Departmental Disclosure Statement

Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Bill

The Departmental disclosure statement for a Government Bill brings 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 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.

Dated: 28 April 2016

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Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following enactments:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- Stamp and Cheque Duties Act 1971
- Student Loan Scheme Act 2011
- Income Tax Act 2004
- Goods and Services Tax (Grants and Subsidies) Order 1992

The taxation amendments contained in the Bill aim to improve the current tax settings within a broad-base, low-rate framework. Under this framework, the tax treatment of alternative forms of income and expenditure is intended to be as even as possible. This ensures that overall tax rates can be kept low, while also minimising the biases that taxation introduces into economic decisions. This framework underpins the Government's Revenue Strategy and helps maintain confidence that the tax system is broadly fair, which is crucial to encouraging voluntary compliance.

Although New Zealand has relatively strong tax settings, it is important to maintain the tax system and ensure that it continues to be fit for purpose. Changes in the economic environment, business practice, or interpretation of the law can mean that the tax system becomes unfair, inefficient, complex or uncertain. The tax system needs to be responsive to accommodate these concerns.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (the GTPP). This is a very open and interactive process between the public and private sectors, which helps ensure that tax and social policy changes are well thought through. This process is designed to ensure better, more effective policy development through early consideration of all aspects, and likely impacts, of proposals, and increased opportunities for public consultation.

The GTPP means that major tax initiatives are subject to public scrutiny at all stages of their development. As a result, Inland Revenue and Treasury officials have the opportunity to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected.

The final stage is a post-implementation review of new legislation and identification of remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy.

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. The *Commentary* will be available, shortly after this Bill is introduced, at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview.

Closely held companies

The Bill proposes changes to the look-through company (LTC) rules and the dividend rules as they apply to closely held companies. The changes are intended to simplify the rules to reduce compliance costs, while ensuring that the rules remain robust and in line with intended policy.

LTC eligibility

The Bill proposes amendments to the definitions of *look-through company* and *look- through counted owner*, to tighten the eligibility criteria for a company electing to become a LTC.

In particular, it is proposed to broaden the way that beneficiaries are counted when determining whether the requirement that there be five or fewer counted owners is met. The proposed new test would count any beneficiary who receives any distribution from a trust with a look-through interest, sourced from any income of the trust. Currently, the tests are limited to beneficiary income sourced from a look-through interest.

To bolster the current legislative prohibition on direct corporate ownership of LTCs, the Bill proposes that a LTC owned by a trust will lose its LTC status if the trust makes a distribution to a corporate beneficiary.

Charities and Māori authorities will be precluded from being LTC owners, directly or indirectly, under the proposed amendments. However, a trust that is a shareholder in a LTC will be able to make a distribution to a charity when the distribution is akin to a donation or is received by the charity as a residual beneficiary. Māori authorities that have ownership interests in LTCs immediately before the introduction of this Bill will be excluded from the prohibition.

The Bill proposes that the annual amount of foreign income earned by a foreign-controlled LTC be limited to the greater of $10,000 and 20% of the LTC's gross income in the relevant income year.

The Bill also includes an amendment to the definition of *look-through interest*, enabling a LTC to have more than one class of shares, provided all shares have uniform entitlements to all distributions.

LTC entry tax

When companies convert to become LTCs the rules currently seek to tax any retained earnings, being income earned prior to conversion and retained by the converting company, using the entry tax formula. The entry tax formula calculates the income to be taxed at the company tax rate. Reliance on the company tax rate can produce over-taxation or under-taxation of the earnings, depending on a shareholder's personal tax rate and whether the company was a qualifying company (a QC) or an ordinary company prior to becoming a LTC.

Two amendments are proposed to correct the effect. The first amendment modifies the income adjustment formula to ensure the taxable income that arises is taxed at the shareholder's personal tax rate. The second applies to QCs converting to LTCs and ensures that the entry tax formula does not tax the owner of a QC more than the

owner would have been taxed had they liquidated the QC instead.

Deduction limitation rule

The Bill proposes to remove, except for LTCs in a partnership or joint venture, the rule that limits an owner's LTC deductions to the amount that the owner has at risk economically. The change will apply from the 2017–18 income year, and deductions previously restricted under this rule will be available for offset from then onwards. The existing anti-avoidance rule that deems a partner's transactions to be at market value is proposed to be extended to owners of LTCs, in order to prevent excessive deductions.

Debt remission

Two retrospective changes to the debt remission rules in the context of LTCs and partnerships are proposed. The first change ensures that remission income does not arise to a person who is a LTC owner or partner and who remits a debt owed by the LTC or the partnership, which may be a limited partnership (referred to as *self-remission*). The second change clarifies that debt owed by a LTC upon liquidation or election out of the LTC regime must be adjusted for any credit impairment.

Qualifying companies

It is proposed that qualifying companies lose their QC status if there is a change in control of the company. A change in control will be measured using a continuity test requiring a group of persons that holds, for the continuity period, minimum voting interests in the company of at least 50% in total. The continuity period commences on the date on which the Bill receives Royal assent and runs through to the relevant income year.

Tainted capital gains

The tainted capital gains rule, under which some capital gains made by companies are treated as taxable when distributed to shareholders on liquidation of the company, is proposed to be liberalised. The changes ensure that genuine capital profits made by ordinary companies are not tainted merely because there is a transaction involving an associated party. Instead it is proposed that a capital profit on the disposal of an asset is tainted only if the purchaser is a company and the shareholders of the company disposing of the asset retain an interest in the asset of at least 85% after the disposal. This could be through their being either direct or indirect shareholders in the purchaser company.

This 85% threshold test will be applied whether there is one sale, or a series of sales or transactions. Whether the gain is tainted will be determined when a distribution is made by the vendor company to its shareholders as a result of liquidation.

RWT on dividends

Two amendments to reduce over-taxation of dividends are proposed. The first would allow a company to opt out of deducting resident withholding tax (RWT) from a fully imputed dividend paid to corporate shareholders. The second proposes a new formula for determining the amount of RWT payable when cash and non-

cash dividends are paid contemporaneously. The formula treats the two dividends as a single dividend and applies if the cash dividend is equal to or greater than the RWT calculated under the formula.

PAYE and shareholder-employees

The Bill proposes that when an employee of a close company who is also a shareholder in the company, receives regular salary or wages throughout the year and also receives a further amount of income that is later allocated to them in their capacity as an employee, the employee may split the income so that the base salary is subject to pay-as-you-earn (PAYE) and the variable amount is paid out with no tax being withheld. A taxpayer will need to make an irrevocable election to apply this approach.

NRWT: Related party and branch lending

The Bill proposes changes to the non-resident withholding tax (NRWT) and approved issuer levy (AIL) rules as they apply to interest paid on debt provided by non-residents. The amendments are necessary to ensure that the tax (whether NRWT or AIL) applies consistently to transactions that are economically similar and easily substitutable consistent with the underlying policy. In particular, the proposals address issues that arise on the boundary between the application of NRWT and AIL, which can at times result in different tax outcomes based on the legal form of a loan rather than the economic reality.

Capturing arrangements giving rise to non-resident passive income

A New Zealand borrower who obtains funds from a non-resident under a financial arrangement is entitled to a deduction for funding costs under the financial arrangement rules; however, NRWT will only be required to be withheld from the interest, or AIL paid, if that arrangement involves money lent. As these definitions do not exactly align it is possible for a deduction to be obtained where the lender does not derive non-resident passive income (NRPI). To address this inconsistency, the Bill proposes to extend the definition of money lent to include funding provided to a New Zealand resident by an associated non-resident under a financial arrangement that involves expenditure being incurred under the financial arrangement by the resident.

Correcting timing mismatches between NRPI and financial arrangement expenditure

The Bill contains proposals to correct mismatches between the time at which certain NRPI is subject to NRWT and the time when the corresponding expenditure becomes deductible under the financial arrangements rules. To achieve this, the Bill proposes introducing a new concept of *non-resident financial arrangement income* (NRFAI) as a new category of NRPI arising under certain financial arrangements between associated parties. The calculation of NRFAI is similar to a resident's calculation of financial arrangement income and expenditure. All other financial arrangements with non-residents continue to be taxed under the current NRWT rules, which operate on a payments basis.

Under the proposals, NRWT will be paid on NRFAI when a financial arrangement

with an associated party has a sufficiently large degree of income deferral, measured by comparing cumulative payments under the arrangement (on which NRWT is ordinarily payable) with cumulative deductions. NRFAI does not arise for borrowers who make interest payments to related parties if the payments are less than a new *de minimis* threshold.

Applying NRWT when a third party has been interposed to access AIL

The policy intent has always been that AIL should not be available on interest payments made to an associated party lender. This restriction does not currently apply when the lender is equivalent to an associated party in substance or when the arrangement has been structured so the direct lender and borrower are not associated, although section BG 1, the general anti-avoidance provision, may apply to the situation.

Two examples of situations to which AIL is applicable, and that are in substance an interest payment to an associated party, are back-to-back loans and multi-party arrangements. A back-to-back loan occurs when an associated party lends to a third party who subsequently on-lends the funds to an associated borrower. A multi-party arrangement achieves the same result through a more complex structure. For example, the principal portion of funding originally provided by a third party may be sold to a person who is associated with the borrower.

The Bill proposes to introduce rules addressing the problem. The rules are to apply to arrangements that have the purpose or effect of qualifying for AIL on interest which is effectively paid to an associated party. In the case of a back-to-back loan, the interposed third party is treated as having received interest payments as agent for the ultimate lender; both the borrower and the interposed third party jointly have a liability to withhold NRWT on interest attributable to the associated non-resident.

Acting together

AIL is currently available if 2 or more persons who are not associated with each other or with a New Zealand borrower act together to control, and in particular to fund, that borrower, which is typically a joint venture or private equity investment structure. The Bill proposes, in some circumstances, to subject this borrowing to NRWT instead, by introducing a non-resident owning body test. The test is similar to provisions introduced into the thin capitalisation rules in 2014.

Eligibility for AIL

The Bill also introduces restrictions on the ability to register a security, in order to prevent New Zealand borrowers from falsely claiming that the lender is not associated. Otherwise, such borrowers will pay AIL, when they should withhold NRWT.

Borrowing not attributed to an onshore branch

Under the current rules, interest paid by a New Zealand resident to a non-resident is not subject to NRWT or AIL if the non-resident operates a business in New Zealand through a fixed establishment, or branch. This is known as the onshore

branch exemption. The onshore branch exemption currently applies even if the non-resident's branch has no involvement in the transaction.

Although income tax is payable on the margin earned by the non-resident, this is often much less than the NRWT or AIL that would be payable if the branch did not exist. The Bill proposes to narrow the exemption so that a payment of interest by a New Zealand resident to a non-resident will be covered by the exemption, and therefore not subject to withholding tax, only if the money lent is used by the non-resident for the purposes of a business carried on through the New Zealand branch.

The exemption will continue to apply to a New Zealand resident who borrows from a non-resident bank with a New Zealand branch if the borrower and the lender are not associated. Therefore, the proposed change will not impose NRWT or AIL on payments to acquire foreign property made by New Zealand borrowers who are not associated with a non-resident bank with a New Zealand branch.

Borrowing allocated to an onshore branch

A non-resident bank can borrow offshore for the purpose of funding its worldwide operations and allocate a portion of this funding to its New Zealand branch. When calculating its net income taxable in New Zealand, the bank can deduct, from the income generated by its New Zealand activities, an amount that is treated as interest attributable to the borrowing raised offshore and used to fund the New Zealand business.
However, New Zealand currently does not impose NRWT or AIL on any portion of the interest paid on the offshore borrowing by the bank or on the interest which the New Zealand branch is treated as paying to the non-New Zealand part of the bank that provides it with funding.

To correct this asymmetric tax outcome, the Bill proposes to make funding costs, of a New Zealand branch of a non-resident bank, subject to NRWT or AIL if the costs are deductible for income tax purposes in relation to a deemed loan to the branch by its head office.

Offshore branch exemption

The offshore branch exemption applies to interest derived from money lent outside New Zealand to a New Zealand resident using the money for the purposes of a business carried on through a fixed establishment offshore.

This exemption is intended to apply to a New Zealand resident operating an active business through a branch in another country so that the offshore branch of a New Zealand company is treated in the same way as a foreign incorporated subsidiary borrowing for an equivalent business.

However, this exemption currently also applies to a New Zealand company with an offshore branch that borrows money for the purpose of providing funding to New Zealand borrowers, who may or may not be associated with the New Zealand company. By using this exemption, a New Zealand company can borrow through an offshore branch of an associated New Zealand company without paying AIL on interest payments, whereas it would have to pay AIL if it borrowed directly from the ultimate lender.

The Bill proposes to impose AIL or NRWT on interest paid to a non-resident by an offshore branch of a New Zealand company to the extent that the money is then lent to New Zealand residents.

Replacement of NRWT with AIL on interest paid by a member of a New Zealand banking group to an associated non-resident

Using the branch exemptions discussed above, New Zealand banks are currently able to pay interest to non-residents without the imposition of NRWT or AIL, even when the non-resident is an associated party.

Imposing NRWT on the lending by a bank to an associated party would be inappropriate, as there are commercial reasons why a foreign bank may borrow from a third party and on-lend to its New Zealand bank subsidiary. Further, a likely result of imposing NRWT on such a loan would be that a New Zealand bank would borrow directly from third parties although, in the absence of tax, it would be economically efficient to borrow through an associate.

The proposed amendments will continue to allow a member of a New Zealand banking group to pay AIL on interest payments to an associated non-resident.

GST current issues

The Bill proposes several amendments to the Goods and Services Tax Act 1985 to address various issues.

Capital raising costs

Under current rules, input tax deductions will generally be unavailable for goods and services purchased to raise capital. The GST treatment depends on the use of the goods and services in making taxable supplies. Supplies of financial services to final consumers are exempt, and therefore do not give rise to deductions.

Amendments are proposed to enable businesses to recover GST incurred on goods and services purchased to raise capital. A deduction is available to the extent that the capital is raised to fund a taxable activity. The amendments recognise that the cost of raising the capital relates economically to the businesses' general business activities, rather than to the consumption of the financial services themselves.

Agreed alternative methods for applying the apportionment rules

The apportionment and adjustment rules determine the input tax deductions that businesses can claim for the goods and services they purchase. The rules match the deduction with the use of goods and services by the business in making taxable supplies. However, the legislated approach can be difficult to apply for certain businesses, in particular for providers of mixed taxable and exempt accommodation such as retirement villages, resulting in high compliance costs.

An amendment is proposed to include in the apportionment and adjustment rules an alternative method, which would be available to businesses with a turnover

likely to exceed $24 million in a 12-month period. The alternative method would be agreed with the Commissioner, and would be required to produce a fair and reasonable result that is similar to the outcome that would be reached if the legislative test were applied.

The amendment would also allow an industry association to agree a method with the Commissioner, which could apply to that industry or to a group of businesses within that industry. The benefit of such a method would then be extended to businesses with a lesser turnover that experience similar difficulties in applying the statutory method.

Secondhand goods and gold

Input tax deductions are available for secondhand goods acquired by a registered person, when GST is not charged on the supply but is treated as being embedded in the cost of the supply. The deduction addresses the fact that the supplier could not recover the GST incurred when the supplier purchased the good.

An exception to this rule exists to the extent that secondhand goods are composed of gold, silver, or platinum and the goods are not fine metal. The exception is intended to mitigate a potential fiscal risk that could arise if a deduction were allowed under the secondhand goods rules and an advantage could be gained by switching between supplies of fine metal and supplies of metal that is not fine metal. However, the exception may cause tax to be imposed multiple times on the consumption of some goods, such as jewellery.

The Bill includes an amendment to narrow the exception, so that a deduction is available for goods of a kind manufactured for sale to the public.

Services connected with land

Supplies of services to non-residents outside New Zealand are generally treated as being consumed outside New Zealand, and are therefore not subject to GST. An exception to this treatment applies when the services are closely connected with land in New Zealand. Such services are treated as being consumed in New Zealand.

The current rules capture supplies of services that are described as being *directly in connection* with land in New Zealand. However, the test does not capture all supplies of services with a close economic connection to the land. The Bill proposes an amendment to expand the current test by ensuring that supplies of services are subject to GST if they are acquired to enable or assist a change in the physical or legal nature of land in New Zealand.

A rule expressed in similar terms applies to exclude supplies of services directly in connection with land outside New Zealand from GST. The Bill proposes a new test to similarly ensure that GST does not apply to supplies of services that enable or assist a change in the physical or legal nature of land outside New Zealand.

Other issues

The Bill also proposes several GST remedial amendments to:

- Ensure that the rules applying to business-to-business supplies of land apply as intended. The amendments ensure that the rules apply to lease surrender payments, the novation of an existing lease, and to supplies of land to non- profit bodies. Some technical issues have been corrected in the test that determines when a commercial lease is zero-rated.
- Allow businesses in certain situations to account for GST to the extent that consideration for a supply is paid, or an invoice issued, although the total consideration payable, and therefore the total GST charged, for the supply is not able to be determined at that time.
- Allow agents making purchases on behalf of their principals, and their principals, to treat a supply as being made between the agent and principal. The proposal is intended to reduce compliance costs incurred by agents who also make supplies on their own behalf and are currently required to distinguish between the 2 types of transaction.
- Ensure that services performed on, and goods that are incorporated into, newly purchased boats and aircraft that are exported under their own power, are zero-rated.
- Prevent goods that are imported into New Zealand and subsequently re-exported by a business from being effectively subjected to tax by the claw-back of deductions.
- Resolve technical issues with the rules that allow non-resident businesses outside New Zealand to register and recover GST. In particular, the amendments ensure GST is not incurred on business-to-business transactions, and correct an issue with a base maintenance rule to ensure consumption in New Zealand is taxed correctly.
- Fix a technical anomaly that prevents limited partnerships from being members of a GST group composed of companies and limited partnerships.
- Effectively extend the time period for the Commissioner to notify a person that their GST return is being investigated, or for the Commissioner to request additional information, thereby allowing the claimed refund to be withheld. The amendment replaces the requirement that the notice be received within 15 working dates from the date of the return, with a requirement that it be issued within this time frame.
- Fix technical issues with the Commissioner's discretion to allow certain taxpayers to file 6-monthly GST returns, by imposing a more objective test.
- Resolve a technical anomaly that creates an inconsistent time period for the Commissioner to refund overpaid tax.
- Better align the treatment of prizes won by registered persons, who enter a horse in a race as part of their taxable activity, with commercial practice.
- Extend the application of a savings provision that applies to GST-registered members of unregistered bodies corporate.

Related parties debt remission

The Bill proposes changes to the treatment of debt remission, including remission by the capitalisation of debt, when the lender and borrower are related.

The current rules can result in an asymmetric tax treatment because the borrower is obliged to pay tax on the debt remission income while the lender, as an associated person, is unable to claim a deduction for the bad debt. The debt remission income arises for tax purposes despite there being no economic gain to the persons involved when they are considered as a single economic group. The Bill proposes amendments to address this asymmetry by deeming remitted debt to be repaid in full. This ensures that the tax outcome matches the economic substance.

The amendments apply to persons who are effectively a single economic group, including:

- creditors and debtors within the same wholly-owned group of companies;
- a single non-corporate owner and their wholly-owned company;
- multiple shareholders and a company (or partners and a partnership or limited partnership), when the debt is remitted in the same proportion as equity (or ownership).

It is proposed that the rules also apply for a loan advanced by a relative of the owner. Both the creditor and debtor are not required to be within the New Zealand tax base; the amendments apply to inbound and outbound investment.

Debt remission and available subscribed capital

It is proposed that the remission of a company's debt to an associated creditor will increase the available subscribed capital of the company, and also increase the cost of the creditor's investment in the debtor. This proposal provides for the same outcome as if the debt were capitalised.

Bad debts and guarantees

The Bill also proposes amendments to the treatment of bad debts, and debt guarantees, involving related parties.

In particular, the change to the treatment of bad debts addresses a situation where a double deduction could be allowed to a creditor for unpaid interest, and to the debtor for the incurred interest, with only a single stream of income being recognised. It is proposed that a bad debt deduction be denied when the creditor and debtor are part of the same economic group.

The proposed amendment to the treatment of debt guarantee payments would apply when a person makes a payment to a third-party creditor under a guarantee of an associated person's borrowing. The defaulting debtor has remission income, and therefore a tax liability, but may be insolvent and unable to pay. In practice, allowing the guarantor a deduction would result in an asymmetric tax outcome that does not match the economic substance. Under the proposed amendment, the payments under the debt guarantee are instead treated as purchasing the debt, and the rules relating to sales of debts to associates apply (excluding the threshold value for the

cost of the debt).

Loss grouping and imputation

A company that has benefited from loss grouping will pay less income tax and therefore generate fewer imputation credits. If the profit company is wholly-owned by its parent company, any dividends will not be taxable due to the exemption from tax for inter-corporate dividends. However, if the profit company and the loss company are not wholly-owned, the inter-corporate dividend exemption will not apply and the reduced level of imputation credits will mean that the dividend cannot be fully imputed.

When a shareholder of the profit company receives a partially imputed dividend, it will have to pay income tax to the extent the dividend is not fully imputed. This additional income tax effectively claws back the benefit of the loss grouping and may leave the owners of the profit company in a worse position than if the loss grouping had not occurred.

The Bill proposes to allow a loss company, or another company in a commonly owned group, to transfer imputation credits to a profit company in conjunction with a loss grouping transaction. The imputation credit transfer will allow the profit company to pay a fully imputed dividend despite engaging in loss grouping, thus removing the distortion created by the existing rules.

Existing anti-avoidance provisions relating to imputation credits will be extended to groups who undertake these transfers to prevent the inappropriate transfer of the value of imputation credits between different groups.

Remission income, insolvency, and bankruptcy

The proposed amendments seek to improve the consistency of income tax legislation with the fresh-start principle of insolvency law, under which a person released from all debt under insolvency law is encouraged to start afresh with minimal assets. The amendments also align with current administrative practice, and seek to improve the neutrality of the tax system in relation to investment decisions.

In particular, the proposed amendments will:

- cancel the full amount of carried-forward tax losses of an insolvent person who is released from all provable debts under insolvency law except debt released under subpart 1 of Part 5 of the Insolvency Act 2006;
- ensure that, on being declared bankrupt, assets vested in the Official Assignee are transferred at their tax values;
- clarify that a bankrupt is liable to satisfy income tax obligations for income derived during the period of bankruptcy, consistent with current practice;
- correct an inadvertent overreach relating to social policy legislation arising from an earlier amendment.

Aircraft overhaul reserves

The Bill introduces amendments relating to the timing of aircraft engine overhaul deductions to provide certainty and produce a better alignment of deductions and income arising from the use of aircraft. The amendments propose to treat the engine overhaul value inherent in the acquisition cost of an aircraft separately from the depreciation of an aircraft taken as a whole.

In particular, a deduction will be permitted when an engine is acquired, either separately or as part of the aircraft, for the overhaul value inherent in the cost of the engine. An amendment will also clarify that overhaul costs are an allowable deduction. Both deductions are proposed to be spread between periods according to the use of the engine during the periods. The appropriate use measures are given by the maintenance programme for the engine issued by the manufacturer, subject to changes regulated from time to time by the Civil Aviation Authority.

The Bill also provides for a transitional deduction for the proportion of the cost of an aircraft engine that relates to the overhaul value of the engine, to the extent that the proportional cost is not fully depreciated by the beginning of the 2017–18 income year.

The proposed amendments also provide for the reversal of an accounting provision that has accrued at the end of the 2016–17 income year for a future overhaul of an aircraft engine. The reversal occurs either as a reduction in the cost of the first overhaul for that aircraft engine or as an increase in the consideration on the disposal of the aircraft or separate engine, depending on whether the overhaul or disposal occurs first. On disposal of the aircraft or the aircraft engine, disposal proceeds are to be apportioned between the aircraft or engine as an item of depreciable property (the depreciation rules apply) and unexpired deductions for aircraft engine overhauls. An income recovery provision applies to disposal proceeds apportioned to the unexpired deductions for aircraft engine overhauls, similar to the depreciation recovery provisions for depreciable assets.

To reduce compliance costs, it is also proposed that IFRS taxpayers may elect, with the agreement of the Commissioner, to adopt a tax accounting approach based on IFRS accounting that results in a similar outcome to that intended by the spreading approach. Similarly, a person in business who owns 1 aircraft may elect to be allowed the aircraft overhaul expenses as a deduction when they are incurred (although associated persons who together own more than 1 aircraft are not allowed this election). If this election is made, however, the proportional cost of the engine relating to overhaul must continue to be depreciated as part of the aircraft, taken as a whole.

Clarification of empowering provision for New Zealand DTAs

It is proposed that the Income Tax Act 2007 be amended to clarify that the empowering provision for New Zealand's double tax agreements (DTAs) does not prevent the anti-avoidance rules contained in income tax legislation from applying to a tax advantage arising under a DTA. A remedial change to this provision is also proposed to ensure that it operates as intended in relation to the process for bringing

DTAs into force.

Schedule 32 donee status

The Bill proposes to amend the Income Tax Act 2007 by adding 14 charities to the list of donee organisations in schedule 32, and renaming an existing charity on the list. The Bill further proposes to remove Bicycles for Humanity, Auckland, from the list as this charity has ceased activities and has wound up.

The following New Zealand donee organisations with overseas purposes are proposed to be added to the list of donee organisations in schedule 32 of the Income Tax Act 2007:

- Astha Childrens Home (Nepal/New Zealand);
- Cambodia Trust (Aotearoa-New Zealand);
- Destiny Rescue Charitable Aid Trust;
- First Steps Himalaya;
- Fountain of Peace Children's Foundation New Zealand;
- GC Aid;
- Hornsby Pacific Education Trust;
- Mercy Mission of New Zealand Trust Board;
- Microdreams Foundation New Zealand Humanitarian Trust;
- NPH New Zealand Charitable Trust;
- Orphans Refugees and Aid (ORA International) of New Zealand Charitable Trust;
- Siphala Foundation;
- Solomon Outreach Society;
- Toraja Rural Development Charitable Trust.

It is also proposed that The Destitute Children's Home, Pokhara Charitable Trust, which has donee status, be renamed as the Youth Education and Training Initiatives (YETI) Nepal Trust.

Land tainting and council-controlled organisations

The land tainting rules impose tax on certain disposals of land by an associate of a person who deals in, develops, subdivides or improves land. Land held on capital account by an affected person is treated as being held on revenue account and any gains on sale are subject to income tax.

The rules, which were introduced to prevent tax avoidance, are overreaching in the context of council groups by taxing capital account land when tax avoidance is not a concern. The Bill proposes an exemption from the rules for organisations controlled by, or associated with a local authority.

This exemption does not apply to entities associated with a local authority under the tripartite relationship test in section YB 14 of the Income Tax Act 2007. The exemption also does not apply to entities outside the council group that are associated with a developer of land, unless that association occurs under section YB 14.

Loss offsets by mineral miners

The Bill proposes to effectively restore the position as it was prior to amendments effective from 1 April 2014, by allowing mineral miners to utilise the benefit of losses incurred by non-mining companies within the same group of companies. Mineral miners will continue to be unable to make losses available to, or receive subvention payments from, non-mining companies within the same group of companies.

The Bill also proposes to clarify that a mineral miner that was a loss-attributing qualifying company (LAQC), before the repeal of the LAQC rules in 2011 was required to attribute its loss to its shareholders. Owing to the ring-fencing of mineral mining losses, it was not clear whether a LAQC could attribute a mining loss to its shareholders, consistent with the broad policy objective of attributing losses to shareholders of a LAQC. A savings provision ensures that a LAQC that did not attribute a mining loss to its shareholders, and does not request to amend its tax position, will not be required to do so.

Working for Families Tax Credits

Parental tax credit entitlement

A parental tax credit (PTC) rule was introduced on 1 April 2008 that was intended to ensure recipients who have a parental entitlement that overlaps 2 tax years can receive their PTC entitlement as a lump sum in the end of year assessment for the first tax year. However, the ability to receive the PTC as a lump sum for that first year is not explicitly provided for in the Working for Families tax credits (WFFTC) entitlement provisions. The proposed amendments will ensure that this PTC entitlement rule applies as intended.

Parental tax credit abatement

The PTC abatement formula was changed as part of Budget 2014 to better target the PTC rule and to align it with the way other WFFTC are abated. However, the new abatement formula and its related rules could mean that some PTC recipients, who have a parental entitlement period that overlaps 2 tax years, or whose WFFTC entitlement changes during their parental entitlement period, are subject to a larger amount of abatement than the Government intended. The Bill proposes amendments to ensure that PTC recipients in these situations are subject to the correct amount of abatement, as announced in Budget 2014.

FBT Vouchers

Employees who have received short-term charge facilities, such as vouchers, from their employer are required to include an amount for the facility in:

- their family scheme income, which is used to determine WFFTC, community services card, and student allowance entitlements; and
- in their adjusted net income, which is used to determine student loan repayment obligations.

The amount must include the amount of fringe benefit tax (FBT) paid by their employer, if any. However, an employer may refuse to, or be unable to, provide the information needed for the employee to include the correct FBT amount in their family scheme income or net adjusted income. The Bill proposes to enable employees in this situation to give a figure based on the maximum FBT rate on their short-term charge facilities.

Information sharing under an approved information sharing agreement

Section 81A of the Tax Administration Act 1994 provides for an exception to tax secrecy that allows the Commissioner of Inland Revenue to share personal information about an identifiable individual under an approved information sharing agreement (AISA) made under Part 9 of the Privacy Act 1993. The Bill proposes to extend this exception so that it allows the sharing of non-personal information under an AISA. The change will allow for a fairer and more equitable enforcement of obligations and support the integrity of the public sector.

Ancillary taxes and time bar

The Bill proposes to clarify that the time bar applies to ancillary taxes including PAYE, fringe benefit tax, resident withholding tax and non-resident withholding tax, and the approved issuer levy. The time bar provides certainty for taxpayers in respect of their past tax positions by preventing the Commissioner from increasing an amount included in a relevant return four years after the tax year in which the return has been filed (subject to certain exceptions). Therefore, the amendment will provide certainty for taxpayers filing returns for ancillary taxes.

Confirmation of annual rates for the 2016–17 tax year

The Bill sets the annual rates of income tax for the 2016–17 tax year at the same rates that apply for the 2015–16 tax year.

Remedial amendments

A number of remedial matters are addressed in the Bill. In addition to fixing minor faults of expression, readers' aids, and incorrect cross-references, the following specific issues are dealt with by:

- clarifying that the pay and allowances of Employment Relations Authority members are subject to PAYE;
- amending the taxable bonus issues rules to clarify that imputation credits attached to taxable bonus issues are not included in the available subscribed capital of a company;
- providing a cost base for shares in a company that are acquired by way of a taxable bonus issue;
- amending the imputation credit provisions relating to tax pooling transactions to ensure they work as intended;
- clarifying the priority of different methods for calculating foreign investment fund income;
- correcting cross-reference errors in the rules relating to calculation of depreciation recovery income and in the definition of "consideration";
- correcting cross-reference errors in the depreciation rules relating to partial business use of an asset, and including a saving provision to preserve a tax position taken before the Bill is introduced;
- repealing redundant foreign dividend payment provisions;
- rationalising the foreign tax credit provisions;
- repealing a remaining reference to a new start grant in the Income Tax Act 2007 as it is no longer part of the suite of responses that Government uses for a primary sector adverse event;
- ensuring the Commissioner's obligation to issue income statements does not include the issuing of statements to employees who do not have to file an income tax return when their employer fails to withhold and pay PAYE to Inland Revenue;
- providing ordering rules for the payment of R&D repayment tax when multiple loss reinstatement events take place in a single income year;
- clarifying that, when a taxpayer with a R&D loss tax credit has a loss reinstatement event for loss of continuity, the calculation of R&D repayment tax includes all share disposals and transfers that gave rise to the loss of continuity;
- amending the taxation rules for life insurance business that were introduced in 2010, including changes to clarify the treatment of investment management fees as they arise between the shareholder base and the policyholder bases for calculating tax, confirming the deductibility of interest expense in connection with reinsurance arrangements with a non-resident life reinsurer, making a number of technical changes to remove ambiguities in the current law, and dealing with other legislative housekeeping matters;
- confirming that the initial cost of repurchased shares is added to the remaining shares of the same class when shares are repurchased by a company;

- changing the formula that applies when a person changes their balance date, to ensure the calculation of the basic tax rate results in the person's tax liability being neither understated nor overstated;
- clarifying that providing transport to an employee in a work vehicle is not a fringe benefit if the vehicle is a heavy goods vehicle;
- ensuring that a disposal of livestock on the sale of a business is taxable from the beginning of the 2005–06 income year, as intended, including a savings provision to protect tax positions taken before the amendment;
- clarifying the circumstances in which an amalgamated company is able to carry forward its own tax losses after an amalgamation;
- clarifying that the calculation of the available capital distribution amount does not include deductible depreciation losses arising on a disposal of a capital asset;
- clarifying that when a debit balance of a company's imputation credit account is carried forward from one year to the next year, the debit balance is not subject to a second charge of further income tax;
- ensuring that the Commissioner is able to exercise a discretion to allow a late election by a company to make its tax losses available under the loss grouping rules;
- clarifying that a refund of income tax due to an imputation credit account company (ICA company) does not exceed the ICA company's credit balance in its imputation credit account at the end of the previous tax year;
- ensuring that a company can elect to spread its excess foreign investor tax credits to any 1 or more of the 4 years prior to the year in which the foreign investor tax credit arises;
- removing an overlap between 2 provisions in the Income Tax Act 2007 relating to the treatment of land disposed of together with other land;
- correcting a cross-reference from the definition of *non-filing taxpayer* to operative provisions in subpart RB and making minor drafting improvements to those operative provisions;
- clarifying that for income derived by a non-resident from personal services income to be exempt from New Zealand tax, the person must not be present in New Zealand for more than 92 days in a 12-month period;
- preventing inappropriate interest deductions when a limited recourse loan matures.

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**
A *Commentary* on the Bill will be made available at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview shortly after the Bill is introduced. This commentary will provide a more detailed explanation of the main proposed legislative changes in the Bill. In addition, the documents listed in Appendix One have been authored by Inland Revenue and are all publicly available at http://taxpolicy.ird.govt.nz/publications.	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**
A number of regulatory impact statements (RISs) have been prepared by Inland Revenue and are all publicly available at http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview. These RISs are listed in Appendix One. The remaining policy items in the Bill are exempt from the regulatory impact analysis (RIA) requirements, as the proposed changes result in little or no change to the status quo legislative position. A number of the items, (particularly those of a remedial nature) involve technical "revisions" or consolidations that substantially re-enact the current law to improve legislative clarity and understanding (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). The changes are therefore exempt from the regulatory impact analysis requirements.	

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?	**NO**
The Treasury's RIA team did not provide an independent opinion on the quality of the RISs, as none of the policy items discussed in the RISs are likely to have a significant impact or risk that requires certification of, or opinion on, the adequacy of the RIA and RIS.	

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**
Related parties debt remission The detailed secondary measures (regarding debt guarantees, dividend adjustments, and associated persons bad debt write offs) were not included in the RIS, *Related parties debt remission*. These were more technical matters, and did not substantially affect the discussion in the RIS.	

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?	**YES**
The *Commentary* on the Bill, which will be available at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview shortly after the Bill is introduced, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a RIS, may provide impact analysis of the proposals.	

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**

2.5.(a) Size of potential costs and benefits

The RISs listed in Appendix One and available at http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are the subject to the RIA requirements. It should be noted that for the remaining policy items in the Bill, there is little or no publicly available analysis on the size and potential costs and benefits, as these items have been assessed as having no or very minor impact on businesses, individuals or organisations.

Where appropriate, the *Commentary* on the Bill (available shortly after the Bill is introduced at: http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview) may provide some additional information on the potential costs and benefits of individual policy items.

2.5.(b) Potential for any group of persons to suffer a substantial unavoidable loss of income or wealth

This omnibus Bill contains amendments to tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses, organisations, entities and the Crown.

Analysis on the potential for any particular group or person to suffer a substantial unavoidable loss of income or wealth may be available in the RISs at the URL addresses listed above or, where appropriate, in the *Commentary* on the Bill (available at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview shortly after the Bill is introduced). For the majority of the items in the Bill, there is no analysis available that indicates that any group of persons has the potential to suffer a substantial unavoidable loss of income or wealth because of these policy changes.

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**

The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards, and the nature of regulator effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill.

For the appropriate policy items, this is discussed in more detail in the documents listed in Appendix One that are available at http://taxpolicy.ird.govt.nz/publications or where appropriate in the *Commentary* on the Bill (available at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview shortly after the Bill is introduced).

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?
Unless it has been specifically identified in the development of the policy that there may be some impact on New Zealand's international obligations, there have been no formal steps to determine whether the policy to be given effect is consistent with New Zealand's international obligations. In identifying whether there are relevant international obligations, analysts may have regard to a variety of materials and may seek input from internal international tax experts. The following items were identified as potentially having an impact on New Zealand's international obligations: • Clarification of the empowering provision for New Zealand DTAs • NRWT: Related party and branch lending These items have been considered by Inland Revenue staff with expertise in international tax matters, in light of New Zealand's obligations under its double tax agreements and in light of the OECD's Commentary to the Model Tax Convention. The OECD Commentary forms part of context in which these DTAs are internationally understood. The Minister of Foreign Affairs and Trade was also consulted in relation to the first item. The items are considered to be consistent with New Zealand's international tax obligations.

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 Māori. However, Inland Revenue policy staff who have expertise in Treaty of Waitangi and Māori matters have been involved in the preparation of this Bill. As per the GTPP (described in Part One of this statement), the inherent focus on consultation (both with Māori and non-Māori interested parties) during the development of the relevant policy measures as contained in this Bill is directly in line with the "duty to consult" principle of the Treaty of Waitangi. If it has been identified in the policy development that there is impact on Māori, consultation with Māori stakeholders is conducted. As noted above, no consultation with Māori stakeholders was conducted for the purposes of this Bill, as no significant impacts were identified.

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?	**YES**
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

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
Clause 293 would enable the Commissioner to share non-personal information under an Approved Information Sharing Agreement (AISA) made under Part 9 of the Privacy Act 1993. This expands the Commissioner's existing ability to share personal information about an identifiable individual under an AISA.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner was consulted in relation to this provision, and is supportive of the amendment.	

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 extensive external consultation on much of the policy to be given effect by this Bill, as per the GTPP (described in Part One of this statement). Please refer to Appendix Two of this statement and the documents listed in Appendix One (question 2.1) for further information on the various parties consulted for the policy items.	

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
Tax policy is developed using the GTPP (described in Part One of this statement). Therefore, the policy details are tested or assessed by the parties that have been consulted in the development of the specific policy item and, where appropriate, by internal experts. As noted above, external parties who provided comment on the proposals, and copies of the publicly released documents seeking comment on policy proposals, can be found in the appendices (Appendix Two and One (question 2.1), respectively). On most occasions, tax policy is jointly developed by Inland Revenue and the Treasury. Where there is no joint policy development, the Treasury is regularly informed or consulted in the development of the policy item.	

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**
Given the nature of tax, this Bill does contain provisions that could result in the compulsory acquisition of private property. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 50 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

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?	**NO**
Given this Bill 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 page 53 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**YES**
There are policy items in the Bill that may have a retrospective effect and, given the nature of tax, the retrospective application may have some impacts on the rights of specific taxpayers. A list of all items which are proposed to apply prior to the enactment of this bill is included in Appendix Three. Further information on the retrospective application of these amendments can be found in the *Commentary* on the Bill, which will be made available at http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview shortly after introduction of the Bill.	

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

Civil or criminal immunity

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

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

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?	NO

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

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?	NO

Appendix One: Further Information Relating to Part Two

Publicly available inquiry, review or evaluation reports question 2.1

Closely held companies
Closely held companies taxation issues, an officials' issues paper, September 2015, see
http://taxpolicy.ird.govt.nz/publications/2015-ip-closely-held-company-tax-issues/overview

NRWT: Related party and branch lending
NRWT: related party and branch lending, an officials' issues paper, May 2015, see
http://taxpolicy.ird.govt.nz/publications/2015-ip-nrwt/overview

GST current issues
GST Current issues, an officials' issues paper, September 2015, see
http://taxpolicy.ird.govt.nz/publications/2015-ip-gst-current-issues/overview

Related parties debt remission
Related parties debt remission, an officials' issues paper, February 2015, see
http://taxpolicy.ird.govt.nz/publications/2015-ip-debt-remission/overview

Loss grouping and imputation
Loss grouping and imputation credits, an officials' issues paper, September 2015, see
http://taxpolicy.ird.govt.nz/publications/2015-ip-loss-grouping/overview

Regulatory impact analysis question 2.3

Closely held companies
Review of closely held company taxation
2 December 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

NRWT: Related party and branch lending
NRWT: Related party and branch lending – NRWT changes
1 December 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview
NRWT: Related party and branch lending – bank and unrelated party lending
1 December 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

GST current issues
GST current issues
11 February 2016 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Related parties debt remission
Related party debt remission
18 August 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Loss grouping and imputation

Loss grouping and imputation credits

20 November 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Remission income, insolvency, and bankruptcy

Remission income, tax losses and insolvent individuals

9 November 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Aircraft overhaul reserves

Aircraft overhaul expenses: deductibility and timing

21 August 2015 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Clarification of empowering provision for New Zealand DTAs

Relationship between double tax agreements and anti-avoidance rules

4 February 2016 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Land tainting and council controlled organisations

Exempting councils from the land tainting tax rules

4 February 2016 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Information sharing under an approved information sharing agreement

Cross government sharing of tax information

23 February 2016 see http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview

Appendix Two: Further Information Relating to Part Three

External consultation – question 3.6

External consultation on numerous items contained in this Bill was undertaken in various forms. Information on the consultation, including the form that consultation took place, what was covered, and the nature and the extent of feedback received is available for viewing in:

- The *Commentary* on the Bill, which will be made available shortly after the Bill is introduced at: http://taxpolicy.ird.govt.nz/publications/2016-commentary-archcrm/overview.
- Public consultation documents on specific measures contained in the Bill, which are available at: http://taxpolicy.ird.govt.nz/publications/year/2015.
- Various RISs outlining consultation that was undertaken on measures in the Bill, which are available at: http://taxpolicy.ird.govt.nz/publications/2016-ris-archcrm-bill/overview.

The following is a list of all the external agencies, representative parties, organisations and groups that have been consulted in the preparation of this Bill.

Government Agencies

- Accident Compensation Corporation
- Civil Aviation Authority
- Crown Law
- Department of Internal Affairs
- Ministry of Business, Innovation and Employment
- Ministry of Foreign Affairs and Trade
- Ministry of Social Development
- New Zealand Police
- Office of the Privacy Commissioner
- Rewrite Advisory Panel
- The Treasury

Representative Organisations

- Aviation Industry Association of New Zealand
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Financial Services Council
- New Zealand Bankers' Association
- New Zealand Law Society
- Retirement Villages Association of New Zealand
- Security Industry Association

Other parties/organisations/entities

- Air New Zealand
- Airwork group
- ANZ Bank New Zealand
- ASB Bank
- Australian Taxation Office
- Australian Treasury
- Bank of New Zealand
- BDO
- Callaghan Innovation
- Chapman Tripp
- Covisory Partners
- Crowe Horwarth
- Deloitte
- Deutsche Bank
- Electronic Tax Exchange (ETX)
- EY

- Fidelity Life
- Harmoney
- Helicopters New Zealand
- John Hart
- Kiwibank
- Kookmin Bank
- KPMG
- McCulloch Partners
- New Zealand Gold Merchants
- New Zealand Steel
- OliverShaw
- Provisional Tax Finance
- PwC
- Reserve Bank of New Zealand
- Russell McVeagh
- Tax Management New Zealand
- Tax Pooling Solutions [Now PwC Tax Pooling Solutions]
- Tax Traders
- The Hong Kong and Shanghai Banking Corporation
- Wayne J French & Associates
- Westpac
- Z Energy

Appendix Three: Further Information Relating to Part Four

Retrospective application dates – question 4.3

Items shown below include application dates that are proposed to apply before the enactment of this Bill. Some of these items also include other items with prospective application dates.

Closely held companies

Clause 20 is backdated to 1 April 2008, with application for the 2008–09 and later income years. This amendment is taxpayer-friendly and aligns the law with commercial practice, and effectively validates the practice.

Clauses 56 and 262(97) apply to income years beginning on or after 1 April 2011. The amendments ensure debt remission income does not arise on a self-remission, being either a LTC owner or partner in partnership who remits debt owed to them by the company or partnership, and is taxpayer-friendly. Clause 104 clarifies that the market value of debts owed must take into account any adjustment for a credit impairment when an LTC is liquidated or elects out of the LTC regime.

Clause 119 introduces a retrospective transitional rule to ensure that income that would arise as a result of the amendment in clause 104 in the period from 1 April 2011 to the date of royal assent, is brought into the 2017–18 year in order to reduce compliance costs.

Clause 106 applies from 1 April 2011, being the date of introduction of the LTC rules. The amendment is to clarify the intended policy for the avoidance of doubt, it is not expected to affect past positions taken as it confirms current commercial practice.

GST current Issues

Secondhand goods and gold

Clause 304(5) and (6) apply the GST treatment, as amended by clause 304(3), to taxable periods within four years of the date of Royal assent. This is a taxpayer-friendly measure that preserves past positions and enables deductions to be claimed by those who have not already done so.

Zero-rating of land

Clause 310(3) and (4) apply from 1 April 2011, and clause 310(5) applies from 30 June 2014. The rules address technical errors with the existing provisions, which applied from this date.

Consideration not known at time of supply

Clause 308 contains an application clause, which preserves previous positions that are consistent with the amendment. It is therefore taxpayer-friendly.

Horse racing

Clauses 306(3) and 309(2) apply from 1 April 2012. This aligns the law with commercial practice, and effectively validates this past practice.

Bodies corporate

Clause 317 applies from 1 October 2011, and extends the period to which a savings provision applies, to now apply to taxable periods beginning on or after 1 November 2010, and ending before 3 November 2015, or including 3 November 2015. This is therefore taxpayer-friendly.

Related parties debt remission

A number of clauses apply retrospectively, to protect past tax positions taken by taxpayers in respect of debt capitalisation arrangements.

- Clauses 337, 338, 342, and 343(2), (3), (4), (5) and (8) apply from 1 April 2006.
- Clause 16, 22(1) and (9), and 57 apply from the commencement of the 2006-07 income year.
- Clauses 262(16), (17), (18), (74), (114), and (116) apply from 1 April 2008.

Bad debts

Clauses 41(2) and (3) apply from 20 May 2013 and make several retrospective amendments to the bad debt provisions to prevent inappropriate interest deductions when a limited recourse loan matures.

Loss grouping and imputation

Clauses 167, 175, 180, 181, 182, 186, 187(4) and (7), 188(4) and (6) and 262(49) apply from 1 October 2016, for the 2017-18, and later, income years. The clauses enable a person to make an election to transfer imputation credits to a company in the same group at the time of filing their annual tax return. Therefore, they should not retrospectively affect obligations despite applying to some companies with an early balance date from 1 October 2016.

Remission income, insolvency, and bankruptcy

Clauses 139, 334(2) and 334(3) apply from 1 April 2014. Retrospect effect prevents adverse outcomes arising in relation to Working for Families and student loan obligations.

Schedule 32 donee status

Clause 272(4) applies for the 2016-2017 income year and later income years. This gives certainty about when donations to an association that is granted donee status by the amendment will qualify for tax benefits. Clauses 272(1) and (2) apply from 1 April 2013, the date the relevant charity changed its name. Clause 272(3) applies from 3 December 2015, the date the relevant charity ceased operations and wound up.

Land tainting and council controlled organisations

Clauses 9, 10, 11 and 12 apply from 1 September 2015, the date on which Auckland Council established a land development entity. The amendment will prevent land held by council controlled organisations from being tainted by the land development entity.

Loss offsets for mineral miners

Clause 102, 122(1), (2), (5) and (6) apply the treatment for the 2008–09 income year and later income years beginning before 1 April 2011. This is a taxpayer-friendly change that will only apply to taxpayers who have taken that tax position or who request their return be amended to that position.

Clause 125 applies for the 2014–15 and later income years. This is a taxpayer-friendly change and the application date aligns with previous changes to this section introduced in the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014.

Working for Families Tax Credits

PTC abatement formula

Clauses 141(2) and (3), and 142 apply for dependent children born on or after 1 April 2015. This retrospective application corrects technical errors and makes clarifications to the 2014 Budget change to the Parental Tax Credit (PTC) abatement formula, which applies to these persons.

Clauses 144(4), (5) and (7), 145(2), (3) and (4), 146(2), (4), (5) and (8), and 147(2) apply from 1 April 2015. The amendments are due to the Budget 2014 PTC abatement formula changes,

and replace a reference to “56 days” with a reference to “70 days” for dependent children born on or after 1 April 2015.

PTC rule in “cross year situations”

Clause 141(1) applies from 1 April 2008. The clause ensures that a person is entitled to receive a PTC as a lump sum for the tax year of their child’s birth, where their parental entitlement period spans two tax years (a “cross year situation”). This change is a taxpayer friendly clarification. The amendment applies from the same date as the rules it amends.

Clauses 144(1), (2), (3) and (6), and 145(1) apply from 1 April 2008 as they merely clarify the policy intent of how the PTC abatement and entitlement is calculated and reflect Inland Revenue’s practice. Clauses 146(1), (2), (3) and (7), and 147(1) apply from 1 April 2014, as they are related to another amendment that took effect from this date.

FBT voucher rules

Clauses 138 and 334(1) applies from 1 April 2014. This was the date employees have been required to include short-term charge facilities in their income for social policy purposes. The amendment is taxpayer friendly. It enables (but does not require) employees, when calculating their income for WFFTC, community services card, student allowance and student loan repayment purposes, to apply the maximum FBT rate on their short-term charge facilities. Employees, who applied the maximum FBT rate since 2014 because they were unable to obtain the correct rate from their employer, will be treated as complying with the law.

Ancillary taxes and the time bar

Clause 295 applies from the date of introduction of the Bill. This will mean that the Commissioner cannot increase an amount in an ancillary tax or AIL return if 4 years have passed from the end of the tax year in which the taxpayer provides the relevant return and the introduction of the Bill (unless one of the existing exemptions applies). This date was chosen because it is the first date the amendment was publicly announced and it will provide more certainty for taxpayers.

Confirmation of annual rates for the 2016–17 tax year

The provision will apply to the 2016–17 tax year.

Remedial amendments

Remedial imputation amendments relating to tax pooling transactions

Clauses 163, 204 apply from 6 October 2009. They relate to rewrite corrections, and allow an imputation credit date when purchased tax pooling funds are used to meet an increased amount of tax that is not income tax.

Clauses 169, 209 apply from 1 April 2008. They relate to rewrite corrections, and provide for the elimination of an imputation debit when new shareholders of the company or group sell the company’s or group’s own deposited tax pooling funds to another pool user.

Depreciation recovery remedial amendments

Clauses 51 and 341 apply from 1 April 2008 and 1 April 2005 respectively, to counteract the effect of a drafting error that occurred post-rewrite of the 1994 Act. A savings provision applies for those taxpayers who have taken a tax position on the law as it existed before the Bill is introduced.

Life insurance remedial amendments

Clauses 38, 69(1), 262(6), (82) and (113) apply from 1 July 2010 the date that the life insurance changes came into force. The retrospective dates confirm the existing policy, or otherwise improve the clarity of the legislation. Clauses 61(1), 62(1), 63, 65 and 66 apply from 1 April

2015 and contain savings and validation provisions for earlier tax positions taken since 1 July 2010 by taxpayers who have relied on the law as it existed prior to the amendments.

R&D remedial amendments

Clause 148 applies for income years beginning 1 April 2016 and subsequent income years. This remedial amendment closes a potential loophole in the new research and development regime and ensures the policy operates as intended.

Company repurchasing shares

Clause 73 applies from the 2008-09 income years and changes a method used by taxpayers to adjust the cost base of their shareholding. A savings and validation provision applies to taxpayers who relied on the law before the change and have taken a tax position in a return of income before the introduction of the bill.

Rewrite issues

A number of amendments address unintended legislative changes that came about during the rewrite of the Income Tax Act. The following clauses apply from the beginning of the 2008-09 income year, and ensure that the law has the same effect as set out in 2004 Act.

- *Reduction of further income tax - double counting on debt balances* clause 179.
- *Pre-amalgamation losses* clause 124.
- *Loss-offsets – Commissioner of Inland Revenue's ability to allow late elections* clause 123.
- *Foreign investor tax credit* clause 136.
- *Income tax treatment of share repurchases* clause 73. A validation clause (73(2)) protects taxpayers who have taken the position in the rewritten Act.
- *Duplication of land provisions* clause 7.

The following clauses ensure that the law has the same effect as set out in 1994 Act. They apply from 1 April 2005, 1 April 2008 and 1 July 2009. The latter dates are to ensure that the retrospective amendments commencing from 1 April 2005 are continued, as appropriate, in the Income Tax Act 2007.

- *Definition of trading stock and section CB 2* clauses 262(106), (107), (108) and (117), and 343(6) and (7). Clauses 262(116) and 343(9) contains saving provisions to protect tax positions taken before Rewrite Advisory Panel announced its conclusions on the change.
- *Fringe benefit tax remedial amendments* clauses 33 and 341.
- *Available Capital Distribution Amount and disposals of depreciable assets* clauses 23(1), (4) and (6), and 340.

Miscellaneous

A number of minor faults of expression, readers' aids and incorrect cross-references are corrected with various retrospective application dates. These amendments will not affect the interpretation or application of the existing legislation.