

Departmental Disclosure Statement

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- 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.

This disclosure statement was prepared by Inland Revenue

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.

12 November 2015

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Part One: General Policy Statement

This Bill introduces amendments to the *Student Loan Scheme Act 2011*, the *Income Tax Act 2007*, the *Goods and Services Tax Act 1985*, and the *Tax Administration Act 1994*.

The following is a brief summary of the policy measures contained in this Bill. A comprehensive explanation of all the policy items will be included in a commentary on the Bill that will be available shortly after this Bill is introduced, at -

<http://taxpolicy.ird.govt.nz/publications/type/bill-commentary>.

Student Loan Scheme

The main policy measure relating to the Student Loan Scheme provides for giving effect in domestic law to the Arrangement for the Exchange of Information regarding New Zealand Student Loans between the Commissioner of Taxation (Australia) and the Commissioner of Inland Revenue (New Zealand) (the Arrangement).

Trans-Tasman information-sharing regarding New Zealand student loans

The Bill proposes to amend the Student Loan Scheme Act 2011 and the Tax Administration Act 1994 in order to facilitate the sharing of information between the Australian Taxation Office and New Zealand's Inland Revenue Department (Inland Revenue) in relation to New Zealand student loan borrowers residing in Australia.

The Arrangement was signed by the respective Commissioners in March of this year. The Arrangement does not constitute a legally binding commitment in international law for the New Zealand Government.

The key to collecting overdue repayments is holding up-to-date contact details for defaulters. Not having contact details makes engaging with overseas-based borrowers, many of whom are believed to be living in Australia, difficult.

This information exchange would allow Inland Revenue to receive up-to-date contact details for New Zealand student loan borrowers residing in Australia through matching borrower details against the Australian Taxation Office database of Australian taxpayers. Inland Revenue would then be able to contact those individuals to keep them engaged with their loan obligations and, where appropriate, recover outstanding student loan amounts.

Approval of charitable organisations for student loan purposes

Student loan borrowers who work overseas for approved charitable organisations, in approved aid activities as volunteers, or for token payment are entitled to be treated as if they were physically present in New Zealand. As such, they are not charged interest on their student loans for a maximum period of 24 months.

However, some borrowers do not have access to the full benefit of the provision because of the time it takes to achieve Cabinet approval of a charitable organisation and have it listed in the Student Loan Scheme (Charitable Organisations) Regulations 2011. The Bill proposes to revoke those regulations and delegate the authority for approval of charitable organisations for this purpose to the Commissioner of Inland Revenue (the Commissioner). The Commissioner already has a similar power to approve exemptions from income tax for specified charitable organisations, relying in part on the principles established under the Charities Act 2005. Under the proposals, organisations that are already registered with Charities Services or have been approved as a tax charity would automatically be approved for the purposes of the student loan scheme. Other applicant organisations, which will generally be non-resident, will have to satisfy the Commissioner that they are established for charitable purposes in their home jurisdiction and that it is appropriate for them to be approved. A list of approved organisations will continue to be published on Inland Revenue's Internet site.

The Commissioner will also have the power to remove organisations from the student loans charities list when they no longer meet the criteria for inclusion. When that happens, borrowers who have already had an interest write-off approved will have that treatment grand-parented (in effect until they complete their volunteering assignment or reach the end of the 24-month period, whichever is earlier).

Transitional provisions will ensure that charitable organisations that are listed in the regulations immediately before the Act comes into force are carried over to the new charities list. The proposals are expected to reduce administrative costs and provide eligible borrowers with more timely access to the interest write-off.

Treatment of over-recovered Commissioner deductions

The Bill proposes to align the treatment of over-recovered deductions from a borrower's salary or wages, regardless of whether they were standard deductions or additional deductions initiated by the Commissioner to recover some previous repayment shortfall. This will simplify the administration for Inland Revenue by having 1 standard process to follow.

Under the proposal, over-recovered Commissioner deductions will be offset against a borrower's consolidated loan balance in the first instance, but the borrower will be advised of the over-recovery and given the opportunity to apply for a refund of the amount.

Notifying adjustments to net income

Student loan borrowers are required to make specified adjustments to their net income to ensure that their student loan repayments are calculated with regard to the full amount they have available to apply to those repayments. The Bill proposes amendments to ensure that all borrowers with the relevant types of income make those adjustments. However, they will be allowed to simply notify the Commissioner of the adjustments rather than making a declaration that meets the requirements of the Oaths and Declarations Act 1957. A number of consequential amendments are needed to incorporate the changed wording.

Main income equalisation scheme deposits and refunds

The main income equalisation scheme is intended to allow persons carrying on an agricultural, fishing, or forestry business to smooth their incomes for income tax purposes to address large fluctuations in income over several years. Consequently, deposits to the scheme are allowed as deductions for income tax purposes. However, because the amounts deposited would have been available to a student loan borrower to apply to their student loan repayments, they are one of the required adjustments to net income referred to previously. Conversely, when deposits are refunded they are not counted as income for student loan purposes. The proposed amendments are technical corrections to ensure that the provisions work as intended, including when the borrower's interest is more indirect, through a company or a trust with which the borrower is associated.

Other remedial changes to Student Loan Scheme Act 2011

The Bill proposes to relax the requirements for cancellation of loan contracts by allowing a person to notify the Ministry of Social Development in writing, including by electronic means, that they wish to cancel the contract. This is consistent with the requirements under the Credit Contracts and Consumer Finance Act 2003 and the arrangements that were in place prior to a previous amendment. The provision will be retrospective to 1 January 2012, when the law was changed, to ensure that borrowers have not inadvertently been in breach of the law.

A transitional provision will make it clear that the loan balance thresholds for calculating the repayment obligations of overseas-based borrowers apply only in respect of tax years commencing 1 April 2014 and later.

Consequential amendments to other enactments

As a consequence of the changes relating to charitable organisations in the Student Loan Scheme Act 2011, the Bill proposes an amendment to section MK 2(1)(d)(ii) of the Income Tax

Act 2007, which allows a KiwiSaver member volunteering overseas to continue to receive member tax credits if they meet the criteria established for the student loan scheme.

The Bill also proposes the following amendments to the Tax Administration Act 1994 as a consequence of the proposed changes to the Student Loan Scheme Act 2011:

- amendments to make it explicit that student loan borrowers with adjustments to net income are subject to the record retention requirements in respect of those adjustments; and
- an amendment to create an additional exception to taxation secrecy provisions to allow for communication in accordance with the Arrangement.

Residential Land Withholding Tax

The Bill proposes a new tax named residential land withholding tax (RLWT). The objective of the RLWT is to act as a collection mechanism for the bright-line test, which would require income tax to be paid on any gains from the disposal of residential land that is acquired and disposed of within two years, subject to some exceptions.

With the introduction of the bright-line test, it is highly likely that overseas vendors who sell residential property within two years will have a tax liability in New Zealand in relation to income from that property. Given the general difficulty faced in collecting tax from foreign investors with no or limited presence in New Zealand, RLWT would optimise the effectiveness of the bright-line test and support the integrity of the tax system as it would be consistent with New Zealand's broader approach to withholding taxes to withhold tax on the payment received by the vendor.

It is proposed that RLWT is payable from 1 July 2016, in the same circumstances as bright-line residential land income, except there is no "main home" exemption. Because the focus of RLWT is on New Zealand residential land sold by offshore persons, a main home exemption is a compliance cost of marginal use. There will be an exemption for disposals of inherited property, as well as relief for relationship property.

It is proposed to impose RLWT at the point in time when New Zealand land is sold by an offshore vendor, so as to improve collection of any annual income tax liability for bright-line residential land income the offshore person might have.

Payment of RLWT generates a tax credit that may be used to pay the annual income tax liability for bright-line residential land income. If the tax credit for RLWT is not needed to pay income tax liability, the tax credit / RLWT is refundable.

"Offshore person" includes a New Zealand citizen who is living overseas, if they have been overseas for the last 3 years. An individual who holds a New Zealand residence class visa may be an offshore person if they have been living overseas for the last 12 months. New Zealand trusts and companies may also be offshore persons if there are significant offshore interests in them.

The mechanism proposed for the collection of RLWT at the point in time when residential land located in New Zealand is disposed of is, primarily, an obligation on the offshore person / vendor. It is proposed that the offshore vendor's conveyancer, or, in the absence of a vendor's conveyancer, the purchaser's conveyancer, is treated as the "RLWT agent" of the offshore vendor. In absence of a vendor's conveyancer and a purchaser's conveyancer, the purchaser themselves is treated as the RLWT agent. In the case of association between the offshore vendor and the purchaser, the purchaser will be primarily liable.

The amount of RLWT required to be paid would be the lower of:

- 33% of the offshore vendor's gain on that property, or 28% if the vendor is a company (i.e. 33% (or 28%) \times (agreed purchase price - vendor's acquisition cost)); and
- 10% of the agreed purchase price of that property.

The amount of RLWT is reduced, if it would otherwise subtract from the amount of a payment to discharge a mortgage on the relevant land and the mortgage is held by a New Zealand registered bank or licensed non-bank deposit taker. This reduction would only be available where the RLWT agent is the seller's conveyancer.

The RLWT agent is agent only in respect of RLWT, and is not primarily liable for the RLWT. As conveyancers for the sale and purchase of residential land, the RLWT agents have access to the principal's / offshore vendor's funds, namely the sale proceeds. It is proposed that the conveyancers make RLWT returns and payments as agents on behalf of liable offshore vendors. While a RLWT agent may not be primarily liable for the RLWT as agent, if they fail to pay, they may be exposed to penalties for their failure, as well as possible reporting to their professional body.

It is proposed that RLWT will be remitted to the Commissioner on a monthly basis. However, this does not preclude a RLWT agent from remitting RLWT for a particular transaction to the Commissioner immediately following settlement.

Goods and services tax on cross-border services and intangibles

In principle, goods and services tax (GST) should apply to all consumption that occurs in New Zealand, ensuring the system is fair, efficient, and simple. However, currently GST is not collected on most cross-border services and intangibles (including internet downloads and online services).

When GST was introduced in 1986, few New Zealand consumers purchased offshore services and online digital products were not available. Therefore, GST was not imposed on these products. The growth of e-commerce has meant that the volume of services on which no GST is collected has become increasingly significant. Many are concerned about the impact that this uneven GST treatment may have on the competitiveness of domestic providers and on future tax revenues.

The amendments in this Bill address the non-taxation of cross-border remote services and intangibles in order to maintain the broad base of New Zealand's GST system and create a level playing field for domestic and offshore suppliers.

The non-taxation of cross-border remote services and intangibles is an international issue faced by countries that have a GST or Value Added Tax (VAT) system. The Organisation for Economic Cooperation and Development (OECD) has developed guidelines to establish an international set of principles for determining when countries should have the right to tax these supplies, which is expected to minimise the potential for double taxation or double non-taxation. The proposed amendments are consistent with these guidelines, which recommend that supplies of "remote" services to consumers should be taxed in the place of the consumer's usual residence.

Supplies to consumers resident in New Zealand

The Bill proposes amendments to the Goods and Services Tax Act 1985 which would apply GST to supplies of "remote" services and intangibles by offshore suppliers to New Zealand resident consumers. Remote services are those where there is no necessary connection between the physical location of the customer and the place where the services are performed. These "remote" services include both digital services (such as internet downloads and online services) and more traditional services (such as legal and accounting services that are supplied remotely).

Special rules for remote supplies of general insurance and gambling services will apply to offshore suppliers in order to provide comparable treatment of these supplies to other remote services. The current special rules for determining the GST treatment of telecommunications services are not impacted by these amendments.

Supplies to GST-registered businesses

The amendments that would tax supplies of remote services and intangibles will not apply to such supplies made to New Zealand GST-registered businesses unless the offshore supplier and registered business agree that these supplies are to be zero-rated. As GST-registered businesses are not able to claim deductions for GST charged on these supplies, non-resident offshore suppliers will not be required to provide tax invoices on their supplies of remote services and intangibles.

However, if an offshore supplier inadvertently charges GST to a GST-registered business and the consideration for the supply does not exceed \$1,000, the supplier would have the option of providing a tax invoice to allow the registered business to deduct the GST charged.

Registration threshold

Offshore suppliers will be required to register and return GST if their supplies to New Zealand residents exceed NZD \$60,000 in a 12-month period, which is the existing domestic registration threshold. Supplies of remote services and intangibles to New Zealand GST-registered businesses will only count towards this threshold if the offshore supplier and the registered business have agreed that the supply is zero-rated.

Electronic marketplaces

An operator of an electronic marketplace would be required to register and return GST on supplies of remote services and intangibles made through the marketplace, when certain criteria are met. This recognises that an electronic marketplace is often in a better position to account for GST on these supplies than the underlying suppliers, as the marketplace is likely to have the best access to the information needed to determine the GST liability arising from a transaction. The proposed rules for electronic marketplaces are broadly consistent with those in other jurisdictions that adopt a similar regime to that proposed in the Bill.

Determining the tax treatment of a supply

An offshore supplier must treat a customer as a New Zealand resident on the basis of 2 non-conflicting pieces of evidence, such as the customer's billing address and the origin of their payment. The legislation provides a list of residence proxies that may be used, and allows for other commercially relevant information to be used. The Commissioner of Inland Revenue would be able to prescribe an alternative method in circumstances where sufficient information is not commercially available.

An offshore supplier must treat a recipient as not being registered for GST unless the recipient notifies the supplier that they are registered, or provides their GST registration number or New Zealand business number. A provision would allow the Commissioner and a supplier to agree on an alternative method of determining whether a customer is a GST-registered business.

If a recipient knowingly provides false or misleading information to avoid the payment of GST, the existing knowledge offences would apply. Additionally, where the amount of GST involved is substantial or where the behaviour is repeated, the Commissioner will have a discretion to register the customer and require them to pay the GST that should have been charged.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	YES
<p>A Commentary on the Bill will be available at http://taxpolicy.ird.govt.nz/ shortly after the Bill is introduced. The Commentary will provide a more detailed explanation of the main proposed legislative changes in the Bill.</p> <p>Residential Land Withholding Tax</p> <p>Residential land withholding tax, an officials' issues paper. Policy and Strategy, Inland Revenue, and the Treasury. August 2015.</p> <p>http://taxpolicy.ird.govt.nz/publications/2015-ip-rlwt/overview http://taxpolicy.ird.govt.nz/sites/default/files/2015-ip-rlwt.pdf</p> <p>GST on Online Services</p> <p>A discussion document <i>GST: Cross-border services, intangibles and goods</i>, released on 18 August 2015. The document sought public submissions on proposals to apply GST to cross-border services and intangibles received by New Zealand residents. The document can be accessed on the Inland Revenue tax policy website.</p> <p>http://taxpolicy.ird.govt.nz/publications/2015-dd-gst-cross-border/overview</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The following four regulatory impact statements were prepared in relation to items in this Bill:</p> <ul style="list-style-type: none"> • Information sharing Arrangement with Australia for the recovery of student loan debt. Inland Revenue, 10 February 2015. • Charitable organisations for the purposes of the Student Loan Scheme Act 2011. Inland Revenue, 16 July 2015. • Options for optimising the effectiveness of the bright-line test. Inland Revenue, 09 November 2015. • GST on cross-border services and intangibles. Inland Revenue. 21 October 2015. <p>The above regulatory impact statements will be published on Inland Revenue's website at www.taxpolicy.ird.govt.nz</p> <p>The remaining policy items in the Bill are exempt from the RIA requirements as the proposed changes are of a minor or machinery nature and maintain current policy settings.</p>	

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?	YES
<p>The Regulatory Impact Analysis Team (RIAT) has reviewed the following two regulatory impact statements prepared by Inland Revenue: <i>Options for optimising the effectiveness of the bright-line test</i> and <i>GST on cross-border services and Intangibles</i> and associated supporting material. Their opinions on these regulatory impact statements are set out in full in Appendix One.</p>	

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?	YES
<p>Student Loan Scheme – Approval of charitable organisations</p> <p>The decision to grand-parent the entitlement of borrowers to interest write-off if the organisation for which they are volunteering overseas is delisted by the Commissioner was not addressed in the relevant RIS. The grand-parenting will ensure that borrowers are not unfairly disadvantaged by a decision to de-list a charitable organisation.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
This is set out in Appendix One.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Student Loan Scheme</p> <p>Inland Revenue publishes guidance on its website to assist borrowers to comply with their obligations. The relevant material will be updated to reflect the changes following enactment.</p> <p>The Information-sharing Arrangement with Australia sets out the responsibilities of the Central Authorities and the information that may be exchanged.</p> <p>Residential Land Withholding Tax</p> <p>The relevant analysis is contained in the RIS 'Options for optimising the effectiveness of the bright-line test'.</p> <p>GST on Online Services</p> <p>The relevant analysis is contained in the RIS 'GST on cross-border services and intangibles'.</p>	

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?

Student Loan Scheme

The Ministry of Foreign Affairs and Trade in New Zealand and the Department of Foreign Affairs and Trade in Australia were both consulted and have indicated support for the approach taken in respect of the Information-sharing Arrangement with Australia.

As there has been no specifically identified impact on New Zealand's international obligations in the development of the remaining policy items, there have been no formal steps to determine whether the policy to be given effect is consistent with New Zealand's international obligations.

Residential Land Withholding Tax

New Zealand has entered into international treaties with a number of countries (free trade agreements and double tax agreements) which provide for non-discrimination against investors from those jurisdictions. The proposed amendments are considered to be consistent with New Zealand's international obligations regarding non-discrimination. The proposed amendments contained in the bill would simply implement a collection mechanism for the bright-line test rather than imposing a new tax type.

GST on Online Services

Non-taxation of cross-border remote services and intangibles is an international issue faced by countries that have a GST or Value Added Tax (VAT) system. The OECD has developed guidelines to establish an international set of principles for determining when countries should have the right to tax these supplies, which is expected to minimise the potential for double taxation or double non-taxation. The proposed amendments are consistent with these guidelines, as well as similar rules applied or proposed in other jurisdictions.

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?

No separate 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, as no policy measures in this Bill have been identified, as part of the normal policy process, as having significant impact on Maori.

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
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights	

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
The Bill does not create offences or penalties per se, but builds into the existing penalties regime for withholding taxes in the Income Tax Act 2007 and Tax Administration Act 1994 by creating a new type of withholding tax (the proposed new RLWT).	

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?	YES
See Appendix Two for details.	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

Inland Revenue worked closely with the Office of the Privacy Commissioner to ensure that the information-sharing Arrangement with Australia is consistent with the privacy principles set out in the Privacy Act.

The RLWT proposal would introduce certain information and record-keeping requirements, consistent with requirements for other withholding taxes (such as resident withholding tax). Inland Revenue's view is that the Privacy Act 1993 would apply to information collected by withholding agents (whether the withholding agent is the vendor's conveyancer or another person).

Due to time constraints, the Privacy Commissioner was informed, but not consulted in regards to the amendments relating to RLWT.

The remaining student loan scheme amendments and the amendments in relation to GST on Online Services are not expected to raise privacy concerns and accordingly the Privacy Commissioner was not consulted.

External consultation

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?	YES
There has been external consultation in relation to all policy items included in this bill; Appendix Two specifies this in further detail.	

Other testing of proposals

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?	YES
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Student Loans

The proposed amendment to support the Information-sharing Arrangement has been considered by operational experts and tested against different scenarios, including a test match with Australian authorities.

The remaining provisions in the bill predominantly focus on administration of the student loan scheme. The proposals have been reviewed by operational subject matter experts, including those in external agencies, who have confirmed that they can be implemented with confidence.

Residential Land Withholding Tax

Many other countries that impose tax on income from certain sales of property also impose withholding taxes on those sales made by foreign investors. Countries with withholding taxes on sales of residential property include Canada, the United States, and Japan. In addition, Australia has recently announced that it is introducing a withholding tax on sales of certain interests in land by foreign investors.

Consideration of these countries' property withholding tax rules has informed the development of the RLWT.

GST on Online Services

Similar rules have been successfully applied in Member States of the European Union and in other countries such as Norway, South Africa, Japan and South Korea. The rules are also consistent with existing rules applied to domestic suppliers of goods and services.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>As this Bill is amending tax legislation, it contains amendments that create or amend powers to impose charges that are taxes, or in the nature of taxes.</p> <p>Residential Land Withholding Tax</p> <p>The Bill introduces a withholding tax on residential property sales made by offshore persons who have owned the property for less than two years prior to selling it. The withholding tax, however, is refundable if the seller does not have a New Zealand income tax liability.</p> <p>The applicable provisions are the proposed amendments to sections BE 1, BF 1, LA 6, RA 10, RA 15, YA 1 and proposed new sections LB 6B, RA 6C, and RL 1–5 in the Income Tax Act 2007, as well as a proposed amendment to section 81 of the Tax Administration Act 1994 and proposed new sections 54B and 54C in the Tax Administration Act 1994.</p> <p>GST on Online Services</p> <p>The amendments in the Bill extend GST to services and intangibles supplied by non-residents to New Zealand residents. When GST was introduced in 1986, few New Zealand consumers purchased services from offshore and online digital products were not yet available, consequently, GST was not applied to these products. The growth in online purchases means that the volume of imported services on which GST is not collected is becoming increasingly significant. This raises the question of whether the existing tax rules will remain suitable and sustainable in the future.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
Residential Land Withholding Tax <p>The RLWT proposal does not create an offence per se, but non-compliance will be subject to the existing penalties regime for withholding taxes in the Income Tax Act 2007 and Tax Administration Act 1994 by creating a new type of withholding tax (the proposed new RLWT).</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

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?	NO
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Powers to make delegated legislation

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?	YES
GST on Online Services <p>The proposed section 8B(3)(b) of the Goods and Services Tax Act 1985 gives the Commissioner of Inland Revenue the power to prescribe the use of another method to determine a recipients residence if a supplier is unable to establish a recipients residence by 2 non-conflicting items from the list in proposed section 8B(3)(b).</p> <p>Proposed section 8B(6) also gives the Commissioner of Inland Revenue the ability to agree with the supplier on the use of another method to determine whether the supply is made to a registered person.</p> <p>These powers are intended to reduce compliance costs on offshore suppliers in situations where they are unable to apply the proposed rules due to insufficient commercially available information.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Student Loan Scheme – Approval of charitable organisations</p> <p>Clause 7 delegates the authority for approval of a charitable organisation for the purposes of the Student Loan Scheme Act to the Commissioner of Inland Revenue. The Student Loan Scheme (Charitable Organisations) Regulations 2011 are consequentially revoked. If a charitable organisation is approved for the purposes of the Student Loan Scheme Act 2011, student loan borrowers who work overseas for that organisation, in approved aid activities as volunteers, or for a token payment, are treated as physically present in New Zealand. As such, they are not charged interest on their student loans. Decisions made by the Commissioner to list or not list a charitable organisation will be disputable decisions.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>GST on Online Services</p> <p>Clause 47 inserts proposed section 5(27) of the Goods and Services Tax Act 1985, which allows the Commissioner of Inland Revenue to treat a recipient of a supply of remote services as the supplier of the services and therefore required to return the GST. The power can only be exercised if the recipient has knowingly notified a fact or provided information to a supplier that is altered, false, or misleading in order to avoid the application of GST on the particular services. In order for the Commissioner of Inland Revenue to exercise this discretion the behaviour must be repeated or the amount of GST that was not charged must be significant.</p>	

Appendix One: Further Information Relating to Part Two

Regulatory impact analysis – question 2.3.1

Residential Land Withholding Tax RIS

The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

The Regulatory Impact Analysis Team (RIAT) was not provided with this version of the RIS when this paper was first submitted to Cabinet and therefore was unable to assess its compliance with the quality assurance criteria. RIAT has now been provided with the final version of the RIS by Inland Revenue and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

GST on Online Services RIS

The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by Inland Revenue and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

Extent of impact analysis available – question 2.5

Student Loans

The costs and benefits of the policies relating to the Information-sharing Arrangement with Australia and the delegated approval of charitable organisations for student loan purposes are set out in the respective regulatory impact statements linked at 2.3.

When the provisions for adjustments to net income were introduced in 2013 it was estimated that approximately 1,000 borrowers would be affected by them. Although the provisions first apply to the 2014/05 tax year so that many affected borrowers will not yet have provided the necessary information relating to adjustments, information from returns for adjustments to family scheme income in the 2014 tax year indicate that approximately 4,000 borrowers with adjustments to net income already provide that information for the purposes of their calculation of entitlement to Working for Families Tax Credits. Those borrowers will not be affected by the provisions in this Bill because they are already providing the necessary information, but we are unable at this stage to update our estimate of 1,000 borrowers who may be affected.

Residential Land Withholding Tax

The benefit of RLWT is primarily as an integrity measure to support the proposed bright-line test (which will require income tax to be paid on any gains from the sale of residential property that is bought and sold within two years), and to ensure consistency with New Zealand's system of tax collection as a whole.

In terms of quantification of direct fiscal benefits the bright-line test has been forecasted to raise approximately \$5 million per year. (The \$5 million per annum figure forecasted for the bright-line test is based on a number of behavioural assumptions, which are difficult to quantify). The RLWT would therefore collect a portion of the forecasted \$5 million.

Compliance costs are expected to increase for sellers and buyers. The legal incidence of the compliance cost is expected to be borne by the seller in most cases.

The exact fiscal and compliance cost figures for the proposed bright-line test, and accordingly the RLWT are not available because Inland Revenue does not currently have accurate data on the types and levels of land sales occurring or how much is collected under the current land rules.

Provisional administrative costs have been estimated for Inland Revenue.

Further analysis in relation to the RLWT can be found in the RIS 'Options for optimising the effectiveness of the bright-line test'.

GST on Online Services

The amendments in this Bill will address the non-taxation of cross-border remote services and intangibles (which is estimated to raise around \$40 million of GST revenue per year), in order to maintain the broad base of New Zealand's GST system and create a level playing field between domestic and offshore suppliers.

The extent to which New Zealand resident consumers will bear the GST will depend on whether the offshore supplier passes this cost on to the consumer. This may be industry or firm specific and depend on factors such as business practices and the elasticity of demand for products.

Further analysis can be found in the RIS 'GST on cross-border services and intangibles'.

Appendix Two: Further Information Relating to Part Three

Privacy issues – question 3.5

Student Loan Scheme – Information Sharing Arrangement

Clauses 26 and 72 of the Bill propose to amend the Student Loan Scheme Act and the Tax Administration Act in order to facilitate the sharing of information between the Australian Taxation Office and New Zealand's Inland Revenue in relation to New Zealand student loan borrowers residing in Australia.

The information exchange will allow Inland Revenue to receive up-to-date contact details for New Zealand borrowers through matching borrower details against the Australian Taxation Office's database of Australian taxpayers. Inland Revenue would then be able to contact those individuals to keep them engaged with their loan obligations and, where appropriate, recover outstanding student loan repayment amounts.

Residential Land Withholding Tax

Proposed new section 54C of the Tax Administration Act 1994 would require a seller who is potentially subject to RLWT (that is, if they are selling residential land that they purchased less than two years ago) to provide certain information to the withholding agent.

In almost all cases, the seller will provide this information to their conveyancer or solicitor who will act as withholding agent. However, in rare cases where the seller does not have a conveyancer or solicitor, they will need to provide this information to the purchaser's conveyancer or solicitor. (If the purchaser also has no conveyancer or solicitor then the seller will need to provide this information to the purchaser themselves who will act as withholding agent).

The information will include the person's tax file number and whether or not they are claiming an exemption from RLWT.

Where the vendor is claiming an exemption from RLWT, the information may include information showing that they are not an offshore person (generally a copy of their passport or similar evidence), or other relevant evidence (if they are claiming an exemption for transfers for inherited property or relationship property settlements).

Proposed section 54B would require a withholding agent making a payment of RLWT to provide to the Commissioner of Inland Revenue with information regarding the RLWT withheld.

Regardless of whether RLWT is required to be paid by the withholding agent, this information will need to be stored by the withholding agent for 7 years, consistent with the requirements for retention of information for other tax purposes. The information held by the withholding agent must be provided to the Commissioner of Inland Revenue if required.

The intention is that the Privacy Act 1993 will apply to information collected and held by the withholding agent.

It should be further noted that a proposed amendment to section 81 of the Tax Administration Act 1994 would allow the Commissioner of Inland Revenue to communicate with professional bodies, such as the New Zealand Law Society and New Zealand Society of Conveyancers, information about conveyancers and solicitors who have not complied with their obligations as RLWT withholding agents. However, this

communication relates to information about the conveyancer or solicitor in their professional capacity rather than their personal capacity.

GST on Online Services

The Bill requires an offshore supplier to treat a customer as a New Zealand resident on the basis of 2 non-conflicting pieces of evidence, such as the customer's billing address and the origin of their payment. The Commissioner of Inland Revenue would be able to prescribe an alternative method in circumstances where sufficient information is not commercially available to the supplier.

The Bill requires an offshore supplier to treat a recipient that is a New Zealand resident as not being registered for GST unless the recipient notifies the supplier that they are registered, or provides their GST registration number or New Zealand business number. The Commissioner of Inland Revenue would be able to agree with a supplier on an alternative method of determining whether a customer is a GST-registered business.

The Bill provides an exception for non-resident suppliers of remote services to the requirement to seek the Commissioner of Inland Revenue's permission to keep records in a language other than English or in a place outside New Zealand.

External Consultation – question 3.6

Student Loans

The Ministry of Education, the Ministry of Social Development, Charities Services of the Department of Internal Affairs, the Ministry of Foreign Affairs and Trade and the Office of the Privacy Commissioner have been consulted on the relevant proposed amendments to the Student Loan Scheme Act 2011.

The Australian Treasury and the Australian Taxation Office have also been consulted in relation to the Information Sharing Arrangement.

Residential Land Withholding Tax

The Treasury and Land Information New Zealand have been consulted in the preparation on the policy to be given effect by this bill.

Treasury and Inland Revenue officials released an officials' issues paper titled "Residential land withholding tax" on 31 August 2015 that sought comment from the public. Submissions closed on 2 October 2015 and a total of 16 submissions were received including from those in the conveyancing industry.

In addition, a workshop was held in September 2015 with representatives from the Auckland District Law Society, New Zealand Law Society, and the New Zealand Society of Conveyancers.

The final RLWT policy proposed in the bill was developed in light of these submissions and discussion.

Further information on the extent of consultation can be found in the RIS 'Options for optimising the effectiveness of the bright-line test'.

GST on Online Services

A discussion document *GST: Cross-border services, intangibles and goods* was released on 18 August 2015. The document sought public submissions on proposals to apply GST to cross-border services and intangibles received by New Zealand residents.

A total of 76 submissions were received in response to the discussion document. The proposals in the discussion document were received well, with most submissions supporting the proposed approach for taxing cross-border services and intangibles. A strong theme was the importance of minimising compliance costs for offshore suppliers, to maximise compliance and reduce the risk the rules could restrict the supply of services and intangibles to New Zealand.

New Zealand Treasury, the Ministry of Business Innovation and Employment, New Zealand Customs Service were also consulted in the preparation on the policy to be given effect by this Bill.