

Departmental Disclosure Statement

Taxation (Income Tax Rate and Other Amendments) Bill
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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 the Inland Revenue Department.

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

30 November 2020.

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Part One: General Policy Statement

This Bill introduces amendments to the following legislation:

- Income Tax Act 2007:
- Tax Administration Act 1994.

The policy proposals in this Bill are aimed at implementing the commitment in the New Zealand Labour Party's manifesto for the 2020 general election to introduce a new top personal income tax rate of 39% on annual income that exceeds \$180,000. The objective for this policy is to raise revenue to allow the Government to continue providing public services and manage debt while supporting New Zealand's economic recovery, in a way that increases the progressivity of the tax system.

The Bill also sets the minimum family tax credit threshold for the 2020–21 and later tax years, a tax credit aimed at providing financial support to low-income working families.

New top personal tax rate

This Bill introduces a new personal income tax rate of 39% on annual income over \$180,000. The new rate applies for the 2021–22 and later income years.

Aside from amending basic income tax rates, the Bill amends a number of tax rules to incorporate the new top personal rate to 39%, including:

- PAYE rules (new secondary earnings and extra pay codes):
- fringe benefit tax (FBT):
- resident withholding tax (RWT) on interest:
- employer's superannuation contribution tax (ESCT):
- residential land withholding tax (RLWT):
- retirement scheme contribution tax (RSCT):
- the taxable Māori authority distributions non-declaration rate.

The consequential changes to the PAYE rules, FBT, ESCT, RLWT, RSCT, and the taxable Māori authority distributions non-declaration rate will apply from 1 April 2021. The higher RWT rate on interest will take effect from 1 October 2021 to ensure that interest payers are able to implement the required systems changes.

Strengthening information-gathering rules

This Bill introduces a clarifying amendment to ensure that the Commissioner of Inland Revenue can collect information solely for tax policy development purposes. Having access to information is critical to providing good tax policy advice.

This Bill also introduces a new information-gathering measure to collect further information from trustees in order to gain insight into whether the top personal rate of 39% is working effectively and to provide better information to understand and monitor the use of structures and entities by trustees.

Minimum family tax credit

The policy proposals in this Bill set the minimum family tax credit (MFTC) threshold for the 2020–21 and later tax years. It is being increased from \$27,768 per annum to

\$29,432 per annum to account for the \$25 per week increase in main benefits made in 2020.

Departmental disclosure statement

Inland Revenue 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

Inland Revenue produced a regulatory impact assessment on 18 November 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill, other than setting the MFTC threshold.

A copy of this regulatory impact assessment can be found at—

- <https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>
- <https://www.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 https://taxpolicy.ird.govt.nz/publications/2020/2020-commentary-itroa-bill . The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
One regulatory impact assessment (RIA) was prepared and is available at https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment and https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments : <ul style="list-style-type: none">• <i>Introducing a new top personal tax rate</i>, Inland Revenue, 18 November 2020 A RIA was not prepared for the proposal relating to the minimum family tax credit threshold for 2020–21 due to time constraints.	

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
No, the RIA Team at the Treasury determined that it was suitable for Inland Revenue to chair a joint QA panel with representatives from Inland Revenue and the RIA Team at the Treasury.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The RIA does not consider the proposal to collect past-year information from trusts and trust information for purposes other than the proposed 39% rate. As noted in the RIA, officials consider that the compliance costs for these options should be included in Inland Revenue's post-implementation review of the trust information-gathering measure.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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No significant further impact analysis has become available for any aspects of the policies in the Bill. However, the commentary on the Bill, available at <https://taxpolicy.ird.govt.nz/publications/2020/2020-commentary-itroa-bill>, contains analysis of the proposals included in the Bill.

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>39% tax rate and information-collection measures</p> <p>The 39% tax rate RIA indicated in section 2.3 provide analysis on the size of the potential costs and benefits.</p> <p>For the aspects not covered by the 39% tax rate RIA, as indicated in section 2.3.2, there is little or no publicly available analysis on the size of potential costs and benefits.</p> <p>This Bill contains amendments to tax legislation which, by their nature will have an impact on resident and non-resident individuals, businesses and organisations, to varying degrees. 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 39% tax rate RIA listed under section 2.3 or, where appropriate, in the commentary on the Bill.</p> <p>Due to the absence of consultation, the 39% tax rate RIA was unable to determine whether the potential integrity benefits from the proposed trust information disclosure outweighed the compliance costs it would impose. The RIA does, however, note that Inland Revenue will conduct a post-implementation review of the proposed information requirements for trusts in 2021 that will include consultation with the affected trustees to determine the compliance costs associated with the new requirements and to identify if any changes could be made to reduce these compliance costs.</p> <p>Minimum family tax credit</p> <p>The increase to the 2020–21 MFTC threshold would provide an additional \$32 to families in each week that they receive the MFTC in the 2020–21 income year. Inland Revenue administrative data suggests approximately 3,600 families would benefit with an average gain of \$1,280 per family.</p> <p>The proposal does not result in the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth.</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 of the policy to be given effect by 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?

There have been no formal steps taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's obligations.

Consistency with the government's Treaty of Waitangi obligations

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

No formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

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

TBC

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)?

NO

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

NO

Privacy issues

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

YES

This Bill clarifies the ability of the Commissioner of Inland Revenue to collect information solely for tax policy development purposes. This Bill also introduces a new information-gathering measure to collect further information from trusts.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Privacy Commissioner was consulted on the proposals to collect more information from trustees in relation to the introduction of the new 39% rate as well as to collect information from trustees from past periods. At this stage he considers that the proposed collection of personal information of beneficiaries poses a low privacy risk. The Privacy Commissioner welcomes the opportunity to work with officials to better understand the specific information to be collected and the drafting of the proposal.

Due to the insufficient information available on the specific use cases associated with the proposal to collect information for tax policy purposes, the Privacy Commissioner is unable to assess the associated privacy risks. However, as the proposal progresses the Privacy Commissioner welcomes the opportunity to work with officials.

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?	NO
<p>Given tax rate changes are often in response to election commitments and passed under urgency, no external or general public consultation has been conducted regarding the new tax rate proposal. However, views were sought from the New Zealand Bankers' Association to determine a feasible application date for the changes to resident withholding tax on interest. It is for this reason the application date of the new rate of resident withholding tax on interest will be on 1 October 2021, rather than 1 April 2021.</p> <p>No external consultation has been undertaken on the information collection measures.</p> <p>The proposal relating to the MFTC threshold is not a policy initiative as such and has arisen as a consequential amendment to main benefit rates. Therefore, consultation was not considered appropriate.</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>The 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.</p> <p>The proposal to gather new information from trustees may have administrative impacts and administrative costs not yet identified. Once the requirements for the new reporting are settled, Inland Revenue may look to seek further funding to cover administration costs.</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 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?	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 <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
This Bill allows the Commissioner of Inland Revenue to collect information from trusts from any income year (including prior years) to provide better information to establish the distribution of wealth and income in New Zealand. The Bill proposes to adjust the minimum family tax credit threshold for the 2020–21 income year to account for an increase in main benefits. This proposed amendment is taxpayer friendly and provides additional financial support to low-income working families.	

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

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

Civil or criminal immunity

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

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

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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
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