

# Departmental Disclosure Statement

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Taxation (Annual Rates for 2023–24, Multinational Tax, 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.

12 May 2023.

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## Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following Acts:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Child Support Act 1991
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022; and
- Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023.

Broadly, the policy proposals in this Bill fall into three categories. The first category sets the annual rates of income tax for the 2023–24 tax year.

The second category contains proposals aimed at improving current settings within a broad-base, low-rate framework. This framework helps to ensure the tax system is fair and efficient and impedes economic growth as little as possible. It also helps to keep compliance costs low and minimises opportunities for avoidance and evasion. The framework underpins the Government’s revenue strategy and helps to maintain public confidence in the tax system, which is crucial to encourage 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 contains proposals aimed at improving the settings for tax administration, KiwiSaver and child support rules administered by Inland Revenue.

The main non-budget policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP), an 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 proposals and their likely impacts. The GTPP increases opportunities for public consultation.

The GTPP means that major tax initiatives that are not budget-sensitive are subject to public scrutiny at all stages of their development. As a result, Inland Revenue and Treasury officials can 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 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://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill>.

## Setting annual rates of income tax for the 2023–24 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 2023–24 tax year be set at the rates currently specified in schedule 1, part A of the Income Tax Act 2007.

## Global Anti-Base Erosion rules for New Zealand

The Bill proposes to introduce the Global Anti-Base Erosion (GloBE) rules in New Zealand. The GloBE rules are a global minimum tax developed by the Inclusive Framework on BEPS (IF), which is led by the Organisation for Economic Co-operation and Development (OECD).

The GloBE rules aim to limit the ‘race to the bottom’ when countries compete to attract mobile income (eg, interest, dividends and royalties) by offering low tax rates and tax incentives. The rules are designed so that multinational enterprises (MNEs) with annual revenues above €750 million are subject to tax of at least 15% on their mobile income in every country where that income is earned.

The GloBE rules are intended to apply to every in-scope MNE in the world, no matter where it has its headquarters, operations or sales. The design of the rules means this can be achieved even if many, or indeed most, countries do not adopt the rules. The rules require implementation by a critical mass of countries to be effective.

The GloBE rules introduced in this Bill would introduce a multinational top-up tax that consists of an income inclusion rule (IIR) and an undertaxed profits rule (UTPR). Together, they would ensure that, if the GloBE rules are adopted by a critical mass of other countries:

- New Zealand would not lose revenue it is entitled to collect to other countries; and
- administration and compliance costs for in-scope New Zealand MNEs and the government would be reduced.

The effective date of the GloBE rules in New Zealand would be set by Order in Council once the Government determines that a critical mass of countries has adopted the GloBE rules. This would not be earlier than 1 January 2024 for the IIR and 1 January 2025 for the UTPR.

Whether an in-scope MNE has a multinational top-up tax filing and (potentially) payment obligation would be determined by applying the OECD-published Model Rules, Commentary and Agreed Administrative Guidance. The Bill proposes that instead of repeating or translating these texts into New Zealand tax law, they would be incorporated by reference. Modifications to the Model Rules to ensure that they work as intended in New Zealand would be contained in a Schedule. This approach to implementing the Model Rules is preferable because it is more efficient. Transposing the Model Rules into New Zealand law would be disproportionately costly and would increase the risk of interpretive errors and mismatches between the GloBE rules as adopted in other countries and as adopted in New Zealand.

### Operative rules

The proposed multinational top-up tax rules would require an MNE headquartered in New Zealand to undertake the following steps:

- Determine whether it is in scope for the GloBE rules, i.e., if it has an international presence and over €750 million in consolidated revenues in any two of the preceding four years.

- Determine whether any safe harbours apply in each country where it operates.
- Calculate its effective tax rate (ETR) in each country where it operates and where a safe harbour does not apply.
- Calculate its mobile income by calculating its GloBE income (ie, accounting profit subject to GloBE adjustments) in each country and reducing it by the substance-based income exclusion (SBIE). The SBIE is a carve out based on tangible assets and payroll costs in a country.
- Calculate the top-up tax due if its ETR in a country is less than 15%. The top-up tax will bring the ETR on the MNE's mobile income in that country up to 15%.
- Pay multinational top-up tax to Inland Revenue for:
  - New Zealand operations under the domestic income inclusion rule (DIIR), which applies when a New Zealand headquartered MNE has undertaxed mobile income in New Zealand.
  - Foreign operations under the IIR, which applies when a New Zealand MNE earns the undertaxed income in another country.

MNEs headquartered outside New Zealand could also be subject to multinational top-up tax under the proposals if they have an intermediate parent located in New Zealand or a liability under the UTPR.

### **Interaction between the GloBE rules and New Zealand tax law**

Amendments are also proposed to deal with how New Zealand tax law interacts with the GloBE rules. These amendments propose that imputation credits would not be available for taxes paid under the IIR or UTPR but would be available for taxes paid under the New Zealand DIIR. In addition, foreign tax credits would not be available for taxes paid under an IIR or UTPR to another country.

The GloBE rules contemplate that countries may introduce a DIIR. This would use the same tax base as the GloBE rules but would be imposed on domestic undertaxed mobile income derived by locally headquartered MNEs and intermediate parent entities. The Bill proposes introducing a DIIR in New Zealand as it would ensure that local MNEs only pay top-up tax to Inland Revenue on undertaxed mobile income in New Zealand. This would remove the potential compliance costs of falling within the scope of other countries' UTPRs.

A provision would also be introduced to deal with the interaction between the GloBE rules and double tax agreements. The IF has always intended for both the IIR and UTPR to be compatible with tax treaties based on the OECD Model. Accordingly, the GloBE rules adopted by New Zealand would apply notwithstanding the terms of a tax treaty, unless those terms expressly refer to the GloBE rules.

### **Administration of the multinational top-up tax rules**

Under the multinational top-up tax rules, a New Zealand headquartered MNE would be required to submit a GloBE Information Return (GIR) to Inland Revenue. The GIR would provide information on the tax calculations made by the group and contain the information a tax administration would need to evaluate the correctness of the MNE's self-assessed tax liability. The due date for the GIR would be 15 months after the end of the income year of the MNE (18 months in the initial reporting year).

The Bill introduces an administrative regime that would deal with the multinational top-up tax rules, including the following:

- A requirement for all in-scope MNEs to register with IR within six months of the end of the first income year in which they are in scope of the multinational top-up tax rules.

- A requirement for all in-scope MNEs to file a separate annual top-up tax return, which would either be nil or the amount of their multinational top-up tax.
- New penalties of up to \$100,000 for failure to submit a complete GIR on a timely basis or to register for GloBE on a timely basis. The size of these penalties would reflect the scale of the taxpayers they apply to.

As the GloBE rules and the country-by-country reporting rules are closely linked, the Bill also proposes a new penalty of up to \$100,000 for failure to submit a complete country-by-country report on a timely basis.

### **Increasing the trustee tax rate to 39%**

The Bill proposes aligning the trustee tax rate with the 39% top personal tax rate from the 2024–25 income year (beginning on 1 April 2024 for most trusts).

Tax paid on trustee income is a final tax. This means that once tax has been paid at the trustee tax rate (which is currently 33%), no further tax is payable when tax-paid trustee income is later distributed to a beneficiary who is on the 39% top personal tax rate. Aligning the trustee and top personal tax rates would therefore help ensure that trusts cannot be used to shelter income from the top personal tax rate.

In addition to increasing the trustee tax rate, special rules are proposed to buttress the 39% rate and help mitigate over-taxation that could arise for certain types of trusts:

- Certain beneficiary income allocations to corporate beneficiaries would be taxed as trustee income to help ensure that trustees cannot circumvent a 39% trustee tax rate by sheltering income in a corporate beneficiary.
- Trustee income of trusts settled for the care of disabled people would be taxed at the personal tax rate of the disabled beneficiary rather than the trustee tax rate.
- Trustees of estates, which are taxed as trusts, would be able to tax income derived within 12 months of the deceased person's date of death at the deceased person's personal tax rates.

### **ACC and MSD lump sum backdated payments**

The Bill proposes to alter the tax treatment of certain types of backdated lump sum payment (BLSP) to address the tax disparity that arises when the timing of the receipt of a BLSP results in a higher tax liability than would arise if the amount had been spread over the periods to which it relates (ie, an amount that should have been paid over multiple years but is paid as a lump sum in a single year).

Generally, payments of employment income are taxed on a cash basis (when they are received). This principle allows tax to be deducted by the payer in the current tax year. This reduces compliance costs and is simple and easy to understand.

While taxing payments on a cash basis tends to be the best option for employment-related payments, this approach can lead to fairness issues when payments that relate to two or more previous tax years are paid in a later tax year. This alternative tax treatment can push a taxpayer into a higher tax bracket, resulting in a larger tax liability than if they had received the payment at the correct time.

To address this issue, the Bill proposes alternative tax treatment that would approximate the lower amount of tax that would be owing if the payment had been paid over the relevant earlier years. Alternative tax treatment is proposed for two types of BLSP: backdated ACC payments and backdated MSD entitlements.

For backdated ACC compensation payments that consist of a lump sum and relate to more than one income year, the Bill proposes that the tax rate that would apply would be –

- 10.5% if the recipient's average basic tax rate calculated over the four previous years is less than 10.5%; or
- the recipient's average basic tax rate calculated over the four previous years; or
- the recipient's basic tax rate for the year they receive the payment if that rate is higher than 10.5% and lower than their average basic tax rate for the four previous years.

For backdated MSD benefit payments that consist of a lump sum that relates to more than one income year the Bill proposes that the tax deducted by MSD would be treated as the final amount of tax owed.

### **Government payment of three percent KiwiSaver contribution to paid parental leave recipient**

The Bill proposes the Government pay a three percent KiwiSaver contribution into the KiwiSaver accounts of paid parental leave (PPL) recipients who pay three percent of their PPL payments into their KiwiSaver accounts. This would take effect from 1 July 2024 and help to increase the retirement savings of people who take time away from work on PPL.

### **Granting six charities overseas donee status**

The Bill proposes six New Zealand charities with overseas charitable purposes be granted overseas donee status and listed in schedule 32 of the Income Tax Act 2007. This status would mostly take effect on 1 April 2024. The Bill also proposes to remove seven charities as they have ceased operations or been wound up. These charities would be removed upon enactment of the Bill.

### **Tax rollover relief in response to recent flooding events**

The Bill proposes tax rollover relief for assets destroyed or made economically useless by the January-February North Island flooding events. Similar relief was provided in the case of the Canterbury and Hurunui-Kaikōura earthquakes as part of a series of taxation assistance measures for affected businesses.

Normally, the receipt of insurance proceeds for a destroyed business asset gives rise to either depreciation recovery income or income on the disposal of a revenue account asset. The effect of the proposed rollover relief would be to defer the recognition of this income provided there was a commitment to rebuild or replace the destroyed buildings or plant. This would provide some cash flow benefits for insured businesses severely affected by the floods to assist them in their rebuild or replacement, and it would limit the windfall revenue gain that the Government would otherwise receive from the events.

A maximum five-year rollover/deferral period is proposed from the 2022–23 income year. If the asset has not been rebuilt or replaced by the 2027–28 income year, the suspended income would be brought to account in that year. If the business decided in an earlier income year to cease business or not to rebuild or replace the asset, the suspended income would be brought to account in that earlier year.

## Extending tax exemption for non-resident offshore oil rig and seismic vessel operators

The Bill proposes extending the existing temporary five year income tax exemption on the income of non-resident offshore oil rig and seismic vessel operators.

The current exemption, which is due to expire on 31 December 2024, would be extended for a further five years until 31 December 2029. The exemption removes the incentive for rigs and seismic vessels to “churn” (ie, to move in and out of New Zealand waters within 183 days to ensure income is not taxable under many of our double tax agreements), an inefficient process that has negative environmental impacts.

Extending the exemption for a further five years is in keeping with the Government’s previous announcement that existing operators’ rights would be maintained.

## Remedial amendments

Several remedial matters are also addressed in the Bill. These include:

- extending automatic resident withholding tax exempt status to all entities registered under the Charities Act 2005
- extending the definition of a gift-exempt body
- ensuring that assets transferred to a person that is not a charity registered under the Charities Act 2005 are subject to the deregistration tax
- excluding technical services fees and interest and royalties connected to a third state permanent establishment from the double tax agreement source rule
- ensuring the provisional tax calculation works as intended for taxpayers using a year preceding the prior year to calculate their provisional tax liability
- minor amendments to the portfolio investment entity tax provisions
- clarifying the rules relating to non-cash dividends received by a custodian from a foreign company
- treating persons becoming New Zealand residents as acquiring all financial arrangements with a New Zealand source held by them on the date they become a resident
- changing the way in which the taxation of extra pay is determined
- allowing the Commissioner of Inland Revenue to share information relating to deceased KiwiSaver members’ estates with KiwiSaver providers
- clarifying that the child support time bar does not apply to temporary exemptions
- clarifying the meaning of “building” for depreciation purposes
- amending the main home exclusion in the bright-line test to ignore the period during which a person’s main home is constructed
- changing the relevant period in the 10% income interest test for access to the attributable foreign investment fund income method, and
- amending recently enacted legislation relating to the North Island flooding events to ensure clarity and consistency.

Several minor maintenance items, consisting mainly of correcting minor faults of expression, reader’s aids, and incorrect cross-references, are also addressed in the Bill.

Details of further remedial amendments are included in the Commentary to the Bill.

## 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://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill">https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill</a> . <b>Government payment of three percent KiwiSaver contribution to paid parental leave recipient</b> In December 2019, Te Ara Ahunga Ora Retirement Commission published its 2019 Review of Retirement Income Policies available at <a href="https://retirement.govt.nz/policy-and-research/retirement-income-policy-review/2019-review-of-retirement-income-policies/">https://retirement.govt.nz/policy-and-research/retirement-income-policy-review/2019-review-of-retirement-income-policies/</a> . This contributed to the direction of subsequent KiwiSaver enhancement work undertaken by a cross agency group which included officials from the Ministry of Business, Innovation and Employment, the Ministry for Social Development, and Inland Revenue.	

### 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>
<b>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?</b>	<b>N/A</b>

## 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://www.tapolicy.ird.govt.nz/publications/2023/2023-ria-multinational-tax-bill/2023-ria-pack-multinational-tax-bill">https://www.tapolicy.ird.govt.nz/publications/2023/2023-ria-multinational-tax-bill/2023-ria-pack-multinational-tax-bill</a> and <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a>.</p> <ul style="list-style-type: none"> <li>• The Taxation of Trustee Income, Inland Revenue, 3 April 2023;</li> <li>• OECD’s Pillar Two GloBE Tax Rules, Inland Revenue, 2 March 2023;</li> <li>• Taxation of backdated lump sum payments, Inland Revenue, 9 November 2022;</li> <li>• Government payment of an employer contribution to qualifying paid parental leave recipients, Inland Revenue, 26 April 2023;</li> <li>• Extending tax exemption for non-resident oil rig and seismic vessel operators, Inland Revenue, 2018 updated in 2022 to reflect changes since then.</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>
<p>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.</p>	

<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>

## 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 <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://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill">https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill</a>, contains analysis of the proposals included in the Bill. This may supplement existing published analysis or, for proposals that did not require regulatory impact assessments and statements, may provide impact analysis of the proposal.</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>(a) 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) This omnibus taxation Bill contains amendments to tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses 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>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
<p>The effectiveness of tax 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://justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights">https://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>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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<b>Global Anti-Base Erosion Rules for New Zealand</b>
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The Bill introduces penalties of up to \$100,000 for failure to submit a complete GloBE Information Return on a timely basis or to register for GloBE on a timely basis. The size of these penalties reflects the scale of the taxpayers they apply to.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice was consulted on the penalties proposed for the GloBE rules. In addition, a copy of the Bill was provided to the Ministry of Justice for New Zealand Bill of Rights Act 1990 vetting on 21 April 2023.
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## 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>
<b>KiwiSaver provider information sharing remedial</b> A remedial change is proposed to enable Inland Revenue to share information relating to the administration of a deceased member's estate in order to assist providers in contacting the executors or administrators of the estate.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
Inland Revenue's internal Privacy Officer was consulted and confirmed the amendment aligns with the intention of the Privacy Act 2020 by allowing the free flow of information to a representative.	

## 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>
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 One of this statement for further information on the various parties consulted and the form in which consultation was undertaken for the policy items. Limited external consultation was undertaken on the proposals to increase the trustee tax rate due to Budget sensitivity.	

## 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>
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.  The non-budget 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.	

## 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>NO</b>
Given the nature of tax, this Bill does contain provisions that could result in the compulsory acquisition of private property. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in pages 50 and 51 of the <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (June 2013).	

### 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>
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 <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (June 2013).	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
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. 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 Two. 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://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill">https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill</a> .	

### 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>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### 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>

## 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?	YES
<p><b>Global Anti-Base Erosion rules for New Zealand</b></p> <p>The Bill includes a regulation-making power that would allow the Governor-General to specify the dates from which components of the GloBE rules would apply in New Zealand.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><b>Global Anti-Base Erosion rules for New Zealand</b></p> <p>The Bill includes a regulation-making power that would allow the Governor-General to specify the dates from which components of the GloBE rules would apply in New Zealand, provided the Minister of Revenue is satisfied that there is a sufficient critical mass of countries who have adopted the GloBE rules.</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?	YES
<p><b>Global Anti-Base Erosion rules for New Zealand</b></p> <p>The bill provides that the OECD's GloBE Model Rules will be incorporated into New Zealand law by reference. This has been reviewed by the Legislation Design and Advisory Committee LDAC who agreed with the principle.</p>	

## Appendix One: Further Information Relating to Part Three

### 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://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-multinational-tax-bill>.
- A public consultation document on the Global Anti-Base Erosion rules contained in the Bill, which is available at <https://www.taxpolicy.ird.govt.nz/publications/2022/2022-ip-oecd-pillar-two>.
- Regulatory impact assessments and statements outlining consultation that was undertaken on the various measures contained in the Bill, available at <https://www.tapolicy.ird.govt.nz/publications/2023/2023-ria-multinational-tax-bill/2023-ria-pack-multinational-tax-bill>.

### Consulted parties

#### Government bodies

- Accident Compensation Corporation
- Department of Internal Affairs – Charities Services
- Department of the Prime Minister and Cabinet
- Ministry of Business, Innovation and Employment
- Ministry for the Environment
- Ministry of Foreign Affairs and Trade
- Ministry of Justice
- Ministry of Social Development
- The Treasury

#### Representative organisations

- Chartered Accountants Australia and New Zealand
- The Corporate Taxpayers Group
- Energy Resources Aotearoa (ERA)
- The New Zealand Law Society

#### Other parties, organisations, and entities

- Advanced Management Systems Ltd
- Air New Zealand
- Datacom
- EY
- Fonterra
- KPMG
- PwC
- Xero

## Appendix Two: 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.

#### **Granting six charities overseas donee status**

The addition of six charities to schedule 32 of the Income Tax Act 2007 would take effect from 1 April 2023. This retrospectivity is taxpayer friendly because it allows persons who donate to these charities to access donation tax concessions from 1 April 2023 going forward.

#### **Tax rollover relief in response to recent flood events**

The rollover relief proposals would apply to income years commencing with the 2022/23 income year. This is necessary to support taxpayers impacted by the January-February 2023 North Island flood events.

#### **Charities remedials**

##### *Applications for RWT-exempt status*

The proposals would ensure that existing gift-exempt bodies and all charities registered under the Charities Act 2005 are automatically given RWT-exempt status. This change would apply retrospectively from 1 April 2020. The retrospective effect is to align the legislation with existing practice.

##### *Deregistration tax*

The proposals would ensure that assets transferred by a deregistered charity to an entity that is not a registered charity are subject to the deregistration tax. This change would apply from the introduction of the Bill to ensure that taxpayers cannot exploit this integrity risk before enactment of the Bill.

#### **Clarifying that the child support time bar does not apply to temporary exemptions**

The Bill proposes that the Child Support Act 1991 is amended to clarify that temporary exemptions can be backdated to apply to periods that would otherwise be time barred. The relevant four-year time bar, which restricts reassessments of child support, was introduced on 26 October 2021. This amendment would apply retrospectively from that date to align the exception with the application of the time bar.

#### **Flood response remedials**

The Bill amends provisions recently enacted in the Income Tax Act 2007 relating to the North Island weather events. The amendments apply retrospectively to when the original provisions were enacted earlier this year. This is to correct an error made in the original provision that made the provision more restrictive than was intended.

All these changes are taxpayer friendly.

#### **Overreach of the New Zealand double tax agreement source rule**

The Bill removes two cases of overreach where the double tax agreement (DTA) source rule deems income to be sourced in New Zealand in circumstances where the connection with New Zealand is tenuous, and where New Zealand did not anticipate collecting tax on that income.

The amendments would apply retrospectively from 1 April 2018. This is necessary to align with taxpayer practice, and it aligns with previous carve-outs to the DTA source rule, which also took retrospective effect from 1 July 2018.

### **Custodians and resident withholding tax**

The Bill clarifies certain terms relating to custodians to more accurately reflect the custodial relationship. The amendments would apply retrospectively from 1 April 2017. This application date is necessary to align with taxpayer practice since the provisions came into effect on 1 April 2017.

### **Transitional residents holding domestic financial arrangements**

The Bill deems non-residents to acquire financial arrangements with a New Zealand source held by them at the time they become a New Zealand resident. This would apply retrospectively to all arrangements with a New Zealand source that a person who became a New Zealand resident on or after 1 April 2008 is party to, provided they became party to that arrangement when they were a non-resident and were still party to that arrangement on the date of enactment of the Bill.

This will not retrospectively affect any tax returns already filed because the deemed acquisition only affects the amount of tax payable upon maturity of an arrangement.

### **Clarifying the meaning of “building” for depreciation purposes**

The Bill clarifies the meaning of “building” for depreciation purposes to ensure it includes part of a building owned under a unit title. This would apply retrospectively from 1 April 2020, being the date on which depreciation for non-residential buildings was reinstated, and it is necessary to align with the policy intent of those changes.

The change is taxpayer friendly.

### **Changing the relevant period in the 10% income interest test for access to the attributable foreign investment fund income method**

The Bill changes the relevant period in the 10% income interest test for access to the attributable foreign investment fund income method. The amendment would apply from 1 July 2011, which is necessary to align with the date at which the attributable foreign investment fund income method became available to taxpayers.

### **Main home exclusion: construction period**

The Bill proposes an amendment to permit homeowners to ignore the period during which their main home was constructed when determining whether they qualify for the main home exclusion under the previous five-year bright-line test. It would apply to residential land acquired on or after 29 March 2018 and before 27 March 2021 and could impact those who have already disposed of their property.

It is a taxpayer-friendly measure as it would ensure that taxpayers who only used their property as their main home are able to qualify for the main home exclusion.