Regulatory Impact Statement

Gift duty repeal

AGENCY DISCLOSURE STATEMENT

This regulatory impact statement has been prepared by Inland Revenue. It is relatively detailed since it deals with the potential repeal of gift duty, which may have implications for a number of government agencies. Specifically, the statement provides an analysis of the tax and non-tax benefits and administrative and compliance costs of gift duty. It considers whether there are existing alternative measures to provide creditor protection and social assistance and whether any new measures could fulfil this role.

A cross-governmental approach has been taken to the review project, including extensive consultation with a wide range of government agencies (the Treasury, the Ministry of Economic Development, the Ministry of Justice, the Ministry of Health, New Zealand Police, the Ministry of Social Development and Housing New Zealand Corporation). None of the agencies are opposed to gift duty repeal, provided that the effects are monitored and any necessary supporting work is carried out.

Although there has been no general public consultation on the proposal since gift duty repeal would largely benefit the private sector, we have discussed the review with professional and private bodies, such as the New Zealand Institute of Chartered Accountants and New Zealand Trustee Services Limited. In addition, as a result of the June 2010 announcement by the Minister of Revenue that repeal of gift duty was being considered, the Minister received a number of letters from the public and significant media coverage. These have been taken into account as part of the review.

We recommend that gift duty be repealed on the basis of enhanced efficiency, simplicity and administrative costs and the significant reduction of private sector compliance costs (although fiscal cost is also a relevant consideration). We believe that gift duty does not fulfil its current objectives and the risks of its repeal are low. However, it is not possible to precisely determine the extent to which gift duty alleviates issues such as income tax minimisation, social assistance targeting and defeat of creditors. Therefore, it is important that affected government agencies monitor the effects of gift duty repeal on their areas and make any necessary operational changes.

None of the policy options would impose additional costs on business or impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest or override fundamental common law principles.

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4 October 2010

EXECUTIVE SUMMARY

1. The principal original purpose of gift duty was to protect the estate duty base. Estate duty was repealed in New Zealand with effect from 1992. At that time, it was decided that gift duty would be retained temporarily until concerns regarding income tax avoidance and social assistance targeting could be addressed. Since then, gift duty has also come to be viewed as providing some protection to creditors.

2. Gift duty was most recently assessed by (The McLeod) *Tax Review 2001*. Repeal of gift duty was recommended by the Review, but the fiscal circumstances did not permit this at that time. The current review is the first to take place since 2001.

3. The current review began in response to frequent requests for legislative exemptions from gift duty and requests for the thresholds to be raised and administration to be modernised. The review considered narrowing the scope of gift duty so that it would apply only to gifts between individuals, trusts and closely-held companies; raising the thresholds at which gift duty applies; removing the need to file non-liable gift statements and providing for electronic filing and payment options. However, as the review progressed, a strong case for the outright repeal of gift duty emerged.

4. Officials have considered the implications of gift duty repeal for income tax, creditor protection, social assistance integrity and other identified areas. Some of the concerns which existed in 1992 have been addressed or reduced by the strengthening of existing legislative provisions. Remaining areas of concern have been scrutinised in consultation with the Ministry of Economic Development (MED), the Ministry of Justice, the Ministry of Health, New Zealand Police, the Ministry of Social Development (MSD) and Housing New Zealand Corporation. None of these departments are opposed to gift duty repeal.

5. Treasury supports the repeal of gift duty as it is an inefficient instrument to provide limited creditor and means-testing protection, but considers that the relevant agencies should be required by Ministers to undertake any recommended work to support the repeal or to monitor whether additional measures might be needed following repeal.

6. Gift duty no longer raises any significant revenue and imposes a high level of compliance costs on the private sector. The protections offered by gift duty in the areas of income tax, creditors and social assistance have only ever been incidental rather than intended policy goals. The analysis undertaken has shown that the protection gift duty offers is indirect, inefficient and very limited.

7. Ultimately, the limited protection that gift duty offers does not outweigh the significant compliance costs that it imposes on the private sector. Officials therefore recommend that gift duty be repealed and the necessary legislation be included in the *Taxation (Tax Administration and Remedial Matters) Bill*, planned for introduction in November 2010. To provide certainty for the private sector, it is recommended that repeal be effective from 1 October 2011.

8. Gift duty repeal is expected to reduce government revenue by $1 million a year and will provide administrative savings of $430,000 annually (this amount will be returned to the

Crown). The repeal is estimated to reduce compliance costs imposed on the private sector by $70 million each year.

9. Other projects are underway that seek to address some of the concerns associated with gift duty repeal. These include Inland Revenue's debt project, Treasury and Inland Revenue's social assistance integrity review and the Law Commission's review of New Zealand trust law.

STATUS QUO AND PROBLEM

Background

10. Gift duty applies when the aggregate value of all gifts made by a person in a 12-month period exceeds $27,000. There are a number of exceptions, including for gifts to charitable organisations and small gifts to family members which are part of normal expenditure.

11. Gift duty has applied in New Zealand since 1885. The original purposes of gift duty were to protect the estate duty base (by discouraging the gifting of assets prior to death) and to raise revenue. When estate duty was abolished with effect from 1992, gift duty was retained as an interim measure to protect against income tax avoidance and social assistance targeting (T95/1991 refers). Since then, gift duty has also come to be viewed as providing some protection to creditors.

12. Gift duty was reviewed in 1996 and at that time officials recommended that gift duty be retained until work could be undertaken to limit tax avoidance opportunities (PAD 96/389, T96/3294 refers).

13. Subsequent to that report, the government-established but independent (McLeod) *Tax Review 2001* recommended that gift duty be repealed on the basis that:

- the original rationale of gift duty – to buttress estate duty – was no longer relevant;
- gift duty raised only $1.6 million a year but involved significant compliance costs; and
- the use of gifting programmes reduced gift duty's effectiveness in preventing income splitting and avoidance of asset testing regimes.

14. The report stated that "it would seem more logical to… [bring] into welfare asset tests any assets transferred over the last half dozen years. This would seem to have the same effect as gift duty but with much lower compliance costs." It also stated that it would be preferable to re-examine the trustee and top personal tax rates rather than retain gift duty due to income splitting concerns. The effectiveness of gift duty in protecting creditors would need to be assessed and alternative protection measures could be considered.

15. In response to the (McLeod) *Tax Review 2001* recommendations, Ministers agreed that gift duty repeal would be considered when fiscal circumstances permitted (T2001/2075, PAD2001/334 refers).

16. The current review of gift duty is the first that has been undertaken since the (McLeod) *Tax Review 2001*.

Reasons for the review and decisions taken to date

17. In 2008–2009, a number of letters were received by Ministers and officials requesting legislative exemptions from gift duty. These requests were considered on a case-by-case basis and new exemptions contained in the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 resulted. The ad-hoc approach with which these exemptions were granted led to concerns that the lack of a coherent framework for considering exemptions might give rise to undesirable inconsistencies and a lack of certainty for donors.

18. Instead of continuing to determine exemptions as requests arose, a review of gift duty was undertaken to consider whether there were general areas where gift duty was not performing a useful function and therefore could be removed from the gift duty scope.

19. There were (and are) frequent requests from the public to review the gift duty thresholds. The thresholds of $27,000 for non-dutiable gifts and $12,000 for the filing of gift statements were set in 1984 and have not been revised since.

20. In addition, administration of gift duty has become antiquated, with no provision for the electronic filing of gift statements or any form of payment other than by cheque. Further, the valuation of annuities for the purposes of gifts under the Estate and Gift Duties Act is set according to life expectancy data which is more than 25 years out of date.

21. In September 2009, officials commenced work on a review of gift duty, focusing on targeting its application (PAD2009/157 refers). At the New Zealand Institute of Chartered Accountants Tax Conference on 16 October 2009, the Minister of Revenue announced that the Government would review gift duty and that consideration would be given to narrowing its scope. The gift duty thresholds and administration procedures were to be considered as part of this review.

22. As work on this review progressed, a strong case for repeal emerged. On 24 May 2010, Cabinet noted that a review of gift duty was underway, that a strong case for its repeal was emerging and that repeal and any necessary protection measures could be included in the November 2010 tax bill (CAB Min (10) 18/15 refers). With Cabinet's approval, the Minister of Revenue announced on 10 June 2010 that consideration was being given to the repeal of gift duty, provided that concerns regarding creditor protection and social assistance targeting could be addressed. The Minister indicated that if gift duty were to be repealed, this change would be included in the November 2010 tax bill.

The policy problem

23. In addition to the problems described above, which gave rise to the gift duty review, work done since the review began has revealed further policy concerns.

24. Gift duty no longer fulfils its original purpose of protecting the estate duty base and has raised minimal revenue, which has decreased in recent years, as shown in the following table.

Year	Amount of gift duty collected (revenue basis)
2009/10	$1,621,000
2008/09	$1,486,000
2007/08	$2,620,000

2006/07	$2,008,000
2005/06	$2,960,000
2004/05	$2,325,000
2003/04	$2,348,000

25. Gift duty is easy to avoid through the use of gifting programmes. Under a gifting programme, an asset is sold at market-value in exchange for an interest-free, on-demand loan for the value of the asset. Legal title to the asset instantly transfers, but no payment is made. The interest-free, on demand debt that the recipient of the asset owes to the donor is then progressively forgiven by the donor at a rate of $27,000 every twelve months. The forgiveness of the debt constitutes annual gifts; however they are within the accepted level so as not to attract gift duty. Until it is completely forgiven, the debt owed is legally an asset of the donor and the donor can demand that it be repaid.

26. These gifting programmes are widely used to transfer large assets without attracting gift duty. The fact that just 0.4% of gift statements received by Inland Revenue result in liability for payment of gift duty is clear evidence of the widespread use of these programmes. They are most often used by individuals to transfer ownership of their assets to a family trust.

27. The direct cost to Inland Revenue for administering gift duty is approximately $430,000 each year. The total cost is likely to be significantly higher. Inland Revenue is treated as a repository for gifting information by some 4,600 taxpayers who request their information each year. This data must be manually retrieved from hard-copy files held by Inland Revenue.

28. The cost to the private sector in complying with gift duty requirements is substantial. 225,000 compulsory gift duty statements are filed each year and it has been noted that just 0.4% of these statements correspond with liability to pay gift duty. Letters to Inland Revenue and Ministers indicate that gift duty liability is often the result of timing mistakes (where the $27,000 threshold for gifts is accidentally exceeded in any 12-month period).

29. Under standard gifting programmes to family trusts, a number of deeds are required that must be filed with Inland Revenue in addition to gift statements. Initially a deed of sale is required when the asset is transferred to a trust. Then a deed of acknowledgement of debt is drawn up, and annual deeds of forgiveness are required to reduce the outstanding debt. The average cost quoted by practitioners is $285 +GST to draw up the annual deed of forgiveness and to file this along with a gift statement. If this cost is grossed up to reflect the 225,000 gift statements filed each year, this reveals more than $70 million in annual costs to the private sector, excluding the initial costs of setting up the gifting programme (deed of sale and deed of acknowledgement of debt).

30. This is a high cost to retain a tax which no longer generates any significant revenue. In addition to raising minimal revenue, gift duty also appears to have little effect in reducing erosion of the tax base in other areas (this is discussed in greater detail below). Hence it appears that the principal arguments for gift duty retention are connected with altering non-tax related behaviours in the areas of social policy and debt repayment (although there is a question whether the tax system should address non-tax issues in this way).

31. By retaining gift duty for non-tax purposes, it has come to be perceived by some as a key way of protecting social assistance integrity and creditors. However, the protection offered by gift duty has only ever been incidental rather than an intended policy goal. The

analysis undertaken has shown that the protection gift duty offers is indirect, inefficient and very limited. The actual protection it offers should justify the extent of gift duty's administrative and compliance costs.

32. Gift duty was retained after the repeal of estate duty as an interim measure to allow time for concerns to be addressed more directly. Changes have since been made that address some of the concerns, including abolition of income-testing for New Zealand Superannuation, alignment of the top personal and trustee income tax rates from 1 October 2010 and the strengthening of legislative provisions in other areas.

33. It could be argued that gift duty should be retained until all of the concerns that gift duty may mitigate are resolved. However, they might never be completely eliminated. The level of protection offered by gift duty has been overestimated and there is possibly less motivation for the core concerns to be addressed across government while gift duty is thought to be providing comfort.

OBJECTIVES

34. The objectives of the gift duty review were to:

- improve and reduce the extent of regulation;
- minimise compliance costs for the private sector;
- minimise administration costs for Inland Revenue;
- ensure that the benefits of the gift duty rules outweigh the associated compliance and administration costs;
- eliminate/reduce the need for exemptions;
- provide certainty; and
- ensure that the gift duty rules are up to date (including gift duty thresholds and life expectancy data used to value annuities).

REGULATORY IMPACT ANALYSIS

35. A number of different options have been considered to address the objectives of the review.

Option 1: Narrow the scope of gift duty

36. The Estate and Gift Duties Act 1968 (the EGDA) applies to all gifts which are not specifically exempted. This means that gift duty may impose compliance costs where there is no need for protection. One approach which has been considered is to narrow the ambit of gift duty so that it applies only to transfers of property between entities where gift duty performs a useful function.

37. Concerns regarding income tax minimisation, social assistance targeting and defeating creditors largely relate to gifts between individuals and family trusts, and sometimes also involve closely-held companies. Therefore, the application of gift duty could be narrowed so that it only applies to gifts between these entity types. This approach would reduce the need for exemptions, provide greater certainty and would maintain gift duty's existing role in preventing income tax reduction, social assistance targeting and defeating creditors. Life

expectancy tables and gift duty thresholds could be updated at the same time as changes to narrow the gift duty scope.

38. Closer analysis of this option revealed that the majority of gifts are made between individuals and family trusts, with some also involving closely-held companies. Therefore narrowing the scope of gift duty to apply exclusively to these entity types could not be expected to make a significant difference to existing compliance and administration costs. Only gifts between widely-held companies (which are generally not considered to be subject to gift duty because they tend to involve commercial benefit) and any other kind of gift with a charitable nature that has not been accounted for in the existing exemptions would be removed from the gift duty net. Given that the gift duty basis would remain much the same; this option would have insignificant fiscal implications and no real impact on the economic efficiency of the gift duty regime.

39. Further consideration of this option also began to reveal that the extent to which gift duty actually offers protection against general tax avoidance, social assistance targeting and defeat of creditors had been over-estimated. If gift duty is no longer performing any significant function, or if better or more efficient protection could be provided through alternative measures, then repeal should be considered in preference to targeting of the existing rules, given the significant compliance costs gift duty imposes.

Option 2: Raise the threshold at which gift duty applies

40. The current threshold of $27,000 per annum was fixed in 1984 and has not been revised since. Ministers and officials receive frequent requests for the threshold to be reviewed on the basis that it has not kept pace with inflation.

41. Any increase in the level at which gift duty becomes payable would also require consideration of the other thresholds at which the rate of gift duty increases. In order to circumvent the need to regularly amend the law to keep pace with inflation, the gift duty thresholds could be inflation-indexed.

42. If the gift duty threshold of $27,000 in 1984 is adjusted in accordance with inflation, in today’s terms it would be $78,291. Raising the gift duty threshold to this level would reduce compliance and administrative costs because a smaller number of individual gifts would be required to transfer assets and therefore fewer deeds and gift statements would be required. However, the fiscal implications (compared to repeal) are likely to be insignificant given that a significant proportion of the revenue from gift duty is thought to result from timing mistakes. This option could be combined with option 1, updating life expectancy tables and removing the need to file non-liable gift statements in order to also meet some of the other objectives of the gift duty review.

43. In 1968, the gift duty threshold was $4,000. It was raised to $8,000 in 1976 (roughly matching inflation). However, it was subsequently raised to $15,000 in 1979 and to $27,000 in 1984 – faster than it if it had been inflation-indexed. The threshold in 1984 was therefore considered to be high.

44. Most significantly, in 1984 the objective of gift duty was to protect against the circumvention of the estate duty rules, not to prevent mischief in relation to income tax, social assistance or creditors. Raising the threshold to $78,291 would significantly dilute gift duty’s protective effect against these forms of targeted gifting by speeding up the rate at which assets may be transferred. For example, a couple with a property valued at $300,000 could sell it to their family trust for the full market rate and then each could forgive $78,291 of this debt

annually – therefore it would take just two years instead of six to transfer the asset. If the key benefit of gift duty – the slowing down of gifting – is diluted to such an extent, it is questionable whether there is any point in retaining it. Further, this option does not address the underlying policy problem of gift duty's relative ineffectiveness at protecting against income-tax minimisation, defeat of creditors and social assistance targeting.

Option 3: Remove the need to file gift statements for non-liable gifts

45. Another option (which could also be considered in addition to one or more of options 1, 2 and 4), is to remove the requirement to file gift statements for non-liable gifts. Under the current rules, any gifts over the value of $12,000 require the donor to deliver a gift duty statement to Inland Revenue along with any associated trust deeds within three months.

46. It has been mentioned already that of the 225,000 compulsory gift duty statements which are filed each year, just 0.4% of these correspond with liability to pay gift duty. Removing the need to file statements for gifts valued between $12,000 and $27,000 would therefore reduce annual gift statements by 99.6%. This would reduce administrative costs and also compliance costs associated with preparing gift statements. Any fiscal implications would be insignificant as the gift duty base would not change.

47. The most significant part of compliance costs is not completion of gift statements – rather, it is the annual drawing up of deeds of forgiveness which require engagement of a legal practitioner. If gift duty continues to apply to gifts over a particular threshold, gifting programmes including annual deeds will still be required in order to gift large assets without becoming liable for gift duty. This option does not address the core policy concern that gift duty is no longer performing a significant, useful function, therefore it goes just a small way towards meeting the objectives of the gift duty review.

Option 4: Moving to electronic systems

48. Currently, Inland Revenue systems only allow for the payment of gift duty by cheque. If an electronic or cash payment is received, it must be manually converted to a cheque and re-banked. Aside from the compliance costs of requiring cheques from taxpayers, it is clearly administratively inefficient for Inland Revenue. Therefore work by Inland Revenue to facilitate electronic payments would reduce compliance and administrative costs.

49. Gift duty statements must also be filed with and stored by Inland Revenue in hard-copy format. Inland Revenue is treated as a repository for gifting information by some 4,600 taxpayers who request the manual retrieval of their information each year. Compliance and administrative costs could therefore be further reduced by moving to electronic filing and storage of gift duty statements. Because the EGDA requires that the original deed is filed along with the gift duty statement (which is then photocopied and returned by post), a legislative change may be required in order to permit electronic copies.

50. Reduced compliance costs resulting from electronic systems may have a positive impact on overall compliance levels. The fiscal impacts of this option are likely to be insignificant, because letters to Ministers and Inland Revenue and advice from practitioners indicate that gift duty liability generally occurs as a result of timing mistakes or when finalising a gifting programme.

51. The financial outlay required to upgrade systems is expected to cost within the range of $1–7 million. This estimate is based on maintaining the current gift duty thresholds. This significant cost would only be justified if gift duty is assessed as fulfilling a useful function

and is likely to be retained for the foreseeable future. Once again, this option does not meet the review's key objective of ensuring that the benefits of the gift duty rules outweigh the associated compliance and administration costs, because the protection provided by gift duty to the income tax base, creditors and social assistance targeting has been assessed as very low.

Option 5: Repeal gift duty

Fiscal implications

52. Gift duty repeal would be expected to reduce government revenue by $1 million a year as per the following table:

	$ millions increase / (decrease)				
Vote Revenue **Minister of Revenue**	2010/11	2011/12	2012/13	2013/14	2014/15 & out years
Crown Revenue and Receipts: Tax Revenue	-	(0.750)	(1)	(1)	(1)

53. In addition to the above cost, the repeal of gift duty is likely to have insignificant fiscal implications for tax collections, benefits entitlements, recovery of the proceeds from crime and state housing. The repeal of gift duty will not have any fiscal implications for the Residential Care Subsidy because the eligibility means-test already takes into account gifted assets.

54. Gift duty repeal would lead to anticipated administrative savings of $430,000 each year. This figure relates to the direct costs that Inland Revenue incurs in administering gift duty and is the amount that will be returned to the Crown in a subsequent baseline update. It does not reflect indirect costs such as infrequent work by staff who are not directly responsible for administering gift duty (for example, policy advice and debt collection staff) in recognition of the fact that these staff will continue to be required to perform their core roles. Inland Revenue has assessed the cost of implementing gift duty repeal and it is expected to be minimal and can be met from within existing baselines.

55. Gift duty repeal is expected to reduce compliance costs imposed on the private sector by $70 million each year. This figure is based on the average cost quoted by practitioners of $285 (plus GST) to draw up an annual deed of forgiveness and to file this along with a gift statement to Inland Revenue. There are roughly 225,000 gift statements filed each year and this number was used to determine the aggregate cost of $70 million. The cost excludes the initial setting up of the gifting programme.

56. Repealing gift duty would meet all the objectives of the review, including removing all compliance and administrative costs, provided that full repeal does not also remove essential protections for the income tax base, social assistance means-testing and creditors. Therefore, analysis of the extent to which gift duty currently offers protection to each of these areas, as well as other areas, and consideration of whether other measures exist or could be established to offer more efficient protection, has been undertaken.

Income tax concerns

57. The number one concern related to the repeal of gift duty from an income tax perspective has, until very recently, been the ability of individuals to reduce their taxable income by transferring their income-generating assets to a trust. High-earning individuals could transfer assets such as shares or interest-bearing savings to a trust so that the associated income accrues to the trustee. This would allow the income to be taxed at the trustee tax rate instead of at the top marginal personal tax rate. Up until 1 October 2010, this would offer a tax saving of 5%. However, alignment of the trustee and top personal tax rate from 1 October 2010 will remove this tax advantage.

58. An associated concern is that high-earning individuals could transfer income-earning assets to a trust in order that the associated income could be distributed to a low-earning beneficiary and consequently taxed at the beneficiary's low marginal rate. The changes announced as part of Budget 2010 will not address this concern, as different marginal personal tax rates remain a feature of the tax system.

59. However, the extent to which gift duty offers protection against this behaviour may have been overestimated. Under a common gifting programme, income-generating assets may already be instantly settled on a trust in exchange for an interest-free, on-demand loan that is progressively forgiven without attracting gift duty. The income associated with the transferred asset immediately ceases to belong to the person who has transferred it (the settlor) and it instead becomes trustee or beneficiary income.

60. In family trust situations (including discretionary family trusts), the fact that the trustee owes the settlor the value of the asset has no effect on the income tax liability of either the trustee or the settlor. Generally, debt forgiveness may be taxed under the financial arrangement rules as remission income of the debtor. However, an exception exists for debts forgiven in family situations, in which case the amounts forgiven will not give rise to remission income. This is commonly known as the natural love and affection exception. The effect of this is that the tax advantages of transferring income from a high-earning settlor to a low-earning beneficiary via a family trust are available straight away. Gift duty does not slow down or prevent this activity.

61. There is an argument that the compliance costs associated with gift duty act as a deterrent against such practices. However, the potential tax savings from these kinds of arrangements often significantly outweigh the compliance costs.

62. Another concern is that high-earning individuals may directly transfer income-earning assets to low-earning family members for income tax purposes without the use of a trust. This can already be achieved without incurring gift duty through the use of a gifting programme. Further, it may constitute a tax avoidance arrangement which is void against the Commissioner in accordance with section BG 1 of the Income Tax Act 2007.

63. Further protection is provided by specific provisions within existing tax laws. For example, under section GC 1 of the Income Tax Act 2007, disposal of trading stock for less than fully adequate consideration is taxed as if an amount equal to the market value was received at the time.

64. Concerns about the potential for income tax reduction as a direct result of gift duty repeal are not possible to quantify, particularly because the extent of protection currently offered by gift duty is speculative. In addition, the impact of the alignment of the top personal tax rate with the trustee tax rate from 1 October 2010 (which will significantly reduce the motivation to reduce tax obligations through the use of trusts) is yet to be seen.

Creditor protection concerns

65. Gift duty is thought to provide some protection to creditors because defaulting debtors are unable to transfer assets out of their name without either becoming liable for gift duty or entering into a gifting programme.

66. The result of gifting programmes is that the person who is transferring an asset receives a corresponding debt asset by virtue of the interest-free, on-demand loan that is exchanged with the recipient in satisfaction of a market-value sale. A diminishing amount of outstanding debt remains because it can only be forgiven at a rate of $27,000 every 12 months in order to avoid gift duty. For a high-value asset, this can take a number of years. For example, a debt asset valued at $1 million would take an individual 38 years to completely forgive if gift duty is to be avoided.

67. The unforgiven portion of a debt under gifting programmes can be demanded in order to satisfy creditor claims against the transferor. If gift duty is repealed, gifting programmes will no longer be necessary because the value of allowable gifts would be unlimited. Therefore when a person transfers a large asset, there will no longer be any portion of its value which is immediately available to be clawed back.

68. The debt asset described above is thought to be of value to creditors because of the Official Assignee’s ability to demand its repayment on behalf of the bankrupt. Even before insolvency, creditors including Inland Revenue may use the fact that the Official Assignee could call on this debt if bankruptcy were to occur as leverage in order to bring about early settlement of debt.

69. During initial consultation, it was revealed that the debt asset was perceived to be of significant value to creditors. However, closer analysis revealed that this perception was theoretical and based on very limited anecdotal evidence. When quantitative work was done to consider the frequency with which the debt asset is used in practice to successfully recover value for creditors and the value of the debt recovered in this manner, it was revealed that the debt asset is only of very minor significance.

70. Inland Revenue records show that of 430,000 IRD numbers for which gift statements were filed between 1 July 2001 and 28 May 2010, less than 0.003% have gone into bankruptcy. MED has advised that the Official Assignee has recovered a total of $1.5 million from trusts in the past two years. Some of this may have been through insolvent gifting provisions. However, in the same period, an overall total of $500,000 was recovered from all entities using the insolvent transactions provisions under the Insolvency Act 2006 and “virtually none” of this has been related to book debts under gifting programmes.

71. Although creditors may be capable of using the debt asset as leverage in negotiations for settlement of debt, there are less than a handful of case examples that Inland Revenue staff are aware of where this has been used to negotiate a higher figure in full and final settlement of defaulting taxpayer debt. In the few known case examples, the value that was able to be recovered has been in the vicinity of $100,000.

72. This quantitative evidence suggests that gift duty is of little benefit in recovering debt from creditors, particularly when it is considered in the context of the estimated $70 million that the private sector spends each year complying with gift duty.

73. Creditor protection is a wider issue that must be addressed by specifically targeted measures. There are a number of such targeted measures under existing law which offer some safeguards for creditors:

- Sections 204 and 205 of the Insolvency Act 2006 allow the Official Assignee to automatically cancel gifts made within two years before adjudication (insolvency is presumed during this period), and five years before adjudication if the bankrupt cannot demonstrate solvency at the time the gift was made;
- Section 292 of the Companies Act 1993 gives the Official Assignee similar powers but over shorter timeframes (6 months and 2 years); and
- Subpart 6 of the Property Law Act 2007 empowers the Courts to set aside property dispositions where there was an intention to prejudice the interests of a creditor-applicant.

74. There are concerns that the time periods under the Insolvency Act 2006 and the Companies Act 1993 may be insufficient to recover assets that may have been disposed of well in advance of bankruptcy or liquidation. These provisions act to claw back portions of the debt asset under gifting programmes that have been forgiven within the relevant time period. Therefore without gift duty and gifting programmes, there is less likely to be gifting that has occurred within the specified periods.

75. There is no time limit for making an application under the disposition provisions of the Property Law Act 2007. However, there is a lack of clarity surrounding the legal interpretation of the "intention to prejudice" wording of the provision. This wording replaced the previous requirement of an "intention to defraud" and the new wording has not yet been applied directly by the New Zealand Courts. There is a lack of clarity as to whether the change of wording has in fact changed the legal test for applying the provision. In the past, the "intention to defraud" has been difficult for applicants to establish. Equally, the further back in time a gift was made, the greater the difficulty and cost of obtaining accurate financial records. However, it must be noted that gift duty is not providing a significant backstop to any inadequacy in these existing provisions.

76. There is concern that gift duty repeal will lead to a higher level of gifting activity due to the removal of compliance costs. In turn, it could be expected that these provisions would be utilised more frequently. Given the time limits under the Insolvency and Companies Acts, there may be more Court action taken under the Property Law Act 2007. Whether or not this provision will offer sufficient protection to creditors is yet to be seen. Therefore, future cases

would need to be carefully monitored and if the legislative provisions are inadequate, they could be addressed directly.

77. Debt collection is an area of concern that Inland Revenue is already focusing on independently of the gift duty review. A debt project is underway, which is considering a range of new front-end measures to collect tax debts. Outbound calling and awareness campaigns are being trialled and new forms of leverage are being explored. Such measures are intended to directly address the level of tax debt in New Zealand, while gift duty has played a very indirect, minor role in debt collection.

78. Additional creditor concerns relate to the fact that gift duty repeal would abolish the requirement to file gift duty statements. These provide the Official Assignee with independent verification of gifting by an individual.

79. During consultation, MED expressed the view that without gift statements, debtors would be able to present falsified documents in order to try to show that gifting has occurred when in fact it has not. This concern stems from the fact that under gifting programmes, the deed of forgiveness and corresponding gift statement are usually the only forms of evidence that establish the extent to which the outstanding debt asset has been forgiven. In practice, there are cases where people have set up gifting programmes but have forgotten to forgive the debt asset by $27,000 in each of the subsequent years. In such cases, it may be claimed that gifting in the form of debt forgiveness has occurred, but unless the deeds and gift statements have been filed with Inland Revenue, it is treated as not having taken place.

80. If gift duty is repealed, there will no longer be any need for gifting programmes and by extension there will be no need to forgive debt each year. Clearly in this case, gift statements and deeds will no longer be required to establish whether there is any outstanding debt if there is no gifting programme. Instead, the whole asset would be transferred as a single gift and no deed or gift statement would be required.

81. In the absence of gift statements, evidence of the transfer would continue to exist in the form of land transfer records for real property, registration details for motor vehicles and banking records for cash transfers. If these records show a transfer of an asset where there is no supporting evidence of fully adequate consideration, a gift can be assumed. Each of these independent records could be expected to show both the donor and the recipient of the gift, just as gift statements do.

82. It should also be noted that strict secrecy requirements prevent Inland Revenue from providing copies of gift statements to anyone except the Official Assignee (who takes on the legal rights and responsibilities of the bankrupt) and Police (under the Criminal Proceeds (Recovery) Act 2009). They cannot be accessed by private creditors.

Social assistance concerns

83. Gift duty is thought to prevent personal asset-stripping in order to meet income-testing or asset-testing requirements for various forms of social assistance. The areas of social assistance which could potentially be affected by the repeal of gift duty are discussed below.

Ministry of Social Development benefits

84. The removal of compliance costs associated with gift duty may lead to an increase in asset transfers including income-generating assets. Such transfers would enable people to qualify for both income-tested and asset-tested benefits where they otherwise would not.

85. In consultation, MSD noted that gift duty does not prevent the instant transfer of income associated with an asset. Therefore gifting programmes may already be used in order to meet income-testing requirements for social assistance. Repeal of gift duty will only affect income-testing for social assistance to the extent that a greater level of gifting activity occurs as a result of reduced compliance costs.

86. MSD is of the opinion that gift duty repeal could be expected to have a limited impact on its ability to effectively target social assistance. To address this concern, benefit application forms could ask key questions to identify asset transfers. The ability to identify asset transfers already relies largely on client honesty. However, the increased risk posed by the removal of gift duty does not appear to MSD to merit the significant level of operational change and additional front-line resources or policy work that would be required to reduce this risk, at this time.

Residential Care Subsidy

87. Entitlement to the Residential Care Subsidy is determined in accordance with the Social Security Act 1964 and the Social Security (Long-term Residential Care) Regulations 2005. Part 8 of the Regulations define a gifting period that commences five years before the date of the means assessment. Any gifting above $27,500 during this five-year period ($5,500 per year) will be added back into means-testing. This five-year period has received wide publicity and general recognition among private advisors and the public.

88. However, there is less awareness of the fact that regulation 9B lists instances that qualify as deprivation of assets in accordance with section 147A of the Social Security Act 1964. There is no time limit on the Ministry of Social Development’s discretion to consider adding back assets that applicants have divested prior to commencement of the five-year gifting period. This provision is applied regularly in practice.

89. Because the Regulations focus on deprivation of assets by the applicant, it does not matter that these assets have changed legal ownership. There is no need to look behind a trust or to show that the applicant has retained the effective control or enjoyment of the transferred assets. Simply the fact that the applicant has transferred their assets allows them to be brought back into means testing.

90. The Ministry of Health advises on Residential Care Subsidy policy. They are confident that the existing legislation and policy provides adequate protection to prevent access to the Residential Care Subsidy where applicants have deprived themselves of assets prior to requiring residential care. Because the means-test for the Residential Care Subsidy provides for adding back gifts and dispositions of property for inadequate consideration, no changes will be required to the means-test if gift duty is repealed.

91. However, if gift duty is repealed, people will be able to transfer all their assets into a trust instantly. It could therefore be expected that a greater number of people would have completely gifted away their assets prior to the five years leading up to their application for the Residential Care Subsidy. As a result, MSD, which is responsible for administering the financial means assessment for the Residential Care Subsidy, would need to apply Regulation 9B more frequently to ensure that people do not receive the Subsidy where they have deprived themselves of assets.

92. If gift duty is repealed, MSD would need to review its administration of the financial means assessment to ensure the right financial information is collected from applicants, including details of historic, lump-sum gifting. This would include making amendments to the information requested at initial application, particularly to better capture gifting that transpired prior to the five-year look-back period. All communication materials including the website, brochures and training materials would need to be revised to reflect the broader application both within and outside of the five years prior to application. There would be a greater dependence on compliance by applicants in providing information and by staff in requesting and verifying this information. Staff training would therefore be required around the operational impacts of the changes. There would also be a greater need to complete land title searches for properties where applicants have spent significant amounts of time living to determine whether it has been gifted by the applicant. MSD has noted that this will lead to increased operational costs; however it has indicated that it is able to absorb such costs within existing baselines.

93. MSD is already working to better-educate financial advisors, solicitors and accountants of the deprivation of assets provisions that apply to the Residential Care Subsidy. More work would be required in this area to ensure that, in the absence of gift duty, people are aware that assets transferred outside the five-year period can be caught within means testing as is intended under the Regulations.

Working for Families tax credits and Student Allowances

94. Entitlement to Working for Families tax credits is based on the adjusted taxable income of the eligible family (family scheme income). Entitlement to the Student Allowance is based on the income of the eligible student (and their partner) if they are over the age of 24, and also on the taxable income of the student’s parents if the student is under the age of 24 and does not have a supported child in their care.

95. There is the potential for applicants to transfer income-earning assets out of their name in order to remove income associated with the asset from their taxable income. However, as discussed above, gift duty does not prevent the instant transfer of income associated with an asset. Therefore gifting programmes may already be used in order to meet taxable income thresholds. Gift duty only offers protection to the extent that the associated compliance costs deter some people from establishing gifting programmes.

96. Income that is not included in family scheme income is being considered as part of the social assistance integrity review currently underway by Inland Revenue and the Treasury and announced as part of Budget 2010. The review aims to widen the definition of income for Working for Families tax credits and Student Allowances by including, for example, tax-paid trustee income, some fringe benefits and other periodic payments such as regular cash gifts.

These changes aim to capture income from legal arrangements that have the effect of increasing entitlement to social assistance, such as divesting income-earning assets to a trust.

State Housing

97. Gift duty repeal may lead to an increase in the number of people who gift away assets in order to satisfy means testing for state housing, or to avoid being investigated for fraudulent behaviour for not declaring income or assets when applying for assistance.

98. Once again, gift duty does not prevent the transfer of assets under gifting programmes. Further, Housing New Zealand Corporation has assessed the risk of asset-stripping through gifting in the absence of gift duty as small, because it is very uncommon for people with significant assets to apply for state housing.

99. If gift duty is repealed and a substantial risk of gifting to obtain state housing becomes evident, Housing New Zealand Corporation has identified several ways this could be addressed, such as changing the definition of assets in current legislation to include gifted assets or by adding additional eligibility requirements for state housing.

100. Once state housing has been allocated, the tenant may apply to have their rent payments determined in relation to their income (known as Income Related Rent or IRR). The number of tenants currently paying IRR who have declared assets is small. The number of market renters with significant assets who would gift away assets in the absence of gift duty in order to qualify for IRR is unknown, but likely to be insignificant.

101. Cash gifts are not currently included in calculations of IRR. If removal of gift duty led to a significant increase in cash gifts received by tenants paying IRR, Housing New Zealand Corporation would consider new operational policy to include cash gifts as income. However, this also seems unlikely.

102. Housing New Zealand Corporation also acts as an insurer for Welcome Home Loans. Therefore, it may be affected by gift duty repeal from a creditor protection perspective. If borrowers are more likely to gift away assets in the absence of gift duty, this may increase the difficulty of recovering any shortfall owing following a mortgagee sale. In order to take advantage of existing creditor protection mechanisms under the Insolvency Act 2006, lenders would have to bankrupt the borrower. Alternatively, the Property Law Act 2007 provisions could be utilised.

103. In a practical sense, the effect of gift duty repeal on Welcome Home Loans is not expected to be significant. Housing New Zealand Corporation would consider changes to its credit policy and to each lender's application form in order to address any risks.

Legal Aid

104. The removal of gift duty may affect the rate of asset transfers by applicants for legal aid in order to satisfy asset testing. However, the Legal Services Agency has estimated that less than 1% of all applicants disclose the existence of a trust which could be affected by the gift duty changes.

105. Irrespective of gift duty repeal, the wider financial circumstances of any applicant for legal aid are considered on a case-by-case basis. Copies of all trust documents must be presented prior to financial eligibility assessments. As such, gift duty repeal is not anticipated to alter the number of persons eligible for legal aid.

Other concerns

Child Support

106. Repeal of gift duty may affect child support to the extent that a liable parent may be more likely to gift away income-earning assets in order to reduce their income and liability for child support.

107. Once again, gift duty does not prevent parents from transferring income-earning assets out of their name under a gifting programme in order to reduce the income on which their child support liability is calculated.

108. There are existing provisions under the Child Support Act 1991 to protect against such behaviour. Any assets transferred to a family trust may be taken into account under an administrative review. In addition, the Commissioner may make an application to the Court under section 201 of the Child Support Act 1991 to set aside any disposition of property that has been made, whether for value or not, in order to defeat the claim or rights of any person.

Relationship property disputes

109. Increased gifting activity in response to gift duty repeal may have the effect of defeating the claim of one partner in a relationship property dispute. However, the Ministry of Justice advises that the principles underlying the statutory regimes in the Property (Relationships) Act 1976 and the Family Protection Act 1955 are not affected by the existence of gift duty and consequential gifting arrangements. The Property (Relationships) Act is based on the principle that an individual should be able to deal with their property as they wish until a relevant event, such as a separation, occurs. Similarly, the Family Protection Act does not restrict what a person may do with their property, including gifting that property to a trust or another person.

110. The Ministry of Justice is satisfied that adequate protection already exists under the Property (Relationships) Act 1976 and the Family Protection Act 1955 to prevent or remedy the disposal of property where this is intended to defeat the interests of another party. The Property (Relationships) Act 1976 gives the Court power to make financial adjustments if relationship property has been transferred to a trust or company which has the effect of defeating the interests of one of the parties.

Enduring powers of attorney

111. Gift duty repeal might lead to an increase in relatives seeking to dispose assets when acting under an enduring power of attorney for another relative. However, the Ministry of Justice is of the view that the Protection of Personal and Property Rights Act 1988 contains sufficient protection to address this risk.

Sentencing

112. The Ministry of Justice considers that gift duty repeal may, in isolated cases, increase the risk of gifting by individuals seeking to avoid enforcement of payment of fines in accordance with sentencing. However, it has assessed this risk as immaterial.

Proceeds of crime

113. There have been cases where criminals have attempted to transfer their assets into other names in order to circumvent asset recovery legislation. New Zealand Police expect that introduction of the Criminal Proceeds (Recovery) Act 2009 (CPRA) will lead to more asset transfers to related parties in an attempt to avoid the confiscation regime.

114. The Ministry of Justice considers that gift duty is unlikely to be a major impediment to gifting intended to avoid the confiscation of proceeds of crime and Police note that assets are already transferred outright from criminals to associates despite the gift duty rules. Few criminals have a good knowledge of taxation regimes and virtually none pay tax on criminal gains. In any case, the CPRA provides the ability to look behind legal title and to seize property based on beneficial interest and effective control.

115. New Zealand Police note that where the beneficial interest and effective control of a transferred asset cannot be shown in Court, an alternative way for the Crown to recover some of the value of the transferred assets is for Inland Revenue to enforce payment of gift duty along with interest and penalties for failure to comply with the gift duty rules. There are currently very few cases where this is known to have happened, however Police are concerned that in the context of the new CPRA, asset transfers may become more common.

116. There is concern that without the deterrence of gift duty, criminals may be more likely to transfer assets before proceedings can be brought when they become aware of proposed action under the CPRA. However, it is unlikely that criminals are currently aware of or are compliant with the gift duty rules.

117. Police also note that the CPRA allows information sharing between Inland Revenue and Police. Therefore gift duty statements may be accessed to verify gifts and to demonstrate that an individual has an interest in a particular asset during financial crime investigations. However, most criminals are unlikely to file gift duty statements and transfers can usually be verified through other records such as land title, car registration and bank records.

Trust law concerns

118. The removal of gift duty and its associated compliance costs could be expected to lead to more instances of gifting to trusts, which may in turn lead to an increase in the number of trusts established in New Zealand. There are broad concerns across government and the private sector regarding the uses of trusts and their lack of regulation. These concerns go well beyond the scope of the gift duty project.

119. The Law Commission is currently undertaking a review of trust law in New Zealand and is expected to release an issues paper shortly. Officials have met with the Law

Commission to discuss concerns and will continue to follow the Commission’s progress. The review will broadly consider the various uses of trusts where legal ownership of property is transferred to a trust but control and enjoyment of that property is retained. New forms of regulation such as a central trust register and the compulsory filing of annual trust accounts are among the ideas that have been raised for reform. Such reforms would help deal with information concerns that may arise as a result of the repeal of gift duty. The Law Commission’s work is ongoing and may continue for some time.

CONSULTATION

120. The wider implications of gift duty repeal required consideration across government to determine the extent to which gift duty offers protection to the tax base, creditors and social assistance integrity. To the extent that repeal of gift duty poses risks to these areas, there should be adequate alternative protections in place.

121. In June, the Minister of Revenue wrote to the Ministers of Commerce, Justice, Health, Social Development and Employment, and Housing advising them of his announcement and seeking to ensure that if gift duty is repealed, due consideration has been given to alternative mechanisms to protect against the defeat of creditors and social assistance targeting. The Minister of Revenue requested for this letter to be passed on to Chief Executives.

122. Formal consultation was undertaken with MED, the Ministry of Justice, the Ministry of Health, New Zealand Police, MSD and Housing New Zealand Corporation. None of these agencies are opposed to repeal. The majority considered that either adequate protection was already in place or that work on additional protection measures was not justified by the low level of risk.

123. Formal questionnaires were sent to each of the above-named agencies seeking responses with formal departmental sign-off. The questionnaires asked them to identify:

- where gift duty currently offers their agency protection;
- any risks associated with gift duty repeal;
- any alternative measures which could be taken to alleviate these risks;
- when and how such measures could be implemented;
- whether there were any significant remaining risks which could not be addressed by alternative measures; and
- whether gift duty repeal would offer any benefits for their agency.

124. Responses were received from all six agencies and, as noted, none are opposed to repeal. The key feedback received has been incorporated into the analysis above and a summary of areas of risk and work recommended by each agency is contained in the Appendix.

125. The Treasury supports the repeal of gift duty as it is an inefficient instrument to provide limited creditor and means-testing protection, but considers that relevant agencies should be required by Ministers to undertake any recommended work to support the repeal or to monitor whether additional measures might be needed following repeal (see Appendix).

126. In September, the Minister of Revenue wrote again to the Ministers of Commerce, Justice, Health, Police, Social Development and Employment, and Housing, advising them of his intention to repeal gift duty and noting any associated work recommended by their officials.

127. The Australian Treasury has also been consulted regarding their experience of gift duty repeal. Gift duty and estate duty were repealed together in Australia in the late 1970s. Aside from the capital gains tax, Australia does not appear to have any significant form of creditor protection which does not also exist in substance in New Zealand.

128. Limited private sector consultation has taken place. The Minister of Revenue and officials met with New Zealand Trustee Services Limited, which raised concerns regarding gift duty repeal in the context of a general lack of trust regulation in New Zealand. These concerns have been referred to the Ministry of Justice and to the Law Commission to consider as part of the trust law review. Informal discussions have taken place with the New Zealand Institute of Chartered Accountants and no real concerns were raised. In addition, the Minister of Revenue received a number of letters from the public, including from the New Zealand Law Society, as a result of his announcement. The Law Society raised concerns regarding the potential impact on relationship property disputes and these have been responded to in consultation with the Ministry of Justice. Views expressed by the general public were largely supportive of repeal. Media coverage following the Minister's announcement has also been predominantly positive.

CONCLUSIONS AND RECOMMENDATIONS

129. Officials have fully considered the implications of gift duty repeal for income tax, creditor protection, social assistance integrity and other identified areas in consultation with MED, the Ministry of Justice, the Ministry of Health, New Zealand Police, MSD and Housing New Zealand Corporation. None of these agencies are opposed to gift duty repeal.

130. Gift duty no longer raises any significant revenue and imposes a high level of compliance costs on the private sector. The protections offered by gift duty in the areas of income tax, creditors and social assistance have only ever been incidental rather than intended policy goals. The analysis undertaken has shown that the protection gift duty offers is indirect, inefficient and very limited.

131. Ultimately, the limited protection that gift duty offers does not outweigh the significant compliance costs that it imposes on the private sector. Officials therefore recommend that gift duty be repealed.

IMPLEMENTATION

132. Abolishing gift duty would require full repeal of the Estate and Gift Duties Act 1968 and any consequential provisions in other legislation. Repeal would be included in the *Taxation (Tax Administration and Remedial Matters) Bill*, planned for introduction in

November 2010. To provide certainty for the private sector, it is recommended that repeal be effective from 1 October 2011.

133. Low-level implementation risks have been identified and will be addressed where appropriate through administrative changes or monitoring. The areas of risk and proposed mitigation measures are outlined in the Appendix.

MONITORING, EVALUATION AND REVIEW

134. In general, Inland Revenue monitoring, evaluation and review of gift duty repeal would take place under the Generic Tax Policy Process (GTPP). The GTPP is a multi-stage policy process that has been used to design tax policy in New Zealand since 1995. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation, and the identification of remedial issues. Opportunities for external consultation are also built into this stage. In practice, any changes identified as necessary following repeal would be added to the Tax Policy Work Programme, and proposals would go through the GTPP.

135. MED, the Ministry of Justice, the Ministry of Health, New Zealand Police, MSD and Housing New Zealand Corporation have indicated that they will monitor any impacts of gift duty repeal on their areas of responsibility.

APPENDIX: Summary of recommended work to accompany/follow gift duty repeal

Area affected	Level of risk	Agency	Potential alternative measures	Recommendation
IRD debt recovery	**Very low** – there are very few cases in the memory of IRD staff where the debt asset created under gifting programmes has led to a greater level of debt recovery for IRD.	Inland Revenue	New powers for IRD to claw back gifts or to register a charge over gifted assets in tax debt situations.	This would go well beyond the level of protection offered by gift duty. It is likely to be controversial as this would give IRD a superior ability to recover debt than private creditors. Debt collection concerns extend well beyond those related to gifting and IRD's debt project is currently developing direct, front-end measures to address this. Any new measures to facilitate debt recovery would need to be considered as part of the wider work programme.
Documentation/ verification of gifts and/or the existence of trusts	**Low** – IRD gift statements are protected by secrecy rules and are only available to the Official Assignee and Police. The information they contain can be verified through alternative means such as bank records or land titles.	Inland Revenue	New record-keeping requirements could be imposed under the Tax Administration Act 1994 or a box could be added to income tax returns requesting gifting information.	The proposals are problematic. It would be difficult to enforce the private recording of gifts. Collecting information on tax returns would impose further compliance costs on the private sector for little real benefit and would be difficult to enforce. In addition, a significant number of trusts do not generate income and therefore are not required to file income tax returns. The Law Commission is considering the creation of a central trust register as part of its trust law review. Any further work by IRD would depend on the outcome of that review.

Debt recovery by the Official Assignee	**Very low** – IRD records show that 0.003% of people who have filed gift statements since 2001 have gone into bankruptcy. MED advises that the Official Assignee has recovered a total of $1.5 million from trusts in the past two years. Some of this may have been through insolvent gifting provisions. However, in the same period, an overall total of $500,000 was recovered from all entities using the insolvent transactions provisions under the Insolvency Act 2006 and "virtually none" of this has been related to book debts under gifting programmes.	Ministry of Economic Development (MED)	None proposed.	The Law Commission is considering creditor protection with respect to trusts as part of their review and MED will contribute to that discussion. MED will monitor the impact of gift duty repeal on creditors going forward.
Access to MSD-administered benefits	**Low** –MSD has assessed gift duty repeal as potentially affecting its ability to effectively target social assistance, but only to a limited extent.	Ministry of Social Development (MSD)	MSD to ensure benefit application forms ask key questions to identify asset transfers.	MSD advises that the removal of gift duty does not appear to merit the significant level of operational or policy work which would be required to reduce any associated risk.
Access to the Residential Care Subsidy	**Low** – the Ministry of Health is confident that the existing legislation and policy provides adequate protection to prevent access to the Residential Care Subsidy where applicants have deprived themselves of assets prior to requiring residential care. Because the means-test for the Residential Care Subsidy provides for adding back gifts and dispositions of property for inadequate consideration, no changes will be required to the means-test if gift duty is	Ministry of Health (policy) and MSD (administration)	MSD to review its administration of the means assessment to ensure the right financial information is collected, including details of historic, lump-sum gifting.	MSD work would need to include amendments to the information requested at initial application, particularly to better capture gifting that transpired prior to the five-year look-back period. MSD staff training would be required around the operational impacts of the changes. There would also be a greater need to complete land title searches for properties where applicants have spent significant amounts of time living to

	repealed. MSD notes that the low level of risk depends on the availability of adequate resources and time to address the operational impacts of gift duty repeal. Repeal is expected to make identification of deprivation less visible, therefore MSD would be required to obtain more information and verification from clients at initial application.			determine whether it has been gifted by the applicant. MSD would need to revise all client communications, forms and brochures to clarify verification requirements. This would lead to increased operational costs for MSD; however they could be met from within existing baselines. An effective repeal date of 1 October 2011 is expected to provide sufficient time for the work described to be undertaken.
Access to state housing	**Low** – Housing New Zealand Corporation advises that it is very rare for people with assets to apply for state housing, although isolated cases exist.	Housing New Zealand Corporation (HNZC)	HNZC could change the definition of assets in current legislation to include gifted assets. A legal opinion on whether this is possible would be required. Alternatively, an additional eligibility requirement for state housing could be added (so that no person who has gifted assets in excess of a certain limit within a defined period is able to access state housing). This would require Cabinet approval.	An additional eligibility requirement for state housing is HNZC's preferred option to address housing allocation as this would require Cabinet approval rather than legislative change.
Assessment of Income-Related Rent (IRR) for state housing	**Very low** – HNZC advises that the number of tenants paying IRR that have declared assets is small. The number of market renters with significant assets	Housing New Zealand Corporation (HNZC)	None proposed.	N/A

	that would apply for IRR if they had the ability to gift these assets without limit is unknown, but would be insignificant as any income from assets does not significantly impact the rent tenants pay.			
Recovery of outstanding Welcome Home Loans following a mortgagee sale	**Very low** – this concern is no more significant than the Official Assignee or IRD's ability to recover debt. HNZC has assessed the risk as "not significant".	Housing New Zealand Corporation (HNZC)	Changes to HNZC's credit policy and to each lender's application form.	Following gift duty repeal, the extent to which the suggested changes are required would be assessed.
Access to legal aid	**Very low** – the Legal Services Agency advises that providers already require copies of all trust documents prior to completing financial eligibility assessments. It is estimated that less than 1% of all applicants disclose the existence of a trust which could be affected by the gift duty changes.	Legal Services Agency/Ministry of Justice	None proposed.	The Legal Services Agency advises that if difficulties were encountered in relation to administration, instructions could be issued with one month's advance notice, but it considers that this is highly unlikely to be required.
Defeat of a party's interests in a relationship property dispute	**Low** – The Ministry of Justice considers that adequate protection already exists under the Property (Relationships) Act 1976 to prevent or remedy the disposal of property where this is intended to defeat the interests of another party.	Ministry of Justice	None proposed.	Monitor any impact of gift duty repeal.
Gifting by relatives under enduring powers of attorney	**Low** – The Ministry of Justice considers that the Protection of Personal and Property Rights Act 1988 contains sufficient protection to address any risks associated with gift duty repeal.	Ministry of Justice	None proposed.	Monitor any impact of gift duty repeal.

Sentencing (enforcement of payment of fines)	**Very low** – there is a risk of evading debt enforcement in isolated cases but the Ministry of Justice has assessed this risk as having no overall material impact.	Ministry of Justice	None proposed.	Due to expected low numbers, the Ministry of Justice considers that efforts to prevent evasion of debt enforcement would be of little benefit considering the work required to mitigate this risk.
Recovery of proceeds of crime	**Very low** – Gift duty is unlikely to be a major impediment to confiscation of proceeds of crime. Existing proceeds of crime laws provide the ability to look behind legal title and to forfeit property based on beneficial interest and effective control.	Ministry of Justice and New Zealand Police	None proposed.	Monitor any impact of gift duty repeal.