

# Departmental Disclosure Statement

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Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) 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 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.

3 September 2021

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## Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following Acts:

- Goods and Services Tax Act 1985;
- Income Tax Act 2007;
- Tax Administration Act 1994;
- Child Support Act 1991;
- KiwiSaver Act 2006;
- Student Loan Scheme Act 2011; and
- Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020.

This Bill also revokes the following regulations:

- Co-operative Dairy Companies Income Tax Regulations 1955;
- Cooperative Milk Marketing Companies Income Tax Regulations 1960; and
- Cooperative Pig Marketing Companies Income Tax Regulations 1964.

Broadly, the policy proposals in this Bill fall into 3 categories. The first category sets the annual rates of income tax for the 2021–22 tax year.

The second of these categories contains proposals aimed at improving current settings within a broad-base, low rate framework. This framework helps to ensure that taxes are fair and efficient and 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.

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 these concerns.

The third category relates to proposals aimed at improving the settings for tax administration, the goods and services tax regime, KiwiSaver and social policy rules administered by Inland Revenue.

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. This process helps to ensure that tax and social policy changes are well thought through. The GTPP is designed to ensure better, more effective policy development through the early consideration of all aspects, and likely impacts, of proposals. The GTPP increases 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 <https://taxpolicy.ird.govt.nz/about-us/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/2021/2021-commentary-argrm-bill>

## Confirmation of annual rates of income tax for the 2021–22 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 2021–22 tax year be set at the rates currently specified in schedule 1, part A of the Income Tax Act 2007.

That schedule has been amended effective from 1 April 2021 to include a tax rate of 0.390 for taxable income of \$180,001 upwards.

## GST-related reforms

### Exclusion of cryptoassets from GST and the financial arrangements rules

The Bill proposes the exclusion of cryptoassets from GST and the financial arrangements rules to ensure that these rules do not impose barriers to developing new products, raising capital, and investing through cryptoassets. The Bill additionally proposes allowing GST-registered businesses that raise funds through issuing cryptoassets with similar features to debt or equity securities to claim input credits for their capital-raising costs.

### Domestic leg of the international transport of goods

The Bill proposes that the domestic leg of the international transportation of goods be zero-rated. This is intended to ensure that partially irrecoverable GST costs are not imbedded in the final price of the goods paid by the consumer and that the tax system does not create incentives to pick one transport carrier over another. This will bring New Zealand's rules into line with those of Australia, which similarly zero-rate the domestic leg of the international transport of goods.

### Improvements to the GST apportionment rules

The Bill proposes 2 improvements to the GST apportionment rules in the Goods and Services Tax Act 1985 (GST Act). These rules are used to determine GST input tax deductions when an asset is used partly to conduct a GST-registered business and partly for a private or exempt use. The first reform would ensure that the apportionment rules do not overtax sales of appreciating assets that are partly used for business and partly used privately (such as farmhouses and home offices) by allowing a deduction that correctly reflects the non-taxable use. The second reform would reduce compliance costs for smaller GST-registered suppliers by allowing them to apply to Inland Revenue to approve an alternative apportionment method (this application process is currently limited to large taxpayers with more than \$24 million of annual turnover).

### Secondhand input tax credits on supplies between associated persons

The Bill proposes an amendment to allow a secondhand goods input tax credit on supplies between associated persons equal to the tax fraction of the original cost of the good at the time it was purchased by the first person in the chain of associated persons. This will ensure registered persons are not overtaxed in respect of land they purchased from an unregistered associated person.

### Modernising the GST invoicing rules and information and record-keeping requirements

The Bill proposes amendments that modernise the GST invoicing rules by replacing the requirements for the issue of documents with requirements for the provision of information, with no prescribed formats. The proposed information requirements will replace the formal requirements that registered persons must create and retain tax invoices for taxable supplies and also credit notes and debit notes for adjustments to taxable supplies. The processes for calculating GST payable for each taxable period remain unchanged.

## **Clarifying rules for groups of companies**

The Bill proposes amendments to the rules relating to groups of companies. An amendment introduces the term *GST group* for a group of companies that choose to register as a group under the GST Act. Other amendments clarify the application of the GST rules for the representative member as the maker and receiver of supplies for a GST group.

## **Granting 11 charities overseas donee status**

The Bill proposes 11 New Zealand charities with overseas charitable purposes be granted overseas donee status and listed in schedule 32 of the Income Tax Act 2007 with effect from 1 April 2021. The Bill additionally proposes a change to the sunset clause for the New Zealand Memorial Trust – Le Quesnoy’s donee status. The Bill will grant this Trust overseas donee status until 31 March 2025. The Bill also proposes to remove 8 charities whose activities have ceased.

## **Local authority taxation: dividends and deductions**

The Bill proposes a series of measures to improve the integrity of local government taxation and help prevent local authorities from effectively transferring the benefit of their exempt status to their taxable council-controlled organisations.

## **Changes to the fair dividend rate foreign currency hedges rules**

The Bill proposes a series of technical amendments to the fair dividend rate foreign currency hedges rules (FDR FX hedges rules). These are designed to improve the functionality of the FDR FX hedges rules from a practical perspective and reduce compliance costs for taxpayers with large numbers of hedges.

## **Use of tax pooling to satisfy a backdated tax liability**

The Bill proposes allowing the use of tax pooling to satisfy a tax obligation where there is no existing tax assessment or the tax obligation has not been quantified. This proposal includes safeguards to avoid incentivising the non-filing of tax returns by taxpayers.

## **Removal of sunset provision from COVID-19 information-sharing provision**

The Bill proposes the removal of the time limit from the COVID-19 information-sharing provision, which will allow it to remain in effect without the need for repeated extension through Orders in Council. This is designed to “future-proof” this provision by ensuring that Inland Revenue is able to share necessary information throughout the life-cycle of the pandemic and the initiatives that support New Zealand’s recovery.

## **Penalising the sale or possession of sales suppression software**

The Bill proposes the introduction of penalties on the sale and acquisition of sales suppression software. This initiative is designed to address the serious risk that sales suppression software poses to the integrity of New Zealand’s tax base.

## **Remedial amendments**

A number of remedial matters are also addressed in the Bill. These include:

- aligning the amount of a deemed dividend and interest denied when a restricted transfer pricing adjustment has been made;
- clarifying that decisions of the Commissioner of Inland Revenue in terms of the remedial powers are not a “disputable decision” for the purposes of the Tax Administration Act 1994;

- aligning the investment income information filing dates for some payers of investment income with their 6-monthly payment dates;
- repealing transitional co-existence provisions;
- various amendments to the 10-year bright-line test to align the rules with the policy intent, including ensuring that a main home that takes longer than 12 months to construct is not subject to the bright-line test;
- clarifying the treatment of employer KiwiSaver contributions;
- amendments to the hybrid and branch mismatch rules;
- administrative amendments to the Child Support Act 1991;
- preventing the conversion of capital gains to taxable distributions following a share-for-share exchange;
- preserving the non-association of a beneficiary of a security trust;
- replacing a knowledge offence in relation to GST invoicing requirements with a strict liability offence;
- aligning the treatment of joint and several liability of GST groups with income tax groups;
- removing fax as a mode of communication between taxpayers and Inland Revenue;
- aligning the treatment of non-active estates with non-active trusts by no longer requiring non-active estates to file tax returns;
- repealing existing information-sharing provisions (ACC and MBIE) to avoid the duplication of authorising provisions;
- removing the power to repeal the SFO information-sharing clause, as it is no longer necessary;
- clarifying the meaning of “revenue information” and “sensitive revenue information”;
- reinserting a penalty for a failure to keep taxpayer information confidential;
- allowing the refund of ancillary taxes; and
- addressing shareholding continuity issues arising from corporate spin-outs.

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.

Detail of further remedial amendments is included in the Commentary to the Bill.

## 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/2021/>

## Regulatory impact assessments and statements

The Inland Revenue Department produced regulatory impact assessments or statements on 26 July 2018, 31 May 2021, 1 June 2021, and 17 June 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments and statements can be found at—

- <https://taxpolicy.ird.govt.nz/publications>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
A commentary on the Bill is available at <a href="https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill">https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill</a> . The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.	

### Relevant international treaties

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

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>These regulatory impact assessments and statements were prepared and are available at <a href="https://taxpolicy.ird.govt.nz/publications/">https://taxpolicy.ird.govt.nz/publications/</a>:</p> <ul style="list-style-type: none"><li>• <i>New Zealand Memorial Museum Trust – Le Quesnoy: tax benefits for monetary donations</i>, Inland Revenue, 26 July 2018</li><li>• <i>Domestic transport services supplied as part of the international transport of goods</i>, Inland Revenue, 31 May 2021</li><li>• <i>GST apportionment</i>, Inland Revenue, 31 May 2021</li><li>• <i>Tax pooling to purchase backdated tax</i>, Inland Revenue, 31 May 2021</li><li>• <i>Tax treatment of cryptocurrencies</i>, Inland Revenue, 31 May 2021</li><li>• <i>Sales suppression software</i>, Inland Revenue, 1 June 2021</li><li>• <i>Local authority taxation – dividends and deductions</i>, Inland Revenue, 17 June 2021</li></ul> <p>The remaining policy items in the Bill are exempt from the regulatory impact analysis requirements, as the proposed changes result in little or no change to the status quo legislative position.</p> <p>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>	

<b>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?</b>	<b>NO</b>
The regulatory impact assessments and statements for this Bill did not meet the threshold for requiring an independent opinion on their quality from the Treasury’s Regulatory Quality Team.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<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 <a href="https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill">https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill</a>, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a regulatory impact assessments and statements, may provide impact analysis of the proposals.</p>	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p><b>2.5(a) Size of potential costs and benefits</b></p> <p>The regulatory impact assessments and statements 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 regulatory impact analysis 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><b>2.5(b) potential for any group of persons to suffer a substantial unavoidable loss of income or wealth</b></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 regulatory impact assessments and statements 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>	

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



(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 regulatory impact assessments and statements 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

<b>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?</b>
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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.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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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.
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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.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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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 <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>Clause 166 of the Bill reinstates an offence and penalty provision for the failure of an employee of another agency to maintain taxpayer confidentiality. This provision was inadvertently omitted from reforms which were implemented in 2019.</p> <p>Clauses 160–162 and 165 of the Bill establish criminal penalties for the manufacture or distribution of electronic sales suppression tools and criminal and civil penalties for the acquisition or possession of those tools.</p> <p>Clauses 163 and 164 of the Bill replace a knowledge offence for knowingly issuing two tax invoices for the same supply with a strict liability offence for making two input tax deductions for the same supply received. The proposed strict liability offence is to provide legislative consistency with the policy objective of preventing multiple input tax claims for the same supply of goods or services.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>A copy of the Bill was provided to the Ministry of Justice for New Zealand Bill of Rights Act 1990 vetting on 30 July 2021.</p> <p>The Ministry of Justice was consulted as part of the development of the electronic sales suppression penalties.</p>	

## Privacy issues

<b>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?</b>	<b>YES</b>
<p>The Bill proposes transferring the disclosure of personal information from a legislative regime under the Tax Administration Act 1994 to an Approved Information Sharing Agreement under the Privacy Act 2020. The Bill also proposes removing a repeal provision relating to the sharing of information with the Serious Fraud Office as this repeal provision is no longer required.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>These changes have been discussed and agreed to by the Privacy Commissioner.</p>	

## External consultation

<b>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?</b>	<b>YES</b>
<p>There has been extensive consultation on much of the policy to be given effect by this Bill, as per the Generic Tax Policy Process (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

<b>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?</b>	<b>YES</b>
<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

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
<p>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, other than the items listed below, 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).</p> <p>The Bill proposes an amendment to section 43 of the Goods and Services Tax Act 1985 (which enables the Commissioner of Inland Revenue to issue deduction notices to recover outstanding GST debt) which will enable the Commissioner to recover outstanding GST debts incurred by members of unincorporated bodies by way of a deduction notice. The deduction notice would be served on a third party (such as a bank or an employer) of the person, and would require the third party to extract from sums payable to the person an amount to be paid to Inland Revenue in satisfaction of the unincorporated body’s GST debt. A further clarifying change has also been made to clarify that a deduction notice can still be used to recover outstanding GST debt even if the person is no longer registered for GST under the Act.</p> <p>The Commissioner has the ability under various Inland Revenue Acts to recover outstanding tax debts through the use of deduction notices. Further information on the Commissioner’s practice exercising these powers is available in the Commissioner’s Standard Practice Statement SPS 21/01: Deduction notices, available at <a href="https://www.taxtechnical.ird.govt.nz/en/standard-practice-statements/processing/sps-21-01">https://www.taxtechnical.ird.govt.nz/en/standard-practice-statements/processing/sps-21-01</a></p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
<p>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).</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>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.</p> <p>There are some 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.</p> <p>More information on the retrospective application of these amendments can be found in the commentary on the Bill, which is available at <a href="https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill">https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill</a></p>	

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

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>Clause 163(2) of the Bill (section 143(1)(ba) of the Tax Administration Act 1994) is a consequential amendment to update the terminology of the existing absolute liability offence to refer to taxable supply information instead of a tax invoice. The requirement to provide GST documentation is a critical part of the GST system and the related offence for not doing so has been in legislation for many years and is consistent with other similar provisions already in the Tax Administration Act 1994.</p> <p>Clause 163(4) of the Bill (section 143(1)(d) of the Tax Administration Act 1994) creates a strict liability offence to replace a knowledge offence. The offence is to mitigate against the claiming of multiple input tax credits for the same supply transaction. However, this offence has two defences, in clause 163(5), either a multiple claim for input tax credits has been corrected in a later tax return or the registered person can show they have taken reasonable care in making a claim for input tax credits in their tax return.</p>	

## Civil or criminal immunity

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

<b>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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 173(2) and (3) would repeal existing information sharing clauses with ACC and the Ministry of Business, Innovation and Employment when they are replaced by Approved Information Sharing Agreements (AISAs). As the date of these AISAs is not yet known these clauses would be brought into force by an Order in Council.</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
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## **Appendix One: Further Information Relating to Part Two**

### **Extent of impact analysis available – question 2.5(a)**

No additional information is available.



## Appendix Two: Further Information Relating to Part Three

### Privacy issues – question 3.5

No additional information is available.

### External consultation – question 3.6

External consultation on 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, available at <https://taxpolicy.ird.govt.nz/publications/2021/2021-commentary-argrm-bill>
- GST policy issues – an officials' issues paper (February 2020), available at <https://taxpolicy.ird.govt.nz/publications/2020/2020-ip-gst-issues>
- Regulatory impact assessments and statements outlining consultation that was undertaken on the various measures contained in the Bill, available at <https://taxpolicy.ird.govt.nz/publications>

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

#### Government bodies

- Department of Internal Affairs
- Ministry of Justice
- Ministry of Business, Innovation & Employment
- Callaghan Innovation
- Ministry of Foreign Affairs and Trade
- Ministry for Culture and Heritage

#### Representative organisations

- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Financial Services Council
- Local Government New Zealand
- New Zealand Bankers' Association
- New Zealand Law Society
- Research & Development Advisory Group

#### Other parties, organisations, and entities

- BNZ Investment Services
- Deloitte
- Ernst Young
- Implemented Investment Solutions
- KPMG
- Mercer Investments
- New Zealand Superannuation Fund
- PricewaterhouseCoopers

### Other testing of proposals – question 3.7

No additional information is available.

## Appendix Three: Further Information Relating to Part Four

### Retrospective amendments – question 4.3

Items below include application dates that would take effect before the enactment of the Bill.

#### **Addition of new tax types to START**

The Bill proposes the inclusion of casino duty, lottery duty and totalisator duty within the definition of “START tax type.” This would take effect from 1 March 2021 to align with the date these products were shifted into START.

#### **Amendment of apportionment rules to ensure that sales of appreciating assets are not over-taxed**

This would take effect from 24 February 2020 which is the date the issue and the proposed amendment was consulted on in the GST policy issues paper. As the proposed amendment would prevent over-taxation, this retrospective application date is intended to ensure that taxpayers who are now aware of the issue with the current legislation would not be disadvantaged if they sell an appreciating asset before the proposed amendment is enacted.

#### **Availability of approved issuer levy**

This would apply from 30 March 2017 and would correct an unintended legislative change that prevented borrowers from choosing to pay approved issuer levy instead of non-resident withholding tax if they were associated with the lender only via a security trust. The amendment is taxpayer favourable.

#### **Child support amendments**

Generally, the amendments in the Child Support Amendment Act 2021 apply from a date appointed by the Governor General by Order in Council or, if not earlier brought into force, on 1 April 2022. Broadly, the provisions of that Act fall into two categories:

- changes which relate to the administration of the scheme which will apply earlier when child support moves to the new platform, and
- changes which relate to how child support is assessed which will need to apply from the beginning of the child support year to align with the annual assessment run for child support.

As at the time this Bill is introduced, the Order in Council will not have been made. When this Bill is enacted some of the provisions relating to administration of the scheme may be retrospective to align with the movement of child support to Inland Revenue’s new technology platform.

#### **Corporate spin-outs**

The Bill will address shareholding continuity problems for a spun-out company that are caused by a gap in the special shareholding continuity rules for corporate spinouts. This change is taxpayer friendly. This will have effect from the date of the Bill’s introduction.

#### **Cryptoassets**

The Bill would remove cryptoassets from the GST and financial arrangements rules to ensure these tax rules are not an unreasonable barrier to investing or using cryptoassets. This would apply from 1 January 2009, the date on which the first cryptoasset, Bitcoin, was launched.

The Bill also proposes allowing GST registered businesses that raise funds through issuing cryptoassets which have features that are similar to debt or equity securities to claim input credits

on their capital raising costs. This would apply from 1 April 2017 so as to mirror the enactment of the general capital raising deduction rule.

### **Clarification of the business continuity test in a part year situation**

The Bill proposes technical amendments to ensure that tax losses incurred in an income year in which a breach of ownership continuity occurs can be considered for carry-forward under the recently enacted business continuity test (BCT). The Bill would also allow companies relying on the BCT to offset tax losses incurred in earlier years against a profit for the pre-breach part-year. To ensure the original policy is realised, these amendments would apply from the 2020–21 income year.

### **Definitions of “sensitive revenue information” and “revenue information”**

The Bill would clarify the interpretation of the terms “sensitive revenue information” and “revenue information” in order to prevent them from being applied too broadly. These amendments would apply from 18 March 2019 which is the date the current confidentiality provisions came into force.

### **Bright-line test**

Amendments to the 10-year bright-line test to align the law with the policy intent are retrospective to 27 March 2021 – the date the 10-year test applied from.

### **Depreciation cost-base integrity measure**

The Bill would apply the depreciation cost-base restriction to non-residential buildings transferred between 2011 and 2020, when the depreciation rate was 0%. This aligns the legislation with the policy intent and would have effect from the 2011–12 income tax year.

### **Debt remission within an economic group**

The Bill will replace references to “forgiveness” in the debt remission rules with “remission”. This would take effect from 1 April 2008. This aligns with the original application date of these provisions.

### **Extending use of money interest relief during COVID-19**

This would apply from 25 March 2022.

### **Hybrid and branch mismatches**

The Bill proposes several amendments to the New Zealand hybrid and branch mismatch rules (enacted in 2018). The following amendments, which:

- allow dual inclusion income arising offshore to counteract the denial of deductions New Zealand under the imported mismatch rule (for a hybrid mismatch located offshore) to the extent that the funding from New Zealand funds the hybrid mismatch
- amend the scope of the imported mismatch rule so that a hybrid mismatch is established in respect of a payment only where there is a conflict in the tax characterisation of the instrument or payee or there is a timing mismatch
- allow deductions in New Zealand for a payment that funds a hybrid mismatch through a chain of payments, where a payment along the chain of payments is from a jurisdiction that has hybrid mismatch legislation from 1 July 2018, and
- insert cross-references into the definitions of “hybrid entity” and “hybrid mismatch”

would take effect from 1 July 2018 which is the original application date of these provisions.

### **GST input tax credits for goods acquired but not physically received**

The Bill proposes an amendment to the rules allowing a GST input tax credit that would take effect from 1 April 2011. This proposed amendment aligns the law with practice since an earlier amendment was introduced, effective from 1 April 2011.

### **Investment income – definition of “end investor”**

The Bill amends the definition of an “end investor” to ensure that custodians that operate in New Zealand via a fixed establishment are able to access the relaxations available to other custodians. This would take effect from 1 April 2020 to align with the introduction of the reporting and withholding rules that apply to custodians.

### **Restricted transfer pricing – terms over five years**

The Bill proposes that the five-year exception to the restricted transfer pricing rules be available only where the total cross-border related borrowing is less than four times the third-party debt. This would take effect from 1 July 2018 to align with the original introduction of that provision.

### **R&D Tax Incentive (RDTI) tax-year cut-off for claiming supporting activities**

The Bill proposes a series of amendments to the rules for claiming a tax credit for supporting R&D expenditure. These amendments are to ensure that a tax credit can be claimed for supporting activity expenditure which occurred outside the income year in which the core activity occurred. These proposals would apply for supporting activity expenditure which occurred in the 2019–20 and later income years.

### **RDTI transitional support payment**

The Bill proposes amendments to the treatment of the RDTI transitional support payment to address a timing mismatch between deduction and timing recognition. This would take effect for the 2019–20 income tax years.

### **RDTI extension of due dates**

The Bill proposes to extend the due dates for RDTI applications made for the 2019–20 and 2020–21 years to 31 August 2021. In order to give effect to these extensions, the amendments will apply from the 2019–20 income year.

### **Significant decision-making powers - question 4.6**

No additional information is available.

### **Powers to make delegated legislation- question 4.8**

No additional information is available.