authority to act. As there is no scripted authority form this is an example only:

Authority to act

Authority is given to *(insert name of business here)*and staff and contractors (if applicable) to act on behalf of the entities listed below to obtain information from Inland Revenue about (tick one):

- ALL tax types (This will allow your tax preparer to view all correspondence and update your address) or
- The following tax types: *(list tax types here)* _____

This includes authority to obtain information from Inland Revenue through all channels (including electronic)

- For tax agents only - authority is given for overall permission across my tax information
- Authority is given to redirect any refunds to the agents trust account for the entries listed below
- Authority is given to sign on behalf of the entities listed below

Individual:

Full name	IRD#	Signature	Date

• An adult is able to sign on behalf of a child under 16, when the child turns 16, they are required to sign an A2A themselves

Non-Individual:

Entity's name	Entity's IRD#	Representative's name	Representative's position	Signature	Date

This Statement was signed on 6 July 2022.

Rob Falk

Technical Lead, Legal Services – Technical Standards