

# Departmental Disclosure Statement

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Digital Services Tax 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.

28 August 2023.

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## Part One: General Policy Statement

This Bill would allow the Government to implement, at an appropriate time, a digital services tax (DST) to be administered by Inland Revenue. The Bill proposes enabling a more comprehensive taxation of the digital economy.

The DST would be imposed at a rate of 3% on digital services revenues connected to New Zealand users or land that are derived by in-scope digital services groups. Taxable digital services revenues are revenues relating to intermediation platforms, social media and content sharing platforms, internet search engines, digital advertising and user-generated data. The tax would apply to large businesses with global digital services revenues of at least €750 million per revenue year and at least \$3.5 million of New Zealand digital services revenue per revenue year.

The DST would be calculated based on the digital services group's revenue year and would be paid and reported via self-assessment by the due date in the following year. Members of the digital services group would be jointly and severally liable for the DST.

The Bill would introduce consequential amendments to the Tax Administration Act 1994.

The Digital Services Tax Act would come into force on 1 January 2025. However, the Government would be able to defer this commencement date for up to five years. The Government is working with other countries at the Organisation for Economic Co-operation and Development to achieve a multilateral agreement. The Government intends to ask Parliament to repeal the DST when an acceptable multilateral solution is implemented.

## 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>NO</b>
A commentary on the Bill is available at <a href="https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-dst-bill">https://www.taxpolicy.ird.govt.nz/publications/2023/2023-commentary-dst-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>
Regulatory impact statement: Digital Services Tax, Inland Revenue, 9 August 2023 A publicly available version of this regulatory impact statement is available here: <a href="https://www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-dst-bill">https://www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-dst-bill</a>	

<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 statement for this Bill did not meet the threshold for requiring an independent opinion on its 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>
No significant further impact analysis has become available for any aspects of the policy to be given effect by the Bill. Therefore, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 29 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

<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>The regulatory impact statement includes an assessment of the potential costs and benefits for this policy. There is a risk that some New Zealand exporters will be subject to loss of income due to trade tariffs being imposed in retaliation for the DST. Analysis on the potential for any particular group of persons to suffer a substantial unavoidable loss of income or wealth is available in the regulatory impact statement.</p> <p>The 2019 Government discussion document <i>Options for taxing the digital economy</i> also considers some of the potential costs and benefits of implementing a Digital Services Tax. This document is available here: <a href="https://www.taxpolicy.ird.govt.nz/publications/2019/2019-dd-digital-economy">https://www.taxpolicy.ird.govt.nz/publications/2019/2019-dd-digital-economy</a></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 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 regulatory effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill. Based on overseas experience with similar taxes, we expect that the targeted taxpayers will comply with the Bill without significant regulatory effort being required. This is discussed in more detail in the regulatory impact assessment 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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Inland Revenue has considered the international obligations that apply to tax measures in conjunction with the Ministry of Foreign Affairs and Trade (MFAT).

Inland Revenue has also identified the need for the DST Bill to be consistent with the October Statement and Outcome Statement New Zealand agreed to in October 2021 and July 2023 respectively. The commencement date of the Bill has been designed in a way to remain consistent with New Zealand's continued support and participation in the multilateral process at the OECD.

### 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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Under the Generic Tax Policy Process, there is a focus on consultation (both with Māori and non-Māori interested parties) during the development of the policy measures. Public consultation was undertaken via the Government discussion document *Options for taxing the digital economy* (2019).

Internal consultation seeking to obtain Māori perspectives occurred during the policy development process. Confidentiality, time, and process constraints limited subsequent analysis on this point.

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

<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 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 <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

### 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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Clause 31 of the Bill introduces civil penalties for not meeting DST obligations. These are aligned with existing penalties in the Tax Administration Act 1994 and those introduced by the Global Anti-Base Erosion Rules for New Zealand in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted on the penalties proposed for the DST Bill (clause 31). The Ministry of Justice raised concerns on the use and size of administrative penalties. However, there is common understanding that administrative penalties are a longstanding feature of the tax system, and that the size of the proposed penalties follow relevant precedent.</p> <p>In addition, a draft copy of the Bill was provided to the Ministry of Justice for New Zealand Bill of Rights Act 1990 vetting on 6 July 2023.</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>NO</b>
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## 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>A discussion document was issued by the Government in 2019, <i>Options for taxing the digital economy</i>. This canvassed views on a DST and on a multilateral solution under development at the OECD (<i>The Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy</i>).</p> <p><a href="https://www.ird.govt.nz/consultation/consultation-digital-taxation/consultation-digital-taxation">Options for taxing the digital economy (ird.govt.nz)</a></p> <p>Most of the feedback received was focused on whether the Government should adopt a DST. Although the business sector generally opposed any DST, individuals and non-governmental organisations generally supported an interim DST until a multilateral solution could be agreed.</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>NO</b>
<p>The DST has been compared to DSTs in other similar countries, particularly those implemented or proposed in the United Kingdom and Canada.</p> <p>Initial discussions with Inland Revenue's operational subject matter experts have been undertaken to assess the administrative impacts and to ensure they are workable and complete. This involves assessing whether systems need to be changed.</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>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 Disclosure Statements for Government Legislation: Technical Guide for Departments (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 introduces a new tax, 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 Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### 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>
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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>
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The Bill includes a provision that allows the commencement date of the Bill to be deferred by one or more Orders in Council, up to a maximum of five years. This is to allow the Government to react more dynamically to international developments, in particular the development and effective implementation of a multilateral solution.

A five-year limit is proposed on the deferment of the commencement date so that the Bill must commence by 1 January 2030. This aligns with constitutional best practice in that it prevents the Executive from altering the will of the Parliament. The period ending on 1 January 2030 allows the Government a reasonable length of time to defer the imposition of the DST and, if deemed appropriate, repeal the DST in favour of a satisfactory multilateral solution.

## Any other unusual provisions or features

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