

# Supplementary Departmental Disclosure Statement

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Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill
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A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill, dated 12 May 2023, can be found at <https://disclosure.legislation.govt.nz/bill/government/2023/255/>.

This supplementary disclosure statement was prepared by the Inland Revenue Department.

The Inland Revenue Department certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 March 2024

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## The Area of Change to the Original Disclosure

This is a supplementary disclosure statement for the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The areas of change to the original disclosure statement are the addition of the following proposals to:

- phase back in the ability to claim interest deductions for residential investment properties
- repeal and replace the current 10-year, 5-year new build, and 5-year bright-line tests with a new 2-year bright-line test
- remove depreciation deductions for commercial buildings with an estimated useful life of 50 years or more
- limit the application of a valuation rule that deems a person who disposes of trading stock at below market value to derive as income the market value of the trading stock on the date of disposal to address instances of overreach
- introduce a new type of gaming duty in the Gaming Duties Act 1971, known as the offshore gambling duty, and
- introduce a transitional rule to allow electronic marketplace operators to treat the GST platform economy rules, which take effect on 1 April 2024, as not applying to contracts for short-stay or visitor accommodation entered into before 1 April 2024.

## Part One: General Policy Statement

The Amendment Paper proposes amendments to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill that would amend the:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Act 1985, and
- Gaming Duties Act 1971.

### Restoring interest deductibility for residential investment property

The Amendment Paper proposes to phase back in the ability to claim interest deductions for residential investment properties.

The interest limitation rules were introduced in 2021 and deny a deduction for interest incurred for residential investment property. For property acquired on or after 27 March 2021, interest deductions have been denied in full since 1 October 2021. For property acquired before 27 March 2021, and borrowings drawn down before 27 March 2021, the ability to claim interest deductions is being phased out.

It is proposed that the ability to claim interest deductions will be phased back in with 80% of deductions allowed from 1 April 2024 to 31 March 2025 and 100% allowed from 1 April 2025 onwards. Phasing back in of interest deductibility will be allowed for all taxpayers, whether they acquired their property, or drew down lending, before or after 27 March 2021.

### Returning the bright-line test to two years

The Amendment Paper proposes that the current 10-year, 5-year new build, and 5-year bright-line tests be repealed and replaced by a new 2-year bright-line test. This will return the bright-line test to its original purpose of ensuring land speculators pay their fair share of tax on gains from property sales.

Given this objective, it is proposed that other policy settings are also returned to those that existed when the original 2-year bright-line test was introduced. In particular, it is proposed that the complex apportionment rules for the main home exclusion be removed. This will mean that the main home exclusion will apply if the land has been used predominantly (ie, more than 50% of the land area) for most of the time the person owned the land (ie, more than 50% of the period) for a dwelling that was the person's main home. The main home exclusion will also be modified so that the period when a dwelling is being constructed on the land is ignored in determining whether the land has been used predominately as a main home for most of the period.

It is also proposed to extend the rollover relief rules. The rollover relief rules essentially allow a transfer between specified people to be ignored for the purposes of the bright-line test. The current rules only apply to a very limited set of transfers. It is proposed that these rules be extended to apply to all transfers between associated persons, provided they have been associated for at least 2 years before the transfer.

### Removal of commercial building depreciation

The Amendment Paper proposes to remove depreciation deductions for commercial buildings with an estimated useful life of 50 years or more. The Amendment Paper also proposes to remove the ability of the Commissioner of Inland Revenue to set special

depreciation rates for these buildings. A new transitional provision for commercial fit-out will be made available for buildings acquired in or before the 2010–11 income year. Deductions taken under the new transitional provision and a former transitional provision will be included when calculating depreciation recovery income for buildings sold. These changes will apply for the 2024–25 and later income years.

### **Disposals of trading stock at below market value**

The Amendment Paper proposes to limit the application of a valuation rule in the Income Tax Act 2007 to address instances of overreach.

The valuation rule deems a person who disposes of trading stock at below market value to derive as income the market value of the trading stock on the date of disposal. The valuation rule would be limited so that it only applies in the following instances:

- Where trading stock is disposed of to an associated person.
- Where a person disposes of trading stock to themselves for their own use or consumption.
- Where trading stock is not disposed of in the course of carrying on a business for the purpose of deriving assessable income, or excluded income, or a combination of both.

A further amendment would ensure the valuation rule does not apply to trading stock disposed of outside the course of carrying on a business to a donee organisation (whether or not that donee organisation is associated with the person making the disposal). This amendment would remove the current disincentive to gift trading stock to donee organisations.

The proposed amendments would take effect for all trading stock disposed of below market value on or after 1 April 2024.

### **Offshore Gambling Duty**

Amendments are proposed to the Gaming Duties Act 1971 to introduce a new type of gaming duty, known as the offshore gambling duty.

The offshore gambling duty would apply to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents. It would be 12% of the offshore gambling profits made by these persons on or after 1 July 2024.

The offshore gambling duty rules have generally been designed to align with the existing rules for GST on remote services to allow existing systems and calculations for GST to be adapted to apply the offshore gambling duty.

The main difference from the GST remote services rules is that the proposed offshore gambling duty is calculated by excluding amounts for which the offshore gambling operator is required to pay “consumption charges” to the Department of Internal Affairs. Consumption charges are a 10% charge on betting on sports and racing by New Zealand residents conducted through offshore operators.

### **Transitional rule for the GST platform economy rules**

The Amendment Paper proposes a transitional rule to allow electronic marketplace operators to treat the GST platform economy rules which take effect on 1 April 2024 as not applying to contracts for short-stay or visitor accommodation entered into prior to 1 April 2024. The effect of this transitional rule is that marketplace operators would not be

required to collect GST on supplies of short-stay accommodation booked prior to 1 April 2024.

This is to address the situation where an accommodation booking was taken before 1 April 2024 without GST being factored into the price, but the supply is not treated as occurring until on or after 1 April 2024, when the new GST rules are in force. This arises because the GST time of supply rules deem a supply to occur when a payment for the supply is first received or an invoice for the supply is issued, whichever happens first. Without the proposed transitional rule, marketplace operators may have unfunded and unanticipated GST liabilities on some bookings taken before the application date of the new rules but for which a payment is not made, or an invoice issued, until after that date.

### **Other amendments**

The Amendment Paper also contains a minor technical change to clarify the treatment of certain fees under double tax agreements. This change was in the Bill at introduction. However, officials identified an issue with the drafting that requires amendment to give effect to the policy intent.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
A commentary covering the policy proposals in the Amendment Paper will be made available on Inland Revenue's tax policy website in March 2024. The commentary will provide a more detailed explanation of the proposal.	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The following regulatory impact statements (RIS) were prepared by Inland Revenue in relation to this disclosure and are available at <a href="https://taxpolicy.ird.govt.nz/publications">https://taxpolicy.ird.govt.nz/publications</a> : <ul style="list-style-type: none"><li>• <i>Removing building depreciation</i> (7 December 2023)</li><li>• <i>Reducing the bright-line period for taxing residential property</i> (8 December 2023)</li><li>• <i>Disposals of trading stock at below market value</i> (20 December 2023)</li><li>• <i>Restoring interest deductibility on residential investment property</i> (1 February 2024)</li><li>• <i>Online casino taxes</i> (21 February 2024)</li></ul>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The RIA Team at The Treasury determined that it was suitable for Inland Revenue to chair a QA panel with representatives from Inland Revenue in relation to all regulatory impact statements associated with the Amendment Paper.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
The regulatory impact statements relating to the proposals <i>returning the bright-line test to two-years</i> and <i>removing commercial building depreciation</i> did not consider the detailed design aspects of the proposed changes. Ministers were delegated authority to make decisions regarding these aspects by Cabinet.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
No significant further impact analysis has become available for any aspects of the policy to be given effect by the Amendment Paper.	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
This information is available in the relevant RISs, accessible here: <a href="https://taxpolicy.ird.govt.nz/publications">https://taxpolicy.ird.govt.nz/publications</a> .	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The Ministry of Foreign Affairs and Trade were consulted on the Cabinet paper for the proposed offshore gambling duty and did not raise any concerns.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

Unless it has been identified in the development of the policy that there may be implications for the rights and interests of Māori protected by the Treaty of Waitangi, no formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**NO**

There is no statutory requirement for an Amendment Paper to be vetted against the Bill of Rights Act 1990.

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

**NO**

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

**NO**

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

**NO**

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>An officials' issues paper on disposals of trading stock at below market value was published in July 2023, available here: <a href="https://www.taxpolicy.ird.govt.nz/consultation/2023/2023-ip-disposal-tradingstock-below-mktvalue">https://www.taxpolicy.ird.govt.nz/consultation/2023/2023-ip-disposal-tradingstock-below-mktvalue</a>. This consultation, which included follow-up meetings with submitters, informed the development of final policy proposals.</p> <p>A number of the proposals (restoring interest deductibility for residential investment property, returning the bright-line test to two years, removing commercial building depreciation, offshore gambling duty) were subject to Budget sensitivities which prevented officials from undertaking external consultation. Following the mini-Budget announcement in December 2023, officials were able to undertake targeted consultation in the short time period ahead of release of the Amendment Paper with a group of taxpayer representatives.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The proposals in the Amendment Paper have been reviewed by internal operational subject matter experts under Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out. The measures in the Amendment Paper do not require formal testing.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
Given the Amendment Paper is amending tax legislation, it does contain provisions that create or amend a power to impose a charge that is a tax. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in the guidance.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
The proposal to remove commercial building depreciation would reintroduce rules for grand-parented structures with retrospective affect. These rules were repealed in error in 2020 and reintroducing them is taxpayer favourable.	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>