

Departmental Disclosure Statement

Taxation (Annual Rates for 2020–21, Feasibility Expenditure, 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.

28 May 2020.

Contents

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 10

Part Three: Testing of Legislative Content..... 13

Part Four: Significant Legislative Features 16

Appendix One: Further Information Relating to Part Two..... 18

Appendix Two: Further Information Relating to Part Three 19

Appendix Three: Further Information Relating to Part Four 21

Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following legislation:

- Income Tax Act 2007;
- Tax Administration Act 1994;
- Goods and Services Tax Act 1985;
- Student Loan Scheme Act 2011;
- KiwiSaver Act 2006;
- Companies Act 1993;
- Land Transfer Act 2017;
- Social Security Act 2018;
- Accident Compensation Act 2001;
- Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017; and
- Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018.

Broadly, the policy proposals in this Bill fall into 3 categories. The first category sets the annual rates of income tax for the 2020–21 tax year.

The second category 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 fair, which is crucial to encouraging voluntary compliance. Proposals in this category include amendments to the income tax treatment of feasibility expenditure and land.

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 tax administration, the goods and services tax regime, KiwiSaver and social policy rules administered by Inland Revenue. As well, the third category contains remedial amendments to the Companies Act 1993 and the Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017.

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. Further information on the GTTP can be found at <https://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 <https://taxpolicy.ird.govt.nz/publications/2020-bill-commentary-arferm-bill/overview>.

Setting the annual rates of income tax for the 2020–21 tax year

The Income Tax Act 2007 requires the rates of income tax to be set each year by an annual taxing Act. The Bill proposes that the annual rates of income tax for the 2020–21 tax year be set at the rates currently specified in schedule 1, part A of the Income Tax Act 2007 (that is, the rates remain unchanged).

Feasibility and other expenditure

The Bill proposes amendments to clarify when taxpayers are able to deduct expenditure incurred in considering the feasibility of making investments in assets or new business models. The change is the first of a number of tax measures the Government is implementing to support its Economic Strategy.

The Bill allows taxpayers to deduct, in equal proportion over a 5-year period, expenditure incurred in completing, creating, or acquiring property if that property is abandoned prior to completion and would have been depreciable property if it had been completed.

The rule also applies to feasibility expenditure incurred by taxpayers in creating, completing, or acquiring property that would typically be taxable if sold, such as revenue account property like trading stock.

Deductions start in the year in which the taxpayer abandons further work on the property.

A condition of deductibility is that the taxpayer is not able to deduct the expenditure under another rule in the Income Tax Act 2007.

The rule overrides the capital limitation rule, which prohibits tax deductions for expenditure on assets that have an enduring role in the taxpayer's business.

The changes to the tax treatment of feasibility expenditure respond to private sector concerns following the decision in *Trustpower Ltd v Commissioner of Inland Revenue* [2016] NZSC 91, which potentially limited deductibility of expenditure incurred on assets that are subsequently abandoned. The proposed amendments are directed at ensuring tax is not a barrier for businesses seeking to invest in new assets.

Immediate deduction for feasibility expenditure

The amendments also provide, as a compliance cost savings measure for small-to-medium-sized enterprises, an immediate deduction for feasibility expenditure incurred in creating, completing, or acquiring depreciable property or revenue account property if the total of such expenditure for the income year is \$10,000 or less. The deduction applies if the taxpayer is unable to deduct the expenditure elsewhere under the Act.

Integrity measure for certain property

As an integrity measure, amounts deducted for property that is later completed, created, or replaced are treated as income in the year in which the property is completed or

created, or a similar asset is acquired. The amount to be returned as income equals the direct costs for that asset. The requirement to return as income amounts previously deducted does not apply to expenditure that has been immediately deducted under the \$10,000 *de minimis* rule.

The amendments apply to qualifying expenditure incurred in the 2020–21 and later income years.

Changes to the land rules

The Bill contains proposals arising out of the first tranche of the Government's review of the current land rules. The objective of this review is to improve the efficient use of land, and ensure that the current tax settings are fair, balanced, and support productive investment.

Habitual buying and selling of property

The Bill proposes amendments that will tighten the current rules that relate to habitual buying and selling of homes and business premises. There are concerns that the current regular pattern restrictions allow taxpayers who habitually buy and sell land to structure around existing rules. The amendments will ensure that taxpayers cannot structure around the rules by using different people or entities to carry out separate transactions, or by varying what is done to the land in each transaction so that there is no "pattern". The proposed amendments demonstrate the Government's commitment that the land rules capture speculators.

Deductibility of revenue account property

The Bill also proposes an amendment to clarify that the cost of revenue account property (i.e. the cost of acquisition and capital improvements) is deductible, even where it was not known at the time that the costs were incurred that the property would be subject to tax on sale, or where the property was used privately while it was held.

Changes to the Land Transfer Tax Statements

People buying and selling property are currently required to complete up to 3 forms:

- the Land Transfer Tax Statement (LTTS);
- the Residential Land Statement; and
- the Residential Land Withholding Tax Declaration.

The content of the LTTS is largely prescribed within the Land Transfer Act 2017 and changes must be made by legislative amendment. Conversely, the requirements for both the Residential Land Statement and the Residential Land Withholding Tax Declaration forms may be altered without legislative amendment to primary legislation.

This Bill provides that the content of the LTTS be moved from the Land Transfer Act 2017 to regulations. This will bring the requirements for the LTTS into alignment with other information requirements in the Land Transfer Act 2017. The transitional provisions ensure the current requirements will remain in place until such time as regulations are made.

Income tax treatment of leases subject to NZ IFRS 16

New Zealand Equivalent to International Financial Reporting Standard 16 Leases (NZ IFRS 16) sets out the accounting treatment of leases by entities with IFRS reporting obligations for income years starting on or after 1 January 2019.

The Bill proposes to allow taxpayers who apply NZ IFRS 16 to more closely align their tax treatment with their accounting treatment for certain operating leases. As NZ IFRS 16 typically slightly accelerates expenditure compared with the previous treatment, the Bill proposes certain exclusions and adjustments (rather than complete alignment) to ensure that taxpayers choosing this proposed method do not obtain a significant tax timing advantage over taxpayers who continue to use the existing rules.

The amendments apply from income years starting on or after 1 January 2019 to align with the commencement date of NZ IFRS 16.

Purchase price allocation

The Bill proposes amendments to the rules governing how parties to the sale of 2 or more assets with different tax treatments (a “mixed supply”) allocate the total sale/purchase price between the various assets, for tax purposes. The objective of the amendments is to prevent an overall revenue loss when sellers and buyers adopt different price allocations that minimise their own tax liabilities.

Specifically, the Bill includes the following requirements:

- If the parties agree an allocation, they must follow it in their tax returns.
- If the parties cannot agree an allocation, the seller determines the allocation, and notifies both the buyer and Inland Revenue within 2 months of the change in ownership of the assets. However, the seller must allocate amounts to taxable property (depreciable property, revenue account property, financial arrangements) such that there is no further loss on the sale of that property.
- If the seller does not make an allocation within the 2-month timeframe, the buyer must determine the allocation, and notify both the seller and Inland Revenue of it.
- Inland Revenue may challenge an allocation if it believes it does not reflect market values.
- The purchase price allocation rules will not apply to a transaction if the total purchase price is less than \$1 million, or the buyer’s total allocation to taxable property is less than \$100,000.

The amendments will apply to sales agreements entered into on or after 1 April 2021.

Research and development tax credits: capital expenditure eligibility

The Bill proposes to insert an intention test into the criteria that determine when capital account expenditure incurred to create depreciable tangible property is eligible for the research and development (R&D) tax credit. The test is aimed at excluding such expenditure where a claimant intends to use the property for a non-R&D purpose. This test will require claimants to assess not just how the asset is being used in the year a tax credit claim is made, but also how they intend to use the asset over its life.

The amendment also adds a requirement that, to be eligible, expenditure to create depreciable property must be on a core R&D activity. This requirement is aimed at preventing a claimant from circumventing the usual rules requiring assets used in R&D

to be depreciated over time. For example, this requirement would prevent a person from claiming the up-front cost of constructing a machine in-house, where the machine does not involve any new technology and could be purchased elsewhere.

The proposed amendments mean that expenditure that contributes to the cost of depreciable tangible property will be eligible only if the asset is created as a result of a core R&D activity and only if the property is used, and is intended to be used, solely for R&D for the lifetime of the asset.

Granting overseas donee status to additional charities

The Bill proposes to amend the Income Tax Act 2007 by adding 3 charities to the list of donee organisations in schedule 32. New Zealand charities that support activities overseas must be listed in schedule 32 for their donors to be eligible for tax benefits (in particular, the donation tax credit). The proposed new additions to schedule 32 are Active Hearts Foundation, Kiwilink, and Shimshal Trust.

Mycoplasma bovis

The Bill proposes to allow dairy and beef cattle farmers that have derived unexpected taxable income as a result of their herd being culled (in pursuit of eradicating *Mycoplasma bovis* from New Zealand), to evenly spread that income forward over 6 years. This will allow the taxable income to better match the replacement cost of the farmer's cattle herd.

This amendment supports a core principle of the Biosecurity Act 1993, that no person should be better or worse off because of the Crown's use of its powers under that Act to eradicate an organism.

The Bill proposes that the amendment will apply retrospectively from the 2017–18 income year as the first culls began in late 2017. Standard tax rules would continue to apply to the farmers' other income. It is anticipated that up to 50 farmers could be impacted by this proposal.

GST on outbound mobile roaming services

The Goods and Services Tax Act 1985 contains special rules for supplies of telecommunications services. Under these special rules, outbound mobile roaming services received by a New Zealand resident travelling overseas are zero-rated (subject to GST at the rate of 0%) or not subject to GST. Conversely, inbound mobile roaming services received by someone travelling in New Zealand may be standard-rated (subject to GST at the rate of 15%) but are generally not subject to GST.

The Bill proposes amendments to standard-rate outbound mobile roaming services received by New Zealanders overseas, and make inbound mobile roaming services received by non-residents in New Zealand either zero-rated or not subject to GST. The proposed amendment applies from 1 April 2021.

GST credit notes

The Bill proposes 2 amendments to ensure that a supplier that issues a GST credit note to correct a mistake in a previous GST return receives similar outcomes to a supplier that applies to the Commissioner to amend the assessment for the original GST return.

The first proposed amendment will allow a supplier to issue a credit note to provide the correct amount of GST adjustment in cases where they have incorrectly charged 15% GST on a supply of goods or services which was, in fact, a zero-rated supply (such as

an export) or an exempt supply (such as a financial service). In order to align with existing commercial practices, the proposed amendment would apply retrospectively from 1 April 2012.

The second proposed amendment applies time limits for issuing a credit note for a supply made in an earlier period. The proposed time limits for issuing a credit note will align with the “time bar” that applies to GST refunds which are made through amendments to GST assessment. The proposed amendment would apply from the date that the Bill is introduced.

Portability of Australian unclaimed superannuation money

The Bill would extend the definition of “Australian complying superannuation scheme” in the KiwiSaver Act 2006 and Income Tax Act 2007 to include the Australian Commissioner of Tax in their capacity as the holder of unclaimed superannuation money. This would mean unclaimed superannuation money transferred from the Australian Taxation Office (ATO) to a KiwiSaver scheme would be covered by the existing rules applying to retirement savings transferred from an Australian superannuation scheme to a KiwiSaver scheme.

To enable the transfer of unclaimed superannuation money from the ATO, amendments are also required to Australian legislation and to the Trans-Tasman Retirement Savings Portability Arrangement between New Zealand and Australia. Therefore, the application date for the portability amendments in the Bill will be same as the date stipulated in an exchange of diplomatic notes between New Zealand and Australia to amend the Arrangement. These notes would be exchanged after amendments have been enacted in both New Zealand and Australia.

Remedial amendments and maintenance corrections

A number of remedial matters are also addressed in the Bill, including:

- several remedial amendments to the R&D tax credit regime to align the legislation with policy intent and improve the administration of the regime;
- clarifying that the minors’ income tax exemption does not apply to beneficiary income paid to a minor;
- requiring cash dividends be assessed on a cash basis;
- clarifying a taxpayer’s ability to challenge an amended assessment due to a voluntary disclosure;
- subjecting unpaid KiwiSaver voluntary employer contributions to the penalties, recoveries, and use of money interest rules;
- clarifying the definition of *custodial institution* to remove the distinction between resident and non-resident entities, and to clarify the type of tax that must be withheld; and
- 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/2020/>.

Regulatory impact assessment

The Inland Revenue Department produced regulatory impact assessments on 13 September 2019, 17 October 2019, 23 October 2019, 19 November 2019, and 26 February 2020 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—

- <https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>
- <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
<p>A commentary on the Bill is available at https://taxpolicy.ird.govt.nz/publications/2020-bill-commentary-arferm-bill/overview. The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.</p> <p>In addition, the documents listed in appendix one are all publicly available at the locations indicated.</p>	

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
<p>Five regulatory impact assessments (RIA) were prepared and are available at https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment and https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments:</p> <ul style="list-style-type: none">• <i>Feasibility and other non-deductible expenditure for incomplete assets</i>, Inland Revenue, 13 September 2019;• <i>Land tax rules review 2019 – habitual buyers and sellers</i>, Inland Revenue, 19 November 2019;• <i>Income tax treatment of leases subject to NZ IFRS 16</i>, Inland Revenue, 17 October 2019;• <i>Mycoplasma bovis tax issues</i>, Inland Revenue, 26 February 2020;• <i>GST on telecommunications services</i>, Inland Revenue, 23 October 2019; and• <i>GST refunds using credit notes</i>, Inland Revenue, 23 October 2019. <p>A RIA was not required for the policy decisions on the purchase price allocation proposals, but a supplementary analysis report (SAR) has been prepared to accompany the Bill at introduction. The SAR provides a RIA-like analysis of the policy development to aid understanding of the proposals as they go through the legislative process.</p> <p>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.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The regulatory impact statements for this Bill did not meet the threshold for requiring an independent opinion on their quality from the Treasury's Regulatory Quality 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
<p>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 <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (June 2013).</p> <p>However, the commentary on the Bill, available at https://taxpolicy.ird.govt.nz/publications/2020-bill-commentary-arferm-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.</p>	

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
<p>2.5(a) Size of potential costs and benefits</p> <p>The RIAs 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.</p> <p>2.5(b) Potential for any group of persons to suffer a substantial unavoidable loss of income or wealth</p> <p>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.</p> <p>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 changes.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>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.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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

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 proposed amendments to the KiwiSaver Act 2006 and the Income Tax Act 2007 would allow the direct transfer of New Zealanders' unclaimed Australian retirement savings from the Australian Tax Office to a KiwiSaver scheme. These amendments would progress a commitment made by the Australian and New Zealand Prime Ministers in their 2019 statement on economic priorities, to reunite New Zealanders who have worked in Australia with their unclaimed Australian retirement savings.

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 Generic Tax Policy Process (described in part one of this statement), there is a 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)?	YES
<p>The Bill proposes to deem unpaid KiwiSaver voluntary employer contributions subject to the existing penalties rules within the Tax Administration Act 1994. These include, but are not limited to, late payment penalties, penalties relating to unacceptable and abuse tax positions and evasion, and anti-avoidance provisions. This amendment will provide an incentive to taxpayers not to underpay the voluntary employer KiwiSaver contributions. The proposed amendments will ensure that the same penalties and debt collection mechanisms apply to both voluntary and compulsory employer KiwiSaver contributions. No new penalties or offences have been created.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>The amendments are minor amendments and are consistent with the existing policy framework for tax penalties.</p>	

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
<p>The Bill proposes to amend the Land Transfer Act 2017 to move the content of the Land Transfer Tax Statement (LTTS) to regulations. The framework around the LTTS remain unchanged and continue to be set out in the Land Transfer Act 2017.</p> <p>Transitional provisions currently set out in section 79 of the Land Transfer Act 2017 will continue until the first regulations which prescribe the content for the LTTS come into force.</p> <p>Amendments are also proposed to section 83 of the Land Transfer Act 2017 to update the references to the types of information which may be released. The updated section 83 will include a definition of identifying information and allowing future regulations to deem any further information as identifying information. This continues the current policy regarding the disclosure of information in aggregate form.</p> <p>The Bill proposes a clarifying amendment to correct a cross-reference error that relates to the Commissioner of Inland Revenue being able to obtain extracts or copies of documents or other material in the course of making formal inquiries about a taxpayer. This amendment seeks to resolve any perceived ambiguity and does not seek to create any new powers or amend the capacity of the existing powers to collect personal information about a taxpayer.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>A draft of the legislative changes to the Land Transfer Act 2017 legislation were provided to the Office of the Privacy Commissioner and they did not have any issues with the proposal.</p>	

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
<p>There has been extensive consultation on 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 in appendix one (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.</p>	

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
<p>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.</p> <p>The proposals in the Bill have been subject to the Generic Tax Policy Process, the purpose of which is to promote and improve the workability of proposals.</p>	

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, the 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 of 50 and 51 of the <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (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?	YES
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 <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (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 https://taxpolicy.ird.govt.nz/publications/2020-bill-commentary-arferm-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, the act of failing to pay the required voluntary KiwiSaver employer contributions by the due date would be subject to the existing penalties regime for absolute liability offences in the Tax Administration Act 1994 (including failure to provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law is an existing absolute liability offence).	

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?	YES
<p>The Bill amends the existing regulation making provisions in the Land Transfer Act 2017 to clarify that these include the power for delegated legislation (Order in Council) for the requirements of the Land Transfer Tax Statement.</p> <p>Any regulations will be drafted by the Parliamentary Counsel Office, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. In accordance with the Legislation Act 2012, the regulations will be presented to Parliament and be disallowable following review by the Regulations Review Committee.</p> <p>Power to amend the content of the Land Transfer Tax Statements</p> <p>The Bill contains an empowering provision (proposed amendment to section 227 of the Land Transfer Act 2017) that would allow regulations to be made by Order in Council relating to the content required in the Land Transfer Tax Statements (LTTs). Currently, these rules are largely prescribed in the Land Transfer Act 2017. The provision is necessary because the current requirement to amend the primary Act for what could be minor or inconsequential changes is resource intensive. These changes will enable the content of the LTTs to be updated more easily and enable streamlining of property transfer information requirements.</p> <p>The purpose and framework for the LTTs, for example, rules around disclosure and use of information remain unchanged, and continue to be set out in the Land Transfer Act 2017.</p>	

Any other unusual provisions or features

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

Appendix One: Further Information Relating to Part Two

Published reviews or evaluations – question 2.1

Feasibility and other expenditure

Black hole and feasibility expenditure, A Government discussion document, May 2017, available at

<https://taxpolicy.ird.govt.nz/publications/2017-dd-black-hole-feasibility/overview>

Purchase price allocation

Purchase price allocation, An officials' issues paper, December 2019, available at

<https://taxpolicy.ird.govt.nz/publications/2019-ip-purchase-price-allocation/overview>

Changes to the land rules

Habitual buying and selling of land, A tax policy consultation document, September 2019, available at

<https://taxpolicy.ird.govt.nz/publications/2019-ip-habitual-buying-selling-land/overview>

Goods and Services Tax on outbound roaming services

GST on telecommunications services, An officials' issues paper, May 2019, available at

<https://taxpolicy.ird.govt.nz/publications/2019-ip-gst-telecommunications-services/overview>

Goods and Services Tax refunds using credit notes

Draft PUB00352: Changing GST treatment after reducing the previously agreed consideration, November 2019, available at

<https://web.archive.org/web/20200528001546/https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00352-changing-gst-treatment-after-reducing-the-previously-agreed-consideration>

Appendix Two: Further Information Relating to Part Three

External consultation – question 3.6

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

- The commentary on the Bill, which is available at <https://taxpolicy.ird.govt.nz/publications/2020-bill-commentary-arferm-bill/overview>.
- Public consultation documents on specific measures contained in the Bill, which are available at <https://taxpolicy.ird.govt.nz/publications/type/consultation-document>.
- Regulatory impact assessments outlining consultation that was undertaken on the various measures contained in the Bill, which are available at <https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>.

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

- External Reporting Board
- Housing New Zealand Corporations
- Housing New Zealand Build Limited
- Kāinga Ora – Homes and Communities

Representative organisations

- Auckland District Law Society
- BusinessNZ
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Financial Services Federation
- New Zealand Property Investors Association
- New Zealand Law Society

Other parties/organisations/entities

- 2degrees
- Air New Zealand
- ANZ Bank New Zealand
- ASB Bank
- BDO
- Bell Gully
- Chapman Tripp
- Deloitte
- EY
- Federated Farmers
- Findex
- Fulton Hogan
- KiwiSaver scheme providers

- KPMG
- nsaTax
- OliverShaw
- PricewaterhouseCoopers
- Russell McVeagh
- Spark
- Stephen Rutherford
- T&G Global
- Vodafone
- Xero
- Z Energy

Appendix Three: Further Information Relating to Part Four

Retrospective amendments – question 4.3

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

Amendments to the tax rules for land

The Bill clarifies that the cost of purchasing and improving taxable land are deductible, even if it was not clear when the costs were incurred that the sale of the land would be taxable. The policy intent is that these costs should be deductible in full when taxable land is sold – including land sales subject to the bright-line test. The amendment would apply from 1 April 2008, being the commencement date of the Income Tax Act 2007.

Leasing – New Zealand International Financial Reporting Standard 16

The Bill seeks to align several tax rules with the account standard NZ International Financial Reporting Standard 16 (NZ IFRS 16). The retrospective application date of 1 January 2019 is required to align the amendments with the commencement date of NZ IFRS 16.

Mycoplasma bovis tax issue

The Bill proposes to allow dairy and beef cattle farmers that have derived unexpected taxable income as a result of their herd being culled (in pursuit of eradicating mycoplasma bovis from New Zealand), to evenly spread that income forward to better match the replacement cost of the farmer's cattle herd. The amendment would apply from the 2017–18 income year as the first culls began in late 2017.

Research and development tax credit: capital expenditure eligibility criteria

The Bill seeks to clarify the policy intent of the capital expenditure eligibility rules by introducing an intention test, so that expenditure related to creating tangible depreciable property is only eligible if the tangible depreciable asset is intended to only be used for research and development in the future (and not just in the tax year to which the tax credit relates to). The amendment would apply from the 2019–20 income year (the first year of the research and development tax credit regime). A savings provision will protect taxpayers who have taken a tax position that is inconsistent with the amendment, up until the Bill's date of introduction.

Research and development tax credit: employee costs on creating tangible depreciable property

The Bill proposes to allow employee costs that support the creation of tangible depreciable property, where these costs relate to core research and development activities, to be eligible for the research and development tax credit. This amendment would apply from the 2019–20 income year (the first year of the research and development tax credit regime).

Research and development tax credit: clarifying the definition of eligible expenditure

The Bill seeks to clarify the policy intent of the definition of research and development expenditure so that costs only directly connected to eligible research and development activities are eligible for the research and development tax credit. This amendment would apply from the 2019–20 income year (the first year of the research and development tax credit regime).

Research and development tax credit: list of ineligible research and development expenditure and activities

The Bill seeks to clarify that certain activities and expenditure are ineligible for the research and development tax credit. These are:

- corporate governance costs;
- in-house research and development claim preparation costs;
- costs of acquiring land;
- decommissioning costs;
- land remediation costs;
- mining development activities; and
- the up-front costs of acquiring property that would have been depreciable in the absence of an election under section EE 8 of the Income Tax Act 2007.

This amendment would apply from the 2019–20 income year (the first year of the research and development tax credit regime).

Research and development tax credit: time limit for amending tax credit claims

The Bill seeks to clarify that the Commissioner of Inland Revenue can consider and complete a request for amendment to a tax credit claim, even if more than a year has passed since the claimant's income tax return due date (provided the request was initiated within the prescribed timeframe). This amendment would apply from the 2019–20 income year (the first year of the research and development tax credit regime).

Government Enterprises Housing New Zealand Build Limited

The Bill seeks to add Housing New Zealand Build Limited, a subsidiary of Kāinga-Ora – Homes and Communities, to list of State Enterprises in schedule 36, part A of the Income Tax Act 2007 that confirm that it is subject to income tax. Interpretative advice suggests that Kāinga-Ora's subsidiaries should also be listed in the Income Tax Act, so it is explicit that Kāinga-Ora's subsidiaries are also subject to income tax. This is not a change in tax status as the company is already being treated as taxable. The amendment would apply from 23 May 2018, when Housing New Zealand Build Limited was incorporated.

Minors' income tax exemption

The Bill seeks to clarify that the minors' income tax exemption was not intended to apply to situations where a trustee pays tax on behalf on a beneficiary that is a minor. The item applies from 29 May 2012 (2012–13 and later income years) to align with the commencement date of the original minors' income tax exemption. A savings provision

is proposed for taxpayers that have already taken a tax position before the introduction of the Bill.

Settlor of a trust migrating to New Zealand

The Bill seeks to clarify that where a foreign trust has made a retrospective election to pay New Zealand tax on worldwide trustee income, then any existing tax-paid distributions to a beneficiary are tax free. This aligns with the policy intent that tax has already been paid on these distributed funds. This amendment would apply from 23 March 2020 to align with the application date of a related amendment.

The Bill seeks to clarify that where an election is made involving a voluntary disclosure to the Commissioner of Inland Revenue, then any future distributions from tax-paid income covered by the voluntary disclosure are tax free. This amendment would apply from 1 April 2008 to ensure the policy intent for tax positions under existing voluntary disclosures is achieved.

Imputation credits – consolidating companies

The Bill clarifies the use of pre-consolidation imputation credits by certain taxpayers. Currently companies can have imputation credits prior to becoming a member of a consolidated group (known as pre-consolidation imputation credits). The changes will allow members of a group to use their combined pre-consolidation credits before imputation credits created after amalgamation. Historically, groups have used followed this approach; however, over time the law has not been explicit that it was an appropriate approach. The amendment would apply from 1 April 2008 (2008–09 and later income years) because the Income Tax Act 2007 introduced an ambiguity that the amendment is proposing to resolve. A savings provision is proposed to protect tax positions taken (that are consistent with the proposed changes) prior to the enactment of the Bill.

Goods and Services Tax and credit notes

The Bill seeks to clarify the credit note rules by explicitly allowing the supplier to issue a credit note to the purchaser in order to correct this mistake, with the GST adjustment being claimed in a future GST return. This amendment seeks to align the law with existing commercial practices and so the proposed amendment would apply from 1 April 2012.

The Bill seeks to impose a time limit (known as “time bar”) for GST return credit note adjustments, to ensure the opportunity to amend prior filed returns aligns with similar time limits. Because of the potential risk from publicising the fact that the current time limits may be ineffective for credit notes, the proposed amendment would apply from the Bill’s date of introduction.

Goods and Services Tax and commercial land leases rules

The Bill proposes to clarify the policy intent of the GST rules in relation to the GST compulsory zero-rated rules for commercial land leases. An amendment to section 11(8D)(a) of the Goods and Services Tax Act 1985 proposes to clarify that all leases that meet the criteria in section 11(1)(mb) are zero-rated.

The Bill seeks to clarify that, in the context of business sales that involve transferring a lease of land or cancelling an existing lease and subsequently arranging a new lease, the supply of business assets from the vendor to the purchaser are also treated as a zero-rated supply.

These amendments are required as the current law can lead to an unintended consequence whereby certain lease assignments and surrenders would be subject to GST at 15%. The amendment would apply retrospectively from 30 June 2014, being the date of the amendment that originally amended section 11(8D) of the GST Act.

Amendment to the transfer pricing rules

The Bill seeks to amend the third-party test that is used to determine if the particular features of a related-party loan between a non-resident and a New Zealand resident borrower (such as subordination or terms beyond five years) would also feature in an unrelated party loan. The test will exclude loans where the lender has any ownership interest in the borrower. This test impacts on whether the resulting interest deductions the borrower incurs are allowed for tax purposes. The amendment would apply from 1 July 2018, when the rules were introduced, with a savings provision for taxpayers that have already filed tax returns that followed the current transfer pricing rules.

Remedial amendment to the non-resident financial arrangement income

The Bill proposes to amend the non-resident financial arrangement income calculation method to ensure that it cannot produce an undefined outcome as a consequence of an earlier amendment that sought to include a hybrid deductions element into the formula. The amendment is consequential in nature and would not negatively impact taxpayers. The amendment would apply from 1 July 2018 to align the amendment with the earlier amendment to the formula.

Remedial amendment to the thin capitalisation rules

The Bill proposes three technical amendments to clarify the policy intent of the rules, as well as correct a cross-reference issue that arose from previous amendments. The amendments would apply from 1 July 2018 to align these amendments with the original amendments.