

Mr Richard Bobb, Chairman of the Legislation Review Board¹ met with Mr Robin Oliver (and two of his senior colleagues) in Wellington on 27 May 2005. Mr Oliver is the Deputy Commissioner of Taxation, Policy in the New Zealand *Inland Revenue Department* (“IRD”). The meeting was held with Mr Oliver on the recommendation of Mr Michael Cullen, the Minister for Finance and Deputy Prime Minister of New Zealand.

Mr Bobb has sought to establish a constructive dialogue between the accounting profession in Australia and the IRD, concerning the application of a new privilege for clients of tax advisors.²

To this end Mr Bobb explained to Mr Oliver the Australian accounting profession is keen to better understand the background behind the steps taken in New Zealand to grant tax adviser privilege to the accounting profession in New Zealand and the scope for potential application to tax advisors in Australia.

Proposed amendments to the *New Zealand Taxation Administration Act, 1994* will ensure that any tax adviser (belonging to an approved professional body) will be able to give tax advice and have that advice covered by a claim for privilege. However, any privilege claimed will be exclusive of any advice reciting fact or the giving of investment or financial advice.

Clients of lawyers presently enjoy the right to claim legal professional privilege, when giving tax advice, whilst the clients of accountants do not. Mr Bobb said “Mr Cullen’s courageous

¹ The Board is involved in the review of Australian legislation on behalf of the accounting profession in Australia and is the responsibility of the *Institute of Chartered Accountants in Australia* and *CPA Australia* (through the *Australian Accounting and Research Foundation*).

² The new privilege is contained in the *Taxation (Base Maintenance and Miscellaneous Provisions) Bill* (“the Bill”).

initiatives have been directly aimed at levelling the playing field and will no doubt be most welcome by taxpayers, generally.”

Under the new rules, if a claim for tax advice privilege is challenged by the IRD the *Taxation Administration Act, 1994* will permit a framework for allowing the claim for privilege to be tested.

The nub, for the Australian accounting profession, is that once the Bill is enacted either *CPA Australia* or the *Institute of Chartered Accountants in Australia* can make an application with the New Zealand IRD to seek “professional body” recognition. Given the requirements set out in the Bill require, amongst other things, that the professional body, seeking approval has in place:

- a professional code of conduct in the giving of advice; and
- members of the professional body are subject to a disciplinary process that enforces compliance with the code of conduct

then it is likely that the two Australian accounting bodies would be approved by the New Zealand Commissioner (although it is entirely up to the Commissioner to grant approval once an application has been made).

Mr Bobb said members of the Australian accounting bodies who might seek to provide tax advice on aspects of New Zealand tax law (especially tax law forming part of the Australia-New Zealand Double Tax Treaty) will more likely than not want the Australian Taxation Office (“ATO”) to respect the prospect of privilege being claimed in relation to such advice. Unless the ATO is

prepared to acknowledge and recognise that privilege, then the prospect of tax adviser privilege might be ineffective, in a way which was not intended by the New Zealand Parliament.

As an example of such weakness in the protection intended to be afforded Australian tax advisors, Mr Bobb noted Article 26 of the Australia-New Zealand Double Tax Treaty provides for exchange of information between the two Revenue authorities. Unless the ATO was prepared to acknowledge, recognise and respect the privilege provided in the New Zealand legislation then the New Zealand legislation might prove ineffective if a backdoor entry was used by the ATO. Mr Bobb suggested the test for Mr Carmody³ is whether, *Closer Economic Relations* will be given potency!

In his meeting with Deputy Commissioner Oliver, Mr Bobb was able to learn, as a separate and welcome development, that the New Zealand IRD is presently considering the proposal to recognise Australian registered tax agents as “tax agents” for the purposes of New Zealand income tax law. Naturally, the Deputy Commissioner’s chief advisers will be looking to obtain a form a mutual recognition for New Zealand tax agents. The ATO, however, may not be all that keen on providing reciprocal recognition. As Australian registered tax agents are required to meet a number of rigorous hurdles before they can be granted registration (and the same applies when they are required to re-register periodically), it is understandable why the ATO may approach the prospect with muted exuberance!

Sydney, 2 June 2005

³ Mr Carmody is the Australian Commissioner of Taxation.