Departmental Disclosure Statement

Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) 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.

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

4 December 2018

Contents

Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following legislation:

- Goods and Services Tax Act 1985;
- Income Tax Act 2007;
- Tax Administration Act 1994;
- Student Loan Scheme Act 2011; and
- Child Support Act 1991.

Broadly, the policy proposals in this Bill fall into 4 categories. The first category sets the annual rates of income tax for the 2019–20 tax year.

The second of these categories comprises proposals aimed at improving current tax settings within a broad-base, low-rate framework. This framework, helps ensure that taxes are fair and efficient, and that they impede economic growth as little as possible. It also helps keep compliance costs low and minimises opportunities for avoidance and evasion. The 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 third category relates to proposals aimed at modernising and improving the settings for the administration of social policy by Inland Revenue. This includes simplification measures relating to student loans and Working for Families.

The fourth category consists of proposal aimed at providing consistency with the broad objectives of government for international co-operation. This covers amendments to ensure that the New Zealand is able to meet its international obligations concerning automatic exchange of information.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). It is a very open and interactive engagement 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 of the GTPP 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 specific policy measures contained in this Bill. A comprehensive explanation of all the policy items is provided in a commentary on the Bill that is available at http://taxpolicy.ird.govt.nz/publications/2018-commentary-argosrrm-bill/overview.

Confirmation of annual rates of income tax for the 2019–20 tax year

The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act. The Bill proposes to set the annual rates of income tax for the 2019–20 tax year at the same rates currently specified in schedule 1, part A of the Income Tax Act 2007 (that is, confirm that the rates remain unchanged).

GST on low-value imported goods

Goods and services tax (GST) as a broad-based consumption tax is intended to apply to all consumption that occurs in New Zealand, ensuring the system is fair, efficient, and simple. However, GST is not usually collected on imported goods valued below $400 for administrative cost reasons.

When GST was introduced in 1986, few New Zealand consumers imported low-value goods directly from offshore suppliers. Therefore, the compliance and administrative costs involved in collecting GST on imported goods below the Customs *de minimis* were considered to outweigh the benefits of collection at that time.

The growth of e-commerce has meant that the volume of goods on which no GST is collected has become increasingly significant. This raises concerns about the impact that this uneven GST treatment may have on the competitiveness of domestic retailers and on future tax revenues.

The amendments proposed in this Bill address the non-collection of GST on low-value imported goods in order to maintain the broad base of New Zealand's GST system and provide a level playing field for domestic and offshore suppliers.

The non-taxation of low-value imported goods is an international issue faced by countries that have a GST or Value Added Tax (VAT) system. Since 1 July 2018, offshore suppliers selling goods valued at or below A$1,000 to consumers in Australia are required to collect and return Australian GST on these sales if their total taxable supplies to Australia exceed the A$75,000 GST registration threshold. The European Union (EU) has also introduced legislation that will require non-EU suppliers to collect VAT on low-value goods imported from outside the EU from 1 January 2021. The proposed amendments, which would apply to supplies made on and after 1 October 2019, are consistent with these international developments.

Supplies to consumers

The Bill proposes amendments to the Goods and Services Tax Act 1985 which would apply GST to supplies of "low-value goods" by non-resident suppliers to consumers in New Zealand. Low-value goods are those that are valued at or below $1,000.

Supplies to GST-registered businesses

GST would not apply to supplies of low-value goods made to New Zealand GST-registered businesses. As GST-registered businesses are not able to claim deductions for GST charged on these supplies, non-resident suppliers will not be required to provide tax invoices for their supplies of low-value goods.

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 taxable supplies to New Zealand exceed $60,000 in a 12-month period, which is the existing domestic registration threshold.

Electronic marketplaces

An operator of an electronic marketplace would be required to register and return GST on supplies of low-value goods made through the marketplace. This is intended to maximise compliance with the rules while also minimising total administration and compliance costs by reducing the number of collection entities that would be required to register. The proposed rules for electronic marketplaces are broadly consistent with those recently introduced in Australia.

Re-deliverers

"Re-deliverers" are used by consumers when the supplier or electronic marketplace does not offer delivery to New Zealand. The goods are instead shipped to an address overseas and are brought to New Zealand by the re-deliverer. Since the supplier or marketplace in this situation would not know that the final destination of the goods is in New Zealand, it would be unreasonable to require them to charge GST.

The re-deliverer will however know that the goods are to be delivered to New Zealand. Therefore, as an integrity measure, a re-deliverer would be required to register and return GST on low-value goods that it re-delivers to New Zealand if its total supplies for GST purposes (including the low-value goods it re-delivers to New Zealand consumers) exceed $60,000 in a 12-month period.

Determining the tax treatment of a supply

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

If a consumer 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 of Inland Revenue would have discretion to register the consumer and require them to pay the GST that should have been charged.

Other GST matters

The Bill proposes a number of technical and remedial amendments to the Goods and Services Tax Act 1985.

Capital raising costs

The first set of GST remedial amendments in the Bill clarify the scope of the rules allowing GST-registered persons to deduct GST incurred on costs of raising capital.

The existing law is unclear on whether a registered person can claim input tax deductions for capital raising costs in situations where the funds raised are used in refinancing the taxable activity. An amendment is proposed to clarify that input tax is deductible in such situations.

Where a capital raising transaction is carried out by a treasury company or holding company, it may be another group company that ultimately uses the funds raised in a taxable activity. The amendments clarify that input tax deductions for capital raising costs are available to the company that ultimately uses the funds in these situations.

GST treatment of vouchers

The Goods and Services Tax Act 1985 contains special rules for vouchers, tokens, and stamps. The default rule is that GST applies on the issue of a voucher (the issue basis). However, a significant exception allows the option for GST to apply on the redemption of a voucher (the redemption basis) if the issuer of the voucher and the supplier of the goods and services that it is redeemed for are separate persons and agree to use the redemption basis.

There are issues with the current criteria for when the redemption basis for vouchers can be used, in particular—

- The issue basis is the only option if the issuer and redeemer of the voucher are the same person. This is problematic in relation to cross-border transactions, as applying GST on the issue basis can give rise to either double taxation or double non-taxation of cross-border goods and services. The Bill proposes an amendment to clarify that GST applies on the redemption of a voucher and not at the time it is issued in situations where the voucher is or could be redeemed for cross-border goods and services, regardless of whether there is more than one party involved in the issue and redemption of the voucher or not.
- Where there are more than 2 parties involved (that is, where the issuer, seller, and redeemer of the voucher are different persons) the GST legislation gives rise to a technical issue about which party is liable to pay the GST. The Bill proposes an amendment to clarify that it is the entity redeeming the voucher that has the GST liability.

Treatment of arranging services relating to goods located offshore

The Bill proposes an amendment to correct an unintended change to the GST treatment of certain arranging services, resulting from an amendment that was made in 2016 to allow the rules applying GST to inbound cross-border supplies of services and intangibles to work properly.

The proposed amendment concerns services that consist of the arranging of services supplied directly in connection with goods situated outside New Zealand. The issue is that the arranging services may not be zero-rated, even though the underlying services that they arrange (such as overseas storage, handling, and logistics) will be clearly zero-rated. This is an anomalous result as the GST treatment of arranging services generally follows that of the underlying services being arranged.

The proposed amendment ensures that services that consist of the arranging of underlying services supplied directly in connection with moveable personal property located outside New Zealand at the time the underlying services are performed are zero-rated, in line with the policy intent and the previous treatment that applied prior to 1 October 2016.

Ring-fencing rental losses

Under current New Zealand tax settings, tax is applied on a person's net income. Deductions that relate to particular activities or investments are not generally ring-fenced. This means there is generally no restriction on deductions in respect of a loss-making activity or investment reducing tax on income from other sources (although there are some exceptions to this general treatment).

While rental housing is not formally tax favoured, there is an argument that it may be under-taxed given that tax-free capital gains are often realised when rental properties are sold. The fact that rental property investments are often make persistently loss-making indicates that expected capital gains are an important motivation for many investors purchasing rental property.

While interest and other expenses are fully deductible, not all of the economic income generated from rental housing is subject to tax. There is therefore an argument that, to the extent deductible expenses in the long-term exceed income from rents, those expenses in fact relate to the untaxed gain on sale, so should not be deductible unless the gain is also taxed.

Currently, investors (particularly highly-geared investors) have part of the cost of servicing their mortgages subsidised by the reduced tax on their other income sources, helping them to outbid owner-occupiers for properties.

The Bill proposes to ring-fence deductions in respect of residential rental properties to the extent the deductions exceed income from the properties. This means the excess deductions cannot be used to reduce tax on other income. The proposed rules would apply from the start of the 2019–20 income year.

Portfolio or property-by-property basis

The amendments would apply on a portfolio basis by default – meaning that investors would calculate their overall profit or loss across their residential portfolio. However, taxpayers would be able to elect to apply the rules on a property-by-property basis.

Property subject to the rules

The amendments would apply to "residential land", using the definition of "residential land" that already exists for the bright-line test. The definition includes bare land, but does not include farmland or land used predominantly as business premises.

The amendments would also not apply to a person's main home or a property that is subject to the mixed-use asset rules. Land that is identified to Inland Revenue as being on revenue account is also excluded from the proposed amendments, provided either the taxpayer is notifying the Commissioner of their rental income on a property-by-property basis, or they are notifying the Commissioner of their rental income on a portfolio basis and all properties within the portfolio are on revenue account.

The Bill proposes further exclusions for residential land owned by widely-held companies and accommodation provided to employees or other workers where it is necessary to provide that accommodation owing to the nature or remoteness of the business.

Using ring-fenced deductions

Taxpayers would be able to offset ring-fenced residential property deductions from 1 year against residential rental income in future years (from any property) or against income on the sale of any residential land. Ring-fenced deductions would be released if a taxpayer has applied the rules on a property-by-property basis and the property ends up being taxed on sale, or if a taxpayer has applied the rules on a portfolio basis and all of the properties within the portfolio are sold and were subject to tax on sale.

The Bill proposes to allow the transfer of ring-fenced deductions between companies in the same wholly-owned group, but these deductions would remain ring-fenced.

Structuring around the rules

The Bill proposes specific rules to ensure that interposed entities cannot be used to structure around the ring-fencing rules. The interposed entity rules are proposed to apply where property is held by an entity that is residential land-rich – being where over 50% of the entity's assets are residential properties.

Where this threshold is met, it is proposed that interest on borrowings relating to the entity would be treated as rental property expenditure. The interest would be ring-fenced to the extent it exceeds the appropriate proportion of the entity's profit from residential properties for the year, taking account of the total interests the person has in the entity.

If capital of a residential land-rich entity is applied to multiple purposes, the interest incurred on borrowings to fund the capital would be apportioned between the uses to which the capital is applied on a pro-rata basis. This would ensure the appropriate treatment of the interest that relates to the other (non-rental) activity.

Social policy changes

The Bill proposes 4 amendments to improve the administration of student loans, Working for Families and child support, along with a technical amendment to the day count tests for student loans to align the law with the policy intent.

Deductions from withholding income

Domestic student loan borrowers that earn income other than salary and wages have their student loan assessment calculated at the end of the year based on the amount of income earned in that year.

Some of these borrowers receive schedular, election-day, and casual agricultural income which has a similar treatment to other employment income. Employers are required to withhold tax at source from that income in the same way as PAYE is deducted from salary and wages.

The Bill proposes that student loan borrowers who receive schedular, election-day, and casual agricultural income should have student loan repayments deducted from their income by their employer in the same way a salary and wage earner does.

Interest-free student loans

Moving to Inland Revenue's new computer system, START, allows policy options that were previously discounted owing to systems constraints to be progressed – such as changes to improve the administration of interest-free loans for New Zealand-based borrowers.

Currently, student loan borrowers are charged loan interest. This interest is then written off for borrowers who are New Zealand-based.

The Bill proposes that loan interest should only be charged to overseas-based borrowers, removing the requirement to complete a subsequent write-off for those who are New Zealand-based. This would remove confusion for borrowers whose statements set out the interest charges and subsequent write-offs.

Alignment of the definitions of "income"

Both the Working for Families tax credit and student loan definitions of "income" refer to "net income" as the base income with adjustments made to include or exclude specific types of income. However, there are a number of differences between the Working for Families and student loan definitions of "income", which can lead to confusion.

The Bill proposes to align the respective definitions as appropriate by—

- Providing a separate legislative provision to specifically state that non-beneficiary income from a trust when a person is not the settlor should be included as income for Working for Families purposes (rather than captured as an "other payment"). This would align with the current student loan income definition.
- Aligning the voting interest percentage for student loans with the percentage used for Working for Families to calculate the close company net income not distributed adjustment.
- Aligning the adjustment for specific retirement savings contributions for student loans with other social policy products.
- Aligning the adjustment for depreciation loss allowed on the sale of buildings for student loans with that for Working for Families.

Student loan day count tests

The Bill proposes amendments to the day count tests used to determine whether a student loan borrower is New Zealand-based or overseas-based. The proposed amendments would ensure the rules are consistent with their policy intent and Inland Revenue's administrative practice.

Different repayment rules apply to student loan borrowers depending on whether they are New Zealand-based or overseas-based. A borrower is intended to become overseas-based if they spend at least 184 consecutive days overseas, beginning on the first day they were overseas, excluding periods in New Zealand totalling less than 31 days. Conversely, a borrower is intended to be a New Zealand-based borrower if they spend at least 183 consecutive days in New Zealand, excluding periods overseas of less than 31 days.

An unintended legislative change occurred in the rewrite of the Student Loan Scheme Act 1992 into the Student Loan Scheme Act 2011. This unintended change means that borrowers could become overseas-based after less than 6 months, although Inland Revenue's administrative practice has been to continue to apply the previous law which allowed borrowers to travel overseas for short periods of up to 6 months before becoming overseas-based.

Discretion to grant permanent child support exemption

A person can have a child as a result of being the victim of a sex offence and may be made liable to pay child support for that child. A permanent exemption from paying child support exists for the parent of a child born as a result of a sex offence. To qualify for the exemption, the offender must have been convicted.

However, there are situations when there has not been a conviction for an offence but the reality that a sex offence occurred is in little doubt.

The Bill proposes to give the Commissioner of Inland Revenue discretion to consider other information in order to grant the exemption even though there is no convicted offender. Additionally, the Commissioner would have the discretion to back date the exemption in situations where she is satisfied this would not negatively impact on a parent or carer. An exemption could not be back dated to periods before 26 September 2006 when the permanent exemption was first introduced.

The discretion would be supported by guidelines that would assist with deciding whether or not the exemption should be granted. The type of evidence that could support an offence had occurred could include a police report, medical report, or report from another agency that has already assessed the person was the victim of the offence.

The Commissioner would be obliged to revoke the exemption in situations when she subsequently becomes aware that the exemption should not have been granted – for example, when a person is found to have made a false accusation.

Sale and compulsory buy back of pre-1990 forest land emissions units

The Bill proposes an amendment to address an issue with the tax treatment of pre-1990 forest land emissions units. The issue arises when the units are securitised through a sale and compulsory buy back transaction.

The proceeds from the sale of pre-1990 forest land emissions units are generally non-taxable. However, any subsequent sales of the emissions units are taxable.

It is not appropriate to treat a transaction involving the sale and compulsory buy back of pre-1990 forest land units as a standalone sale, as that transaction amounts to a securitisation of an asset in exchange for a loan.

The proposed amendment will treat the transaction as a loan, including elements that are an excluded financial arrangement, thereby better reflecting the economic substance of the transaction.

Tax records in te reo Māori

The Bill proposes amendments to the Tax Administration Act 1994 and the Goods and Services Tax Act 1985 to allow tax records to be held in te reo Māori. The amendments codify existing Inland Revenue administrative practices regarding taxpayers holding tax records in te reo Māori.

The proposed amendments do not override the disclosure requirements in the GST Act concerning tax invoices or other similar documents provided by GST registered persons.

PAYE and employee share schemes

The Bill proposes to remove a non-tax obstacle relating to financial reporting requirements for employers electing to account for PAYE on benefits provided to employees under an employee share scheme. This potential obstacle relates to the costs an employer would need to incur to comply with financial reporting requirements relating to the provision of benefits under an employee share scheme.

Under an International Financial Reporting Standard (IFRS 2 Share Based Payment), an employer electing to withhold PAYE from income earned by an employee under the terms of an employee share scheme must, for financial reporting purposes, treat the costs of the scheme as either—

- a fixed cost which is amortised on a straight line basis (the fixed cost method); or
- an annually revalued amount, with the relevant amount then being an expense for financial reporting purposes.

The annual expense of obtaining an annual revaluation of costs of the scheme could mean that employers may elect not to withhold PAYE from benefits provided to employees under employee share schemes. The cost of establishing an employee share scheme in a way that permits the employer to treat the costs of the scheme as a fixed cost for financial reporting purposes could also impose significant non-tax compliance costs.

IFRS 2 does however permit an employer to apply the fixed cost method for financial reporting purposes if there is a statutory obligation to withhold PAYE in relation to benefits arising under an employee share scheme. The proposed amendment would allow an employer to make an irrevocable election to withhold PAYE from income earned by employees under an employee share scheme, thus satisfying the statutory obligation threshold.

Trust beneficiaries as settlors

Current legislation makes beneficiaries of a trust settlors if they transfer value to the trust. The policy intent is that the settlor definition is wide, to ensure most transfers of value to a trust are captured. However, it was not intended that beneficiaries with modest current account balances (where the trust has allocated money to them but it has not been paid out) become settlors as a result.

The Bill proposes an amendment to the definition of “settlor” in the Income Tax Act 2007 to ensure that beneficiaries of a trust do not become settlors when either—

- the trust pays a market interest rate, measured by the prescribed fringe benefit tax rate of interest, to the beneficiary to compensate them for the fact they have been allocated money which they have not received yet; or
- the amount retained in the current account with the trust at the end of the income year is no greater than $25,000.

Cash distributions from co-operative companies

In general, co-operative company law permits a co-operative company to make distributions of profits from mutual transactions between the company and its shareholders to a specific group of shareholders, provided the company’s constitution permits such a distribution. However, a rule in the Income Tax Act 2007 allowing co-operative companies to attach imputation credits to a non-deductible cash distribution of profits from mutual transactions during a year requires the relevant distribution to be made to all persons who were shareholders at any time during that year.

The Bill proposes a remedial amendment to the non-deductible cash distribution rule to clarify that a cash distribution of mutual profits in a co-operative company need not be made to all shareholders in order for imputation credits to be attached to the distribution, provided such a distribution is permitted by the company’s constitution.

An “anti-imputation streaming” rule in the Income Tax Act 2007 requires imputation credits to be attached to a dividend at the same ratio as those attached to the first dividend in a year. This rule prevents imputation credits from being attached at different ratios for multiple dividends over a year, as this could result in imputation credits being “streamed” to shareholders that are best able to use them.

Imputation credit streaming is a concern because it is counter to the objectives of ensuring that income derived through companies is taxed at the tax rates of the shareholders in the company.

To avoid such concerns, the Bill proposes that the non-deductible cash distribution rule be subject to the anti-imputation streaming rule.

Common Reporting Standard – Investment entities and corporate trustees

The Bill proposes an amendment to the implementation legislation for the Common Reporting Standard (CRS) to ensure the law works as intended.

The CRS imposes due diligence and reporting obligations on financial institutions. Information provided to Inland Revenue under the CRS implementation legislation is an integral part of the G20/OECD Automatic Exchange of Information initiative which seeks to provide a global framework for the collection, reporting, and exchange of certain financial account information relating to persons who invest outside their country of tax residence. The focus of this is to enable international cooperation in the detection and deterrence of offshore tax evasion.

The CRS definition of “financial institution” includes an investment entity that meets certain criteria. It is ambiguous as to whether or not an investment entity managed by a corporate trustee would be required to comply with the CRS. However, the policy intent, and international consensus, is that such investment entities are obliged to comply with the CRS. If not addressed, this ambiguity could therefore result in Inland Revenue not being able to meet its automatic exchange of information obligations in some instances.

Loss of earnings insurance

The Bill proposes an amendment to ensure that claims paid out under a loss of earnings insurance policy are taxable to the recipient in all circumstances, consistent with the policy intent.

The income component of claims received under a loss of earnings insurance policy has always been taxable under the common law. That principle was codified in an amendment in 2011, which addressed a question over the timing of when the income should be returned. However, the wording of the amendment has inadvertently resulted in the insurance proceeds not being taxable if the policy holder assigns the right to receive the proceeds to another person whose business was not interrupted by the event.

The proposed amendment ensures that if a policy holder assigns a loss of earnings insurance policy to another person, the income component of a claim received by the assignee will be taxable. A savings provision is also proposed to protect the historic tax positions of taxpayers that have relied on the existing law.

“Level premium” life insurance policies

The Bill proposes a technical amendment to the transitional rules that accompanied the substantive reform of the life insurance business taxation rules, to ensure the law better reflects the policy intent of those rules.

The reform of the life insurance business taxation rules provided comprehensive transitional relief for life insurance policies sold on or before 1 July 2010. The proposed amendment would preserve pricing expectations and assumptions made prior to 1 July 2010 for "level premium" life insurance policies which were sold before the taxation rules for life insurance businesses changed.

Remedial amendments

A number of minor remedial matters are also addressed in the Bill, consisting mainly of correcting minor faults of expression, reader's aids, and incorrect cross-references.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at
http://disclosure.legislation.govt.nz/bill/government/2018/.

Regulatory impact assessments

The Inland Revenue Department produced regulatory impact assessments on 20 July 2017, 7 May 2018, 1 August 2018, and 5 September 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- http://taxpolicy.ird.govt.nz/publications/type/ris
- https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments.

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 is available at http://taxpolicy.ird.govt.nz/publications/2018-commentary-argosrrm-bill/overview. The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.

For the GST on low-value imported goods proposals, the Australian Productivity Commission completed an inquiry in October 2017 on similar legislation in Australia. The Commission's analysis and findings can be found in their report *Collection models for GST on low value imported goods,* 31 October 2017, available at https://www.pc.gov.au/inquiries/completed/collection-models/report/collection-models.pdf.

Further analysis on the main policy proposals can also be found in these consultation documents:

- *GST on low-value imported goods: an offshore supplier registration system*, A Government discussion document, May 2018, available at http://taxpolicy.ird.govt.nz/publications/2018-dd-gst-low-value-goods/overview.
- *Ring-fencing rental losses*, An officials' issues paper, Inland Revenue, March 2018, available at http://taxpolicy.ird.govt.nz/publications/2018-ip-ring-fencing-losses/overview.
- *Making tax simpler – Better administration of social policy*, A Government discussion document, July 2017, available at http://taxpolicy.ird.govt.nz/publications/2017-dd-mts-9-social-policy/overview.

Relevant international treaties

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	**NO**

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES

Four regulatory impact assessments (RIAs) were prepared and are available at http://taxpolicy.ird.govt.nz/publications/2018-ria-argosrrm-bill/overview and https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments:

- *GST on low-value goods*, Inland Revenue and the New Zealand Customs Service, 20 July 2017;
- *GST on low-value imported goods*, Inland Revenue and the New Zealand Customs Service, 5 September 2018;
- *Ring-fencing rental losses*, Inland Revenue, 1 August 2018; and
- *Securitization of pre-1990 forestry emissions units*, Inland Revenue, May 2018.

The remaining policy items in the Bill are exempt from the 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). Other items repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities, or involve a very small number of people in practice.

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

The regulatory impact assessment *GST on low-value imported goods* (5 September 2018) was reviewed by Treasury's RIA Team with assistance from quality assurance reviewers in Inland Revenue and the New Zealand Customs Service. Appendix one sets out the opinion of the joint panel on the quality of the impact statement.

The other regulatory impact assessments identified in 2.3 did not meet the threshold for receiving an independent opinion on the quality of the statements from Treasury's RIA Team.

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?	NO

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

No significant further impact analysis has become available for any aspects of the policy to be given effect by the Bill. Therefore, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 29 of the *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013).

However, the commentary on the Bill, available at http://taxpolicy.ird.govt.nz/publications/2018-commentary-argosrrm-bill/overview, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a RIA, 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 RIA listed under 2.3 provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are 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 of potential costs and benefits, as these items have been assessed as having no or a very minor impact on businesses, individuals, or organisations.

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

This omnibus taxation Bill contains amendments to the tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses and organisations. Analysis on the potential for any particular group of persons to suffer a substantial unavoidable loss of income or wealth may be available in the RIA listed under 2.3 or, where appropriate, in the commentary on the Bill. Specifically, the amendments in the Bill applying GST to low-value imported goods would impose costs on consumers, electronic marketplaces, re-deliverers and non-resident suppliers of goods. Ring-fencing rental losses would impose costs on residential property investors that negatively gear, and may impose costs on renters – though there is significant uncertainty about the net impact of this and other policies on the rental market.

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 may be discussed in more detail in the RIAs listed under 2.3 or, where appropriate, in the commentary on the Bill.

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 relevant international obligations, there have been no formal steps to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations. The Ministry of Foreign Affairs and Trade was consulted on the GST on low-value imported goods proposals to determine whether there may be any issues for New Zealand's international obligations relating to free trade agreements or the World Customs Organisation. The proposed amendments to the implementation legislation for the Common Reporting Standards (clauses 73 and 74) are intended to ensure that the legislation is consistent with New Zealand's international obligations for automatic exchange of information, and so deliberate steps have been taken in the drafting of the amendments to ensure this is the case.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
Unless it has been identified in the development of the policy that there may be implications for the rights and interests of Māori protected by the Treaty of Waitangi, no formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi. Under the GTPP (described in part one of this statement), there is focus on consultation (both with Māori and non-Māori interested parties) during the development of the relevant policy measures contained in the Bill. This is directly in line with the "duty to consult" principle of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	**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 available on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-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)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Clause 72 extends the knowledge offences existing under the Tax Administration Act 1994 to include:

- knowing failure of a supplier to issue a receipt relating to a supply of low-value imported goods on which GST has been charged (as would be required under proposed new section 24BAB in clause 25); and
- knowing failure to take reasonable steps to ensure that GST information relating to a supply of low-value imported goods is included on Customs documents (as would be required under proposed new section 24BAC in clause 25).

Other provisions in the Bill do not create offences or penalties per se, but the existing penalties regime for knowledge offences in the Tax Administration Act 1994 would apply under the proposed amendments applying GST to low-value imported goods when a person deliberately provides incorrect information for the purpose of avoiding GST.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES

An initial draft of these provisions was provided to the Ministry of Justice. In the initial draft of the Bill, the new offences were proposed to be absolute liability offences. The Ministry of Justice raised concerns that making these offences absolute liability offences would not be appropriate, as there may be instances in which a defence of absence of fault should be available. To address these issues, the drafting of the provisions was revised so that these offences would be knowledge offences, meaning that an offence would only be committed if the supplier knowingly failed to meet the requirements of proposed new section 24BAB or 24BAC.

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

Clauses 73 and 74 amend the Tax Administration Act 1994 to ensure that investment entities that are managed by a corporate trustee are required to provide certain financial account information to Inland Revenue that is necessary for Inland Revenue to fulfil its automatic exchange of information obligations.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

The Privacy Commissioner was not consulted on these provisions, given that the amendments merely clarify the original policy intent.

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 in relation to much of the policy to be given effect by this Bill, as per the GTPP (described in part one of this statement). Refer to appendix two of this statement and the documents listed under questions 2.1 and 2.3 for further information on the various parties consulted and the form in which consultation was undertaken 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
All proposals in the Bill have been reviewed by internal operational subject matter experts under Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out. None of the measures in the Bill have required formal testing. Inland Revenue and Customs carried out targeted consultation with interested parties on some of the technical details and legislative design of the GST on low-value imported goods proposal. More information about the concerns raised by stakeholders about the workability of the proposals is included at appendix two.	

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 pages 50 and 51 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 pages 53 and 54 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. Barring some very minor remedial items with retrospective application dates (the retrospectivity of which is not expected to adversely affect taxpayers), a list of items which are proposed to apply prior to the enactment of this Bill is included in appendix three. More information on the retrospective application of these amendments can be found in the commentary on the Bill, which is available at http://taxpolicy.ird.govt.nz/publications/2018-commentary-argosrrm-bill/overview.	

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**
The provisions in the Bill do not create or amend any strict or absolute liability offences. However, failure of a person who becomes liable to register for GST under section 51 of the Goods and Services Tax Act 1985 as a result of the proposed amendments applying GST to low-value imported goods would be subject to the existing penalties regime for absolute liability offences in the Tax Administration Act 1994 (failure to register for GST as required under section 51 of the Goods and Services Tax Act 1985 is an existing absolute liability offence, as is failure to provide information to the Commissioner or any other person when required to do so by a tax law).	

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?	**YES**
The Bill contains provisions that provide the Commissioner of Inland Revenue with decision making powers in relation to a person's rights or obligations. Further information on these provisions is set out in appendix three.	

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**
For the GST proposals, clause 17 would require consumers to seek GST refunds from the supplier in situations where the proposed mechanisms for preventing double taxation fail and the consumer ends up paying GST twice (to the supplier and to Customs). The supplier would be able to make an adjustment in its GST return so that it can get a refund of the amount collected from Inland Revenue (see clause 26(4)). Imposing the requirement to provide a refund when double taxation occurs on the supplier may attract some criticism, as some may see it as the responsibility of government (not the supplier) to provide relief from double taxation where it occurs.	

Appendix One: Further Information Relating to Part Two

Independent opinion on quality of impact analysis – question 2.3.1

A joint panel from The Treasury, Inland Revenue and the New Zealand Customs Service reviewed the regulatory impact assessment *GST on low-value imported goods* (5 September 2018) and provided the following assessment on its quality:

> *A joint panel from The Treasury, Inland Revenue, and Customs considers that the Regulatory Impact Assessment partially meets the quality criteria.*
>
> *The RIA could probably be clearer and more concise, particularly as to the nature and implications of the agency disagreement as to the value threshold below which offshore suppliers would be required to collect GST.*
>
> *However, it seems unlikely that this would make the decision itself any more clear-cut, since the adoption of either threshold will entail downsides as well as upsides. It is also evident that consumer and supplier behaviour will be a major driver of the outcome in practice, particularly in terms of revenue collected. It will therefore be important, as set out in the RIA, to collect data and information from different sources, including experience in other jurisdictions, to inform ongoing monitoring and possibly review of the new approach.*

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 the consultation took, what was covered, and the nature and the extent of feedback received is available in:

- The commentary on the Bill, which is available at http://taxpolicy.ird.govt.nz/publications/2018-commentary-argosrrm-bill/overview.
- Public consultation documents on specific measures contained in the Bill, which are available at http://taxpolicy.ird.govt.nz/publications/type/consultation-document.
- Submissions on the consultation document *GST on low-value imported goods: An offshore supplier registration system*, which are available at http://taxpolicy.ird.govt.nz/publications/2018-other-submissions-gst/overview.
- Regulatory impact assessments outlining consultation that was undertaken on the various measures contained in the Bill, which are available at http://taxpolicy.ird.govt.nz/publications/2018-ria-argosrrm-bill/overview.

The following is a list of the main government bodies (excluding New Zealand government departments), representative organisations, and other groups, organisations and entities that have been consulted in the preparation of this Bill.

Government bodies

- Housing New Zealand Corporation
- New Zealand Post

Representative organisations

- Auckland Property Investors Association
- Booksellers NZ
- Business and Industry Advisory Committee to the OECD
- BusinessNZ
- Chartered Accountants Australia and New Zealand
- Co-operative Business New Zealand
- Conference of Asia-Pacific Express Carriers
- Corporate Taxpayers Group
- Customs Brokers and Freight Forwarders Federation of New Zealand, Inc
- New Zealand Property Investors' Federation
- Real Estate Institute of New Zealand
- Retail NZ

Other parties/organisations/entities

- Alliance Group
- Alibaba
- Amazon
- Chapman Tripp

- Creatoi
- Deloitte
- eBay
- Ernst & Young
- Etsy
- Fishpond
- KPMG
- Meridian Global Services
- PricewaterhouseCoopers
- SKYCITY Entertainment Group Limited
- Tandem Group Limited
- Taxamo
- Trade Me
- Transaction Services Group
- Selected holders of pre-1990 forest land emissions units

Other testing of proposals – question 3.7

Some of the marketplaces consulted with raised concerns about the workability of the proposals for collecting GST on low-value imported goods.

In particular, a number of marketplaces commented that they may not have sufficient information to accurately determine the GST treatment of a supply made by a third party on their platform – for instance:

- the ship-from location of the goods;
- whether or not the customer is a GST-registered business;
- the total price paid for the goods (including any charges for delivery); and
- the country of importation (in other words, whether or not the delivery address is in New Zealand).

A number of features have been incorporated into the design of the proposal in order to address these concerns. Such features include:

- for marketplace operators, basing whether or not they are required to collect GST on a supply of goods made by a seller on its marketplace on the residency of the underlying supplier instead of the location the goods are shipped from (clause 35(4)), and setting out a range of proxies that can be used to determine the supplier's residency based on information that marketplace operators may have about their sellers (see proposed new section 60G(2) and (5) in clause 37);
- the proposed Commissioner of Inland Revenue discretions to agree or prescribe an alternative method for determining the GST treatment of supplies (clauses 11 and 37). This may cover allowing the marketplace operator to use a reasonable proxy for the country of importation where the information about the customer's delivery address is not available to the marketplace operator, alternative methods for determining the residency of underlying suppliers, and alternative methods for determining whether the supply is to a GST-registered business;
- allowing certain businesses to charge GST on supplies of high-value goods to consumers (proposed new section 10C in clause 13), so that these businesses are not required to distinguish between goods that are above the threshold versus those that are below;

- allowing the use of a fair and reasonable method for converting foreign currency amounts to New Zealand dollars to determine whether the registration threshold has been exceeded, and providing some flexibility in the choice of the exchange rate used to determine the amount of GST required to be returned (that is, the business has the choice of using the conversion rate at the time of supply, the end of each taxable period, the time of filing its GST return, or another time as agreed with the Commissioner of Inland Revenue – see clause 39 which extends the scope of section 77(3) of the Goods and Services Tax Act by amending section 77(2));
- allowing marketplace operators to claim bad debt deductions in situations where they do not receive the payment for the goods from the customer and the supplier fails to pay the amount of GST to the marketplace operator, provided that the operator also does not collect its facilitation fee or commission from the supplier (clause 30);
- allowing businesses to issue a tax invoice in respect of a supply (so that a GST-registered recipient can claim a deduction for the GST charged in its GST return), provided that the value of the supply does not exceed $1,000 – effectively allowing some businesses to charge GST by default instead of necessarily in all cases having to distinguish between business-to-business and business-to-consumer supplies (clause 23).

It is expected that the above changes will go some way towards addressing stakeholders' concerns about the complexity of the proposals.

Nevertheless, the proposals will involve some complexity and costs for offshore suppliers, marketplace operators and re-deliverers (some more so than others). It is not entirely clear whether these compliance costs will lead to behavioural changes by some parties that are not intended by the policy (such as changes to marketplace business models), however some parties have indicated that, depending on the final design of the rules, this may be a consequence.

Appendix Three: Further Information Relating to Part Four

Retrospective effect – question 4.3

Items shown below include application dates that are proposed to apply before the enactment of this Bill.

GST matters

Clause 21(1) clarifies the scope of the rules allowing GST-registered businesses to make input tax deductions for GST on capital raising costs where the capital raising is undertaken to finance a taxable activity. Given that the proposed amendments are intended to be a mere clarification of the rules and are taxpayer-favourable, the amendments are proposed to apply on and after 1 April 2017, being the date the rules first came into force. However, a savings provision is proposed in clause 21(2) to protect tax positions taken prior to the date of enactment of the Bill.

Clause 15(1) corrects an unintended change resulting from an amendment made in 2016. The 2016 amendment inadvertently resulted in certain arranging services that were previously zero-rated potentially being made subject to GST at the rate of 15%. The proposed amendment is taxpayer-favourable and is proposed to apply from 1 October 2016, being the date that the 2016 amendment applied from.

Student loan day count tests

Clauses 84 and 85 amend the day count tests for determining whether a student loan borrower is New Zealand-based or overseas-based to correct an unintended legislative change that occurred in the rewrite of the Student Loan Scheme Act 1992 into the Student Loan Scheme Act 2011. The unintended change from the rewrite in 2011 means that borrowers could become overseas-based after having been outside New Zealand for less than six months, whereas the 1992 Act allowed borrowers to travel overseas for short periods of up to six months before becoming overseas-based. The amendment is proposed to apply with effect from 1 April 2012, being the date the Student Loans Scheme Act 2011 came into force. This retrospective application date is considered to be appropriate because the proposed amendment is favourable to student loan borrowers and is consistent with the policy intent as well as Inland Revenue's administrative practice.

Discretion to grant permanent child support exemption

The existing child support exemption for victims of sex offences applies only to victims of sexual crimes where an offender has been convicted. Clause 77 proposes to give the Commissioner of Inland Revenue discretion to consider other information in order to grant the exemption in situations where there is no convicted offender. The Commissioner would have the discretion to backdate the exemption in situations where she is satisfied this would not negatively impact on the exempted person or another parent or carer. However, this discretion would not extend to periods before 26 September 2006 when the permanent exemption was first introduced.

Sale and compulsory buy back of pre-1990 forest land emissions units

Clauses 44, 45, 47, 48, 52 and 53 amend the Income Tax Act 2007 to remove a tax barrier to sale and buy back transactions of pre-1990 forestry emissions units. The current rules treat a sale and compulsory buy back of pre-1990 forestry emissions units as a disposal for tax purposes. However, economically the transaction is a loan or lease of property, and therefore should not be treated as a taxable sale. The amendment (which is taxpayer-favourable) is proposed to apply to transactions entered into by taxpayers in the 2018–19 and subsequent income years.

Common Reporting Standard – Investment entities and corporate trustees

Clauses 73 and 74 amend the provisions in the Tax Administration Act 1994 relating to the Common Reporting Standard (CRS). These provisions require financial institutions to provide certain financial account information to Inland Revenue that is required under New Zealand's Automatic Exchange of Information obligations.

The relevant provisions are not clear on whether an investment entity managed by a corporate trustee would be required to comply with the CRS. However, the policy intent, and international consensus, is that such investment entities are obliged to comply with the CRS. If not addressed, the ambiguity in New Zealand's legislation may therefore result in Inland Revenue not being able to meet its obligations under the G20/OECD's Automatic Exchange of information initiative in some cases.

The Bill proposes to clarify that investment entities managed by corporate trustees are required to comply with the CRS with effect from 1 July 2017, being the original application date for the CRS rules.

Loss of earnings insurance

Clause 42 corrects an unintended consequence arising from an amendment in 2011 that clarified the timing of when income from claims received under a loss of earnings insurance policy should be returned. The wording of the 2011 amendment inadvertently resulted in the insurance proceeds not being taxable if the policy holder assigns the right to receive the proceeds to another person whose business was not interrupted by the event leading to the insurance claim. The proposed amendment ensures that if a policy holder assigns a loss of earnings insurance policy to another person, the income component of a claim received by the assignee will be taxable. The proposed amendment is retrospective to 1 July 2010 to ensure the law works as intended. However, a savings provision is also proposed to protect the historic tax positions of taxpayers that have relied on the existing law.

"Level premium" life insurance policies

Clause 54 amends the transitional rules for life insurance businesses to preserve transitional relief for policies sold on or before 30 June 2010 that provide for an increase in premiums as a direct result of an increase in the amount of life cover that does not exceed the greater of 3% or the percentage increase in the Consumer Price Index. The proposed amendment is taxpayer-favourable and is proposed to apply on or after 1 July 2010, being the original application date for the reforms to the rules for taxing life insurance businesses.

Significant decision-making powers - question 4.6

GST on low-value imported goods

Clause 11 would give the Commissioner of Inland Revenue the power to prescribe or agree with a supplier of low-value imported goods on the use of an alternative method for determining whether a supply is made to a GST-registered person.

Clause 37 would give the Commissioner the power to prescribe or agree to the use of a method for an electronic marketplace operator or a re-deliverer to make conclusions relevant to whether they are the deemed supplier of low-value goods, and/or the amount of GST that is payable, in situations where there is insufficient commercially available information or where the relevant information provided by another party may not be accurate.

When exercising the discretion, the Commissioner would take into account the commercially relevant information that is available to the person and the reliability of this information, the compliance costs of the person and mechanisms the person has to prevent and address situations where incorrect information is provided.

Proposed new section 10C(4) and (5) (clause 13) would provide the Commissioner of Inland Revenue with a power to allow a supplier to charge GST on high-value goods supplied to consumers in situations where the supplier may not meet the ninety five percent test in proposed section 10C(1), but the Commissioner is nevertheless satisfied that allowing the supplier to charge GST on high-value goods poses a low fiscal risk. Such discretion may be exercised in situations where:

- the ninety five percent test is not met owing to a minor or one-off discrepancy; or
- the supplier is unable to determine its sales of low-value goods as a proportion of its total supplies of goods to New Zealand consumers but, on the basis of evidence that is available, the supplier is able to satisfy the Commissioner that such sales are likely to be at least ninety five percent of its total supplies of goods to New Zealand consumers; or
- the supplier consistently makes supplies of high-value goods to consumers in excess of the five percent threshold but the proportion of such supplies is not large (for example, is only around ten percent) and the supplier has a good tax compliance history.

These powers are intended to reduce compliance costs on offshore suppliers, marketplaces and re-deliverers in situations where they are unable to apply the proposed rules due to insufficient commercially available information, or where the compliance costs to the supplier in distinguishing between low-value and high-value goods are likely to be disproportionate to the revenue risk involved in allowing them to charge GST on high-value goods.

Where the person has a safe harbour agreement with the Commissioner under the proposed power in clause 37, they would not be liable for additional GST if they have relied on incorrect or misleading information and as a result have underpaid GST.

There may be situations where a supplier has not returned GST on a supply of goods to a consumer because the consumer has provided false or misleading information. In such situations, the Commissioner may exercise her discretion in clauses 7(3) to (8) and 32(2) to register the consumer for GST and require them to pay the GST that should have been returned if the consumer knowingly provided information that was false, altered or misleading. This would apply when the behaviour is repeated or the amount of tax at stake is substantial.

To deal with situations where an electronic marketplace operator has underpaid GST as a result of relying on incorrect or misleading information provided by an underlying supplier, clauses 7(9) and 32(3) propose to give the Commissioner discretion to register the underlying supplier and require them to pay the GST that should have been returned. The discretion would apply in situations where the marketplace operator has relied on a method set out in clause 37 in accordance with the requirements of proposed section 60G, or on an alternative method agreed with or prescribed by the Commissioner, and the provision of incorrect or misleading information by the underlying supplier is repeated or the amount of tax at stake is substantial.

Unlike the similar Commissioner discretion to register a consumer that has provided incorrect or misleading information and require them to pay the GST that should have been returned, a requirement for the incorrect or misleading information to have been provided for the purpose of avoiding GST being returned on the supply is not proposed. This is because the underlying supplier's intention will be difficult to establish in practice.

These powers would ensure the Commissioner has the ability to collect unpaid GST in situations where the supplier for GST purposes has correctly relied on a method for determining the GST treatment of a supply that is set out in the legislation or where a marketplace operator or redeliverer is protected by a safe harbour agreement. The proposed discretion to register an underlying supplier that has provided incorrect or misleading information would not apply where an agreement has not been made and the marketplace operator has not used a default method set out in clause 37 to determine the GST treatment of the supply or the amount of GST that is payable. This is to ensure there is a clear hierarchy where the marketplace operator is the supplier for GST purposes, and therefore has incentives to prevent an incorrect GST treatment from arising.

Discretion to grant permanent child support exemption

Clause 77 would give the Commissioner of Inland Revenue discretion to grant a permanent child support exemption to a person who has become a parent as a result of a sexual crime committed against him or her. The proposals would give the Commissioner of Inland Revenue discretion to consider other information in order to grant the exemption in situations where there is no convicted offender (the existing exemption applies only to victims of sexual crimes where an offender has been convicted). This would better support the policy intent that a person should not be responsible for legal obligations resulting from a crime committed against him or her.

The discretion would be supported by guidelines that would assist with deciding whether or not the exemption should be granted. The type of evidence that could support an offence had occurred could include a police report, medical report, or report from another agency that has already assessed the person was the victim of the offence.

The Commissioner would also be obliged to revoke the exemption in situations when she subsequently becomes aware that the exemption should not have been granted – for example, when a person is found to have made a false accusation.