Departmental Disclosure Statement

Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue.

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

21 August 2024.

Contents

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;
- Gaming Duties Act 1971;
- Stamp and Cheque Duties Act 1971;
- Income Tax Act 2004;
- Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023;
- Child Support Act 1991; and
- Local Government Act 2002.

Broadly, the policy proposals in this Bill fall into three categories. The first category sets the annual rates of income tax for the 2024–25 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 encouraging voluntary compliance.

Although New Zealand has relatively strong tax settings, it is important to continually maintain the tax system and ensure that it remains 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 specific changes are outlined and described in detail below.

The third category relates to proposals aimed at improving the settings for tax administration, the goods and services tax (GST) regime, KiwiSaver and social policy 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), which increases opportunities for public consultation. This process helps to ensure that policy, as well as administrative considerations, 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 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 the identification of any remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at How we develop tax policy (ird.govt.nz).

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/2024/commentary-emergency-response-tax-bill.

Setting annual rates of income tax for the 2024–25 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 2024–25 tax year be set at the rates currently specified in schedule 1, part A of the Income Tax Act 2007.

Generic response to emergency events

The Bill would introduce a mechanism that would allow any of a set of response measures to be activated through an Order in Council when an emergency event occurs.

In the past, tax relief has been provided during emergency events and in the subsequent recovery phase. To date, these responses have been initiated through a range of methods, including amendments to primary legislation (i.e. Acts of Parliament).

However, using primary legislation to achieve these objectives can be slow and inefficient and can create uncertainty for taxpayers while the legislative process is carried out.

A related issue is the challenge Inland Revenue faces in sharing the information it collects as part of its function with other agencies responding to an emergency event. Inland Revenue is currently unable to share sensitive revenue information with other agencies when requested to do so in responding to an emergency event. Delays in communicating this information could affect the government's ability to aid those affected by the emergency.

Set of response measures

The Bill proposes a legislative mechanism that would allow the activation of measures through an Order in Council and one additional measure at the Commissioner of Inland Revenue's discretion. These measures would become available for activation when an emergency occurs. This would leave Ministers with the discretion to determine when and which measures should apply and would streamline the legislative process.

The proposed measures are based on past government responses to emergency events and are contained within the table below.

Measure	Current mechanism	Proposed mechanism	When previously used
Taxation rollover relief for: revenue account property depreciable property amortisable land improvements.	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events

Capped employer payments and fringe benefits, and extended tax-free accommodation period	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council	Mycoplasma bovis outbreak commencing 2017
Turning off the bright-line test and other time-based land sale rules	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events (Government buy-outs available in both cases)
Information sharing for a specific event	N/A	Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards	COVID-19 pandemic response, through specific primary legislation
Remission of UOMI	Order in Council	Commissioner discretion	Regularly used for large-scale emergencies, including Hawke's Bay gastro-medical event

This initiative would allow the Government to provide tax relief to affected groups without the need to amend primary legislation.

Information-sharing power

The second part of the initiative would allow Inland Revenue to share sensitive information with other agencies to assist in delivering assistance in an emergency, provided certain safeguards are met. This information-sharing power would be activated by Order in Council. The safeguards are:

- The power would only be available for events that are declared national emergencies and would need to be consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020.
- Information could only be shared for as long as is necessary to fulfil the purpose of the information requests for that event and within the time limitations set by the Information Sharing Code.
- The Commissioner of Inland Revenue would need to be satisfied that sharing the information would not be undesirable and that the information was readily available. An undesirable disclosure could include disclosing information that could compromise the integrity of the tax system.
- A written agreement, specifying the information to be shared, would need to be agreed between the Commissioner and the party who requested the information.

The proposals would take effect from 1 April 2025.

Crypto-asset Reporting Framework (CARF)

Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Rather than using a financial institution to verify transactions, crypto-asset transactions are confirmed by computers on the crypto-assets network. This is called distributed ledger technology. Blockchain is a form of this technology.

Since the first crypto-asset, Bitcoin, was introduced in 2009, the market for crypto-assets worldwide has grown significantly. The current market capitalisation for crypto-assets is almost NZ$4 trillion. Between 6% and 10% of New Zealanders own some crypto-currency, with most of their transactions undertaken through offshore exchanges.

Tax authorities do not have visibility of income derived through crypto-assets in the way they do with income derived from more traditional sources. However, there have been increased efforts to bring scrutiny to bear on income and investment opportunities facilitated through large-scale intermediaries. For example, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (CRS), which imposes information gathering and reporting requirements on financial institutions relating to financial account information about people and entities investing outside their tax residence jurisdiction.

Against this background, the OECD has developed the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard (CARF)*, which is available for jurisdictions to implement. This represents a standardised framework for the automatic exchange of tax-relevant information on crypto-assets.

Incorporation into New Zealand law

The Bill would incorporate the CARF proposal into New Zealand law. The CARF proposal involves the reporting of tax information on transactions in crypto-assets in a standardised form, with a view to automatically exchanging this information with other jurisdictions.

The CARF is a global minimum standard, which means that all OECD member countries are expected to implement it. To date, over 50 jurisdictions worldwide have signed a joint statement outlining their commitment to implement the CARF in time to commence exchanges of information by 2027. The information obtained under the CARF would increase Inland Revenue’s visibility over income derived through crypto-assets and support compliance activity by ensuring taxpayers are paying the correct amount of tax.

The CARF applies to entities or individuals that facilitate exchange transactions for customers. Under the CARF, these crypto-asset service providers must collect transaction and customer information and provide this to the tax authority in the jurisdiction in which they operate. The information is then exchanged with other tax authorities that have implemented the CARF to the extent it relates to persons resident in that jurisdiction.

Penalties

Jurisdictions are required to ensure they correctly implement the CARF. This requires effective enforcement provisions to address any instances of non-compliance by crypto-asset service providers or crypto-asset users.

New civil penalties will be required to support the CARF. These penalties will be based on penalties included in the Tax Administration Act 1994 following implementation of the CRS and the OECD model rules for the platform economy in New Zealand. The penalties would apply to crypto-asset service providers with a New Zealand reporting obligation, as well as users of these service providers where they fail to comply with the information-reporting requirements of the CARF. These penalties would be discretionary, and it would be up to the Commissioner of Inland Revenue to determine whether a penalty amount ought to be imposed for any breaches under the CARF.

Amendments to the Common Reporting Standard

The CRS is a global framework developed by the OECD for the collection, reporting and exchange of financial account information about people and entities investing outside their tax residence jurisdiction. It is intended to assist in the detection and deterrence of offshore tax evasion. The CRS was incorporated into New Zealand law by the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017.

The amendments to the CRS primarily support the CARF but also include several minor or technical amendments to improve the usability of the CRS. The Bill proposes giving effect to these amendments.

The proposals would be implemented in New Zealand with effect from the 2026−27 tax year, with the first reports due in 2027.

Approved issuer levy retrospective registration

The Bill proposes allowing a New Zealand borrower paying interest to a foreign lender who did not register a security for approved issuer levy (AIL) on time to retrospectively register the security in certain circumstances.

A New Zealand borrower paying interest to a non-associated non-resident lender can generally opt to pay a 2% (or in some cases 0%) AIL instead of non-resident withholding tax (NRWT) at 10% or 15%. To be eligible for AIL, the New Zealand borrower must be an approved issuer and register the relevant security before making an interest payment. The regime supports New Zealand borrowers' access to capital from foreign lenders.

However, if the New Zealand borrower has not registered a security at the outset and Inland Revenue becomes aware of the error, the borrower is required to pay NRWT on any interest payments already made, thereby increasing the interest cost from 2% to 10% or 15%.

Currently, Inland Revenue is unable to allow the borrower to retrospectively register the security for AIL under any circumstances. This is undesirable for several reasons:

- *Increased cost of capital for New Zealand borrowers:* AIL is a concessionary regime designed to lower the cost of capital for New Zealand borrowers to whom foreign lenders would otherwise pass on the full cost of NRWT. Requiring a taxpayer to pay NRWT rather than AIL due to an administrative error increases the cost of capital, thereby conflicting with the intent of the AIL regime.
- *Inconsistency with other settings:* A taxpayer who has registered a security but neglected to pay AIL is still able to pay AIL at 2% (along with usual use of money interest and potential penalties) when the error is discovered. This can be contrasted with a borrower who has not registered a security but has paid AIL on interest payments under it. Such a borrower is liable for NRWT at a rate of 10% or 15%, which could be seen as a disproportionate outcome.
- *Compliance implications:* Taxpayers may be less inclined to disclose their errors if they know that they will face NRWT at 10% or 15% for doing so instead of AIL at 2%.

The Bill proposes permitting a borrower to retrospectively register a security for AIL in limited circumstances. This would allow the borrower to pay AIL rather than NRWT on the interest payments made on the security prior to the date of registration. The Commissioner would only approve an application for retrospective registration if the borrower:

- failed to register the security on time due to a genuine error; and
- applied for retrospective registration within two years of the first interest payment on the security on which the borrower had an NRWT liability being made.

The proposal would take effect from 1 April 2025. Registrations could not be backdated before that date, meaning the change would be prospective.

Taxation of transfers from overseas pension schemes

The Bill proposes measures to address two issues that affect the transfer of pension funds to New Zealand. They primarily address issues concerning the transfer of funds from the United Kingdom (UK). These are:

- the inability of some migrants to pay New Zealand tax due on a transfer of their UK pension fund to a qualifying recognised overseas pension scheme (QROPS) in New Zealand without withdrawing funds from the scheme, resulting in UK tax charges; and
- the existence of “locked in” KiwiSaver funds.

The UK has strict rules for taxing pensions. Accordingly, a UK pension fund may only be transferred overseas free of UK tax if it is transferred to a QROPS. QROPS are pension schemes established outside the UK that agree to follow UK rules. These rules include preventing migrants from accessing the pension fund sooner overseas than they would have been able to in the UK. Transfers to non-QROPS, and withdrawals from QROPS within certain timeframes, are subject to UK tax charges of up to 55%.

Pension transfers are taxable in New Zealand to the extent the migrant is not entitled to the benefit of the concessionary transitional residence regime. This regime exempts certain foreign-sourced income, including withdrawals from a foreign superannuation scheme, for the first four years of the migrant’s tax residence in New Zealand. When the individual is not entitled to the regime, or their transitional period has expired, a portion of the pension fund transferred is taxed at the migrant’s marginal rate. However, a withdrawal from either the original pension fund or the QROPS to meet a New Zealand tax liability will result in a UK tax charge.

Payment of New Zealand tax due on pension transfers

The Bill proposes a “scheme pays” option that would allow a migrant transferring their pension fund to a New Zealand QROPS to elect for the QROPS provider to pay the New Zealand tax due on the transfer from the transferred funds, at a flat 28% rate, directly to Inland Revenue. Under “scheme pays”, there would be no liability for UK tax charges because no funds would flow to the migrant personally. The QROPS will also be responsible for a monthly information report to Inland Revenue on overseas pension transfers received, which will indicate whether the tax has been paid by the scheme or if it will be paid by the individual. The migrant would be responsible for providing accurate information to the QROPS for reporting purposes.

For equity reasons, the Bill also proposes that “scheme pays” would be available for transfers of pension funds from other (non-UK) countries to KiwiSaver schemes. QROPS and KiwiSaver schemes would be required to participate in the “scheme pays” option.

'Locked-in' KiwiSaver funds

In 2015, KiwiSaver schemes ceased to be QROPS. Some migrants who transferred their pension funds from the UK to KiwiSaver schemes prior to that change cannot transfer them to any other KiwiSaver scheme without incurring UK tax charges. This creates issues for migrants who want to move their funds to another scheme and for KiwiSaver providers who want to merge schemes with low participation.

The Bill proposes allowing KiwiSaver providers to move "locked-in" funds from the KiwiSaver scheme into a QROPS, subject to the migrant's consent. Any remaining funds would remain in the KiwiSaver scheme and could then be transferred to another KiwiSaver scheme without UK tax implications.

The Bill proposes that:

- The "scheme pays" mechanism would apply from 1 April 2026.
- Transfers from KiwiSaver schemes of previously transferred UK pension funds to New Zealand QROPS would be available from 1 April 2025.

Exempt employee share schemes

The Bill proposes that thresholds relating to exempt employee share schemes are increased to recognise the effect of past inflation and provide a buffer against future inflation. This is intended to make it easier for companies in the start-up and tech sectors to attract and retain talent through the use of employee share schemes.

Employee share schemes are arrangements whereby shares in an employer company are provided to an employee (either in whole or in part) in return for services. These schemes are an important way of remunerating employees both in New Zealand and overseas.

Exempt employee share schemes allow employers to provide benefits to their employees without causing their employees to incur a tax liability. This reduces compliance costs for schemes that are offered to all (or almost all) of a firm's employees. Benefits provided under an employee share scheme may be exempt if, among other things:

- the maximum value of shares provided to an employee does not exceed $5,000 a year;
- any discount provided by an employer on the market value of those shares does not exceed $2,000; and
- 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions are eligible to take part in the scheme.

The two thresholds above (namely, those that govern the maximum value of the shares that may be provided to an employee and the maximum permissible discount on the shares' market value) were last set in 2018.

In recognition of the impact of inflation since the thresholds were last set, and to provide a buffer against future inflation, the Bill proposes these are increased as follows:

	Current thresholds	Proposed thresholds
Maximum permissible value of shares provided to an employee per annum	$5,000	$7,500
Maximum permissible discount on share market value provided by an employer	$2,000	$3,000

The proposal would apply to offers of shares made under exempt employee share schemes on and after 1 April 2025.

NZBN information-sharing provision

The Bill proposes the "one-off" sharing of IRD numbers and contact information between Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE) to encourage take-up of the New Zealand Business Number by unincorporated entities.

New Zealand Business Numbers (NZBN) are unique business identifiers used for a range of purposes, including verifying businesses' identities and facilitating e-invoicing. While companies are provided with an NZBN upon registration with the Companies Office, unincorporated entities will not receive an NZBN unless they choose to register with the Companies Office. This has resulted in the low uptake of NZBNs among unincorporated entities.

The Bill proposes allowing the "one-off" sharing of information between Inland Revenue and MBIE. This would involve Inland Revenue providing MBIE with the contact details and IRD numbers of unincorporated entities so that MBIE can contact those that do not currently have NZBNs and encourage them to register for an NZBN. Any information shared with MBIE would be destroyed by MBIE once it had contacted the unincorporated entities.

While current information-sharing provisions do exist between MBIE and Inland Revenue, a legislative change is required to allow information to be used for this NZBN initiative.

The proposal would apply from the date the Bill receives the Royal assent.

Enrolling persons aged under 16 in KiwiSaver

The Bill proposes allowing young people aged under 16 to enrol in KiwiSaver with the agreement of one parent or guardian.

Current KiwiSaver settings allow persons aged 18 or over who meet the eligibility criteria to join KiwiSaver "as of right". However, a person aged under 16 who is not in Oranga Tamariki care who wishes to join KiwiSaver requires the consent of both guardians. These settings were developed in response to issues that arose shortly after the implementation of the KiwiSaver regime, and they sought to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the young persons for whom they are responsible.

However, the current enrolment settings for persons aged under 16 can pose a challenge for solo parents wishing to enrol children in KiwiSaver when it is difficult to secure the agreement of a former partner.

The proposal would apply from 1 July 2025.

Charities recommended for overseas donee status

The Bill proposes six New Zealand charities with overseas charitable purposes be granted overseas donee status and added to the list of organisations in schedule 32 of the Income Tax Act 2007. Donee status for one charity is time limited, given the project nature of its work.

The additions to the list would apply from 1 April 2024.

Remedial amendments

The Bill contains a significant number of amendments of a remedial and technical nature that ensure the legislation is consistent with the policy intent. These include:

- ensuring that the bright-line period is not restarted when a co-owner acquires land from another co-owner on a partition or subdivision;
- ensuring the new bright-line test does not apply to transfers of inherited land by a beneficiary of an estate;
- amending the eligibility rules for portfolio investment entities to ensure they are consistent with the policy intent;
- changing the general approval application due date for the Research and Development Tax Incentive tax credit;
- general amendments to ensure the GST rules for apportionment and adjustments of input tax deductions work as intended;
- extending the scope of the temporary GST registration rules;
- clarifying that distributions from unit title bodies corporate to refund members are deductible for GST purposes;
- ensuring GST-registered persons that have accounting cycles based on 13-week quarters can have approved taxable period end dates that are aligned with their accounting calendar;
- allowing an optional timing rule for GST on accommodation supplied through electronic marketplaces;
- clarifying how property developers are defined for the purposes of a GST rule for limiting input tax deductions for land sold by property developers;
- allowing taxpayers the option to deduct the GST-inclusive amount of all their expenditure for income tax purposes in certain situations when they include the flat-rate credit as income in their income tax returns;
- ensuring that services provided in relation to commercial vessels passing through New Zealand should be zero-rated for GST purposes;
- ensuring that zero-rating applies to a deemed supply of emissions units upon deregistration;
- clarifying that the taxable activity exclusion for certain goods applies when a person deregisters from GST;
- extending the thin capitalisation rules related to the calculation of non-debt liabilities for interest-free loans and certain shares;
- clarifying that the transfer pricing and dividend rules apply concurrently, and ensuring that any adjustments that flow from a transfer pricing adjustment are subject to the same seven-year time bar;
- clarifying that entities that only derive exempt income are not required to file an annual return;
- repealing the provision allowing taxpayers to apply to the Commissioner to spread income derived by them on disposal of land to the Crown;
- amending provisions relating to partnerships to clarify the application of the associated persons rules to limited partnerships, allow limited partnerships to apply for RWT-exempt status under the name of the partnership, ensure limited partnerships can access the AIL regime, and address other minor and technical issues;
- clarifying the livestock that is subject to the annual valuation provisions of the Income Tax Act 2007;
- including an additional criterion to enable the Commissioner to make an assessment without the need to issue a notice of proposed adjustment; and

- ensuring the same tax treatment for amounts of extra pay that are paid together when one of the amounts of extra pay arises from the ending of an employee's employment.

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. This also includes the removal of two charities that have ceased operations from the overseas donee status list.

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

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	**YES**
A commentary on the Bill is available at https://www.taxpolicy.ird.govt.nz/publications/2024/commentary-emergency-response-tax-bill. The Bill commentary provides a more detailed explanation of the main proposed legislative changes in the Bill. In addition, the document listed in Appendix One is publicly available at the location indicated.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**YES**
Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard The Crypto-Asset Reporting Framework proposal utilises the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.	

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?	**YES**
Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Multilateral Convention on Mutual Administrative Assistance in Tax Matters, National Interest Analysis, Inland Revenue, August 2012 see http://taxpolicy.ird.govt.nz/tax-treaties/convention-mutual-administrative-assistance-tax-matters.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
These regulatory impact assessments and statements were prepared and available at https://www.taxpolicy.ird.govt.nz/publications/2024/ria-pack-emergency-response-tax-bill • generic response measures for emergency events, 19 June 2024; • Crypto-Asset Reporting Framework, 8 May 2024; • taxation of transfers from overseas pension schemes, 23 May 2024; and • approved issuer levy retrospective registration, 31 May 2024. The remaining policy items in the Bill are exempt from the regulatory impact analysis requirements because the proposed changes result in little or no change to the status quo legislative position. A number of the items (particularly those of a remedial nature) involve technical "revisions" or consolidations that substantially re-enact the current law to improve legislative clarity and understanding (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Other items repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities, or involve a very small number of people in practice.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The regulatory impact statements for this Bill did not meet the threshold for requiring an independent opinion on their quality from the Ministry for Regulation's Regulatory Quality Team.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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 *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013). However, the commentary on the Bill, available at https://www.taxpolicy.ird.govt.nz/publications/2024/commentary-emergency-response-tax-bill, 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.	

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

(a) The regulatory impact assessments and statements listed under question 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 because these items have been assessed as having no or a very minor impact on businesses, individuals, or organisations.

(b) This omnibus taxation Bill contains amendments to tax legislation that, by their 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 question 2.3 or, where appropriate, in the commentary on the Bill.

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.

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

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 question 2.3 or, where appropriate, in the commentary on the Bill.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
Unless it has been specifically identified in the development of the policy that there may be relevant international obligations, there have been no formal steps to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
Unless it has been identified in the development of the policy that there may be implications for the rights and interests of Māori protected by the Treaty of Waitangi, no formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi. Under the Generic Tax Policy Process (described in Part One of this statement), there is a focus on consultation (both with Māori and non-Māori interested parties) during the development of the relevant policy measures contained in the Bill. This is directly in line with the "duty to consult" principle of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	**YES**
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be available on the Ministry's website at https://justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights.	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	**YES**
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**NO**
Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard The Bill proposes introducing new penalties that may apply to reporting crypto-asset service providers and reportable users that operate through these service providers, where they fail to comply with their obligations under the CARF. These penalties are outlined in Appendix Two.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted on the penalties proposed for the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard. The Ministry of Justice did not have any concerns with the proposals. In addition, a copy of the Bill was provided to the Ministry of Justice for New Zealand Bill of Rights Act 1990 vetting on 2 August 2024.	

Privacy issues

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

Generic response to emergency events

The Bill introduces an emergency event information sharing provision. The provision involves giving the Commissioner of Inland Revenue a discretion to share s revenue information with other agencies who need that information to help in delivering assistance in an emergency, provided certain safeguards are met. The information sharing power is consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being unable in previous emergencies to share information to help other agencies deliver assistance. The information sharing would only be for national emergencies.

Information sharing for NZBN purposes

The Bill introduces an information sharing provision relating to unincorporated entities. This provision empowers the Commissioner to disclose contact information relating to unincorporated entities to an authorised officer of the department responsible for the administration of the New Zealand Business Number Act 2016, currently the Ministry for Business, Innovation and Employment. This measure enables the one-off sharing of information and would support the uptake of NZBNs among unincorporated entities, expanding from the current information sharing provisions relating to the administration of NZBNs and primary business data.

Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

The Bill implements the OECD's *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* into New Zealand's domestic law. This means that the provisions of the CARF have legal effect in New Zealand and apply under New Zealand law. The CARF itself requires reporting crypto-asset service providers to collect personal information on their reportable users, along with aggregate transaction information in respect of crypto-assets, and to report that to Inland Revenue.

Taxation of transfers from overseas pension schemes

The Bill introduces a new mechanism for reporting investment income information to Inland Revenue. This provision will conform with other forms of income reporting and the requirement will be subject to the Tax Administration Act 1994.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

Generic response to emergency events The Office of the Privacy Commissioner was consulted about the changes. It was concerned about Inland Revenue having a separate information sharing provision that went beyond that allowed to other agencies under the Information Sharing Code. The Office of the Privacy Commissioner and Inland Revenue subsequently agreed to restrict the proposed Inland Revenue power to align with the Information Sharing Code. This would not preclude Inland Revenue undertaking work with the Office of the Privacy Commissioner at a later stage on the appropriateness of extending the information sharing power to other declared emergencies. **Information sharing for NZBN purposes** The Office of the Privacy Commissioner was consulted about the changes. It noted there is a reasonable policy case for targeted information sharing with appropriate risk mitigations, and with the appropriate vehicle. Its view was that an Approved Information Sharing Agreement would be a more appropriate vehicle for this provision to be introduced through. Risk mitigations will be clarified through the safeguards in the Memorandum of Understanding. **Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard** The decision was taken to implement the Crypto-Asset Reporting Framework as part of Budget 2024. The Crypto-Asset Reporting Framework is also a global minimum standard meaning it is non-discretionary and all OECD member countries are expected to implement it. The Office of the Privacy Commissioner has been informed of the proposed changes.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
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 for further information on the various parties consulted and the form in which consultation was undertaken for the policy items.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
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 proposals in the Bill have required formal testing at this stage but initiatives which require systems changes will go through formal testing as part of Inland Revenue's internal design and delivery processes, post-introduction of this Bill. 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.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	**NO**
Given the nature of tax, 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

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**NO**
Given this Bill is amending tax legislation, it does contain provisions that create or amend a power to impose a charge that is a tax. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in pages 53 and 54 of *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**YES**
There are policy items in the Bill that may have a retrospective effect and, given the nature of tax, the retrospective application may have some impacts on the rights of specific taxpayers. 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 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 https://www.taxpolicy.ird.govt.nz/publications/2024/commentary-emergency-response-tax-bill.	

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

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**NO**

Significant decision-making powers

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

Powers to make delegated legislation

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	**YES**

Generic response to emergency events

The Bill proposes a new Order in Council mechanism to switch on any of the generic emergency event provisions that will be contained in the Income Tax Act 2007. Further information on this power is included in Appendix Three.

Approved taxable period end dates

The Bill proposes a power allowing for the Commissioner to prescribe a method for certain registered persons that are approved to have taxable period end dates based on their accounting cycle. Further information on this power is included in Appendix Three.

Non-taxable government grants and subsidies in the Goods and Services Tax Act 1985

The Bill makes a consequential amendment to the existing power in the Goods and Services Tax Act 1985 that empowers the making of Orders in Council to add to the schedule of non-taxable government grants and subsidies. Further information on this amendment is included in Appendix Three.

Crypto-Asset Reporting Framework

The Bill proposes a regulation-making power to allow for the cancellation, reversal or non-application of changes to the CARF by way of Order in Council. Further information on this power is included in Appendix Three.

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
The Bill provides that the OECD CARF will be incorporated into New Zealand law by reference. This method of incorporation has been previously utilised successfully for other reforms such as the platform economy rules, the OECD's GloBE Model Rules, and the Common Reporting Standard.	

Appendix One: Further Information Relating to Part Two

Publicly available inquiry, review or evaluation – question 2.1

Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

The OECD Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard, which is proposed to be incorporated by reference into New Zealand law as part of this Bill, is also publicly available online at https://web-archive.oecd.org/temp/2023-11-10/642426-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm

Appendix Two: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4(a)

Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

The Bill proposes introducing new penalties that may apply to reporting crypto-asset service providers and reportable users that operate through these service providers, where they fail to comply with their obligations under the CARF. The penalties include:

- A civil penalty of $300 for each occasion a reporting crypto-asset service provider does not meet the requirements as set out in the CARF. This is capped at $10,000 per calendar year.
- A civil penalty of $20,000 for each occasion that a reporting crypto-asset service provider does not take reasonable care to meet the requirements of the CARF. For subsequent failures, a further penalty of $40,000 is proposed. The maximum amount of the penalty is capped at $100,000 per calendar year.
- A civil penalty of $1,000 for reportable users that do not provide reporting crypto-asset service providers with the information they need to comply with their obligations under the CARF.

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/2024/commentary-emergency-response-tax-bill.
- Regulatory impact assessments and statements outlining consultation that was undertaken on the various measures contained in the Bill, available at https://www.taxpolicy.ird.govt.nz/publications/2024/ria-pack-emergency-response-tax-bill.

Consulted parties

Government bodies

- Department of Internal Affairs – Charities Services
- Department of the Prime Minister and Cabinet
- Ministry of Business, Innovation and Employment
- Ministry of Foreign Affairs and Trade
- Ministry of Justice
- Ministry for Primary Industries
- Ministry of Social Development
- National Emergency Management Agency
- Parliamentary Counsel Office
- Reserve Bank of New Zealand
- Financial Markets Authority
- Office of the Privacy Commissioner
- The Treasury
- Veterans' Affairs New Zealand

Representative organisations

- Angel Investment Network
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Corporate Trustees Association
- CPA Australia
- Financial Advice New Zealand
- Financial Services Council
- Institute of Certified New Zealand Bookkeepers
- New Zealand Banking Association
- New Zealand Law Society
- New Zealand Private Capital

Other parties, organisations, and entities

- Altered State Machine
- Baucher Consulting Ltd
- Bell Gully
- Binance New Zealand
- Britannia Financial Services Ltd
- Buddle Findlay
- Chapman Tripp
- Charter Square
- Coined
- Craigs Investment Partners
- DASSET
- Deloitte
- Easy Crypto New Zealand
- Ernst & Young
- First Capital Financial Services Ltd
- Forsyth Barr Investment Services
- G3 Financial Freedom Ltd
- iSelect Ltd
- Jarden
- Jim Gordon Tax Ltd
- Kernel Wealth
- KiwiSaver providers
- Kiwi-Coin
- Kiwi Property
- KPMG
- Mayne Wetherell
- New Zealand Funds Management Ltd
- Non-Fungible Labs
- OliverShaw
- PwC
- Swyftx
- UK Pension Transfer Specialists Group

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.

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 2024. This retrospectivity is taxpayer friendly because it allows persons who donate to these charities to access donation tax concessions from 1 April 2024, and later income years.

GST remedial measures

The Bill proposes a series of remedial amendments to the Goods and Services Act 1985 that would apply retrospectively:

- Re-instatement of a rule that allows a non-resident supplier of imported goods to adjust its GST payable for an amount of GST refunded to the consumer when the goods are taxed twice (first at the point of sale, and again when the goods are imported). This would apply on and after 30 March 2022 to align with the date the former rule was inadvertently removed.
- Clarification as to the operation of GST on the listed services rules. These would apply on and after 1 April 2024 to align with the introduction of the new rules for electronic marketplaces.
- Providing marketplace operators, accommodation providers and listing intermediaries the choice of accounting for GST on a supply of accommodation made through an electronic marketplace when the performance of the services is completed (in other words, the guest's check-out date). This change would apply on and after 1 April 2024 to align with the introduction of the new rules for electronic marketplaces.
- Fixing several problems with the provisions allowing the Commissioner to approve taxable period end dates that are not the last day of a month, mainly to ensure GST-registered persons that have accounting cycles based on 13-week quarters can have taxable period end dates that are aligned with their accounting calendar to reduce their compliance costs. The changes would apply on and after 30 March 2022 to align with the effective date of recent amendments that created most of the problems with the rules.
- Clarifying that an agreed amount of consideration for the supply of a pharmaceutical is not altered if part of the consideration was rebated to Pharmac. This would apply from 1 April 2023 to align with the date the former provision was inadvertently removed.
- Ensuring that the GST adjustment rules correctly take into account a non-resident's worldwide supplies. A drafting oversight has resulted in the definition of "actual use" in the adjustment rules only accounting for the company's sales to New Zealand customers. This would apply from 1 April 2020 to align with GST positions previously taken by the affected non-resident businesses.
- Clarifying that the taxable activity exclusion for certain goods applies when a person deregisters from GST. The taxable activity definition was recently amended to exclude goods from being part of a registered persons taxable activity when goods are sold. This clarification would apply to supplies made on or after 1 April 2011, with a savings provision for returns that were filed prior to August 2022, to align with the date the definition was amended.

- Clarifying that the permanent change of use adjustment rule should apply to assets acquired prior to 1 April 2023, as long as the relevant adjustment occurs after 1 April 2023. This clarification would apply from 1 April 2023 to align with the introduction of the new rule.
- Clarifying that if a GST-registered person has agreed an alternative apportionment method with the Commissioner of Inland Revenue, then the specific agreement will override the general limitations for making adjustments. This clarification would apply from 18 March 2019 being the date the general limitations were previously amended to make certain types of adjustments not permitted.
- Clarifying how property developers are defined for the purposes of a GST input tax limitation rule. This would prevent GST rules applying to a smaller range of property development than was originally intended. This clarification would apply from 24 February 2020 to align with the introduction of the new rule. A savings provision would be available for tax positions taken under the current law prior to introduction of the Bill.
- Limiting secondhand goods input tax deductions. A recent amendment unintentionally allows taxpayers to claim a large GST deduction where the same land is sold multiple times between associated persons. This would apply from 30 March 2022 to align with the introduction of the amendment that has created the issue. A savings provision would be available for tax positions taken under the current law prior to introduction of the Bill.
- Ensuring that supply correction information cannot be issued to correct supplies that give rise to an overpayment of tax that are subject to time bar provisions. This would apply from 1 April 2023 to align with the introduction of the amendment which initially gave rise to the uncertainty.
- Allowing taxpayers the option to deduct the GST-inclusive amount of all their expenditure for income tax purposes in certain situations when they include the flat-rate credit as income in their income tax returns. This would apply from 1 April 2024 to align with the new rules for electronic marketplaces.

Trustee tax rate remedial measures

The trustee tax rate was recently aligned with the top personal tax rate of 39% for the 2024−25 and later income years. The Bill proposes a series of remedial amendments to the Income Tax Act 2007 to address consequential issues following the increased rate:

- clarifying that income subject to the minor or corporate beneficiary rules is taxed at the 39% trustee tax rate;
- clarifying how a company’s available capital distribution amount is calculated when it derives beneficiary income subject to the corporate beneficiary rule;
- ensuring that beneficiary income derived from a disabled beneficiary trust by a minor is not subject to the minor beneficiary rule; and
- ensuring that the exclusion for energy consumer trusts from the 39% trustee tax rate applies to the intended trusts.

These amendments would apply retrospectively from when the new rate first applied for the 2024−25 and later income years (from 1 April 2024 for most trusts).

Bright-line test remedial measures

The Bill proposes two remedial amendments to the Income Tax Act 2007 to ensure that the bright-line test is operating correctly. These amendments would apply retrospectively:

- Clarifying the bright-line start date in instances of partitioning. This would ensure the start date for each of the subdivided parcels is the date the undivided land was acquired by the co-owners. This amendment would apply from 27 March 2021 to align with when the original partitioning provision was enacted.
- Ensuring the new 2-year bright-line does not apply to transfers of inherited land by a beneficiary of an estate. It was intended that disposals of residential land acquired on the death of a person should be specifically excluded from the bright-line test. This amendment would apply retrospectively from 1 July 2024 to align with the application date for the new 2-year bright line test.

Sale of subdivided land that was acquired from a co-owner

The Bill proposes two remedial amendments to the Income Tax Act 2007 for rules that apply when land that was acquired on a subdivision between co-owners is subsequently disposed of. These rules ensure that the amount from the sale is exempt to the extent to which the income on the subdivision between the co-owners was exempt:

- The first amendment extends the scope of the section so that it applies to co-owners who developed land in their personal names, rather than just co-owners who set up an entity to undertake the development.
- The second amendment clarifies the amount of income a co-owner should have where they have disposed of land acquired from another co-owner that exceeded their original ownership share in the land.

The amendments would apply retrospectively from 27 March 2021, which is the date the section originally applies from.

Failure to withhold a non-resident withholding tax amount

The Income Tax Act 2004 contained provisions that confirmed the available options to rectify situations when a person who makes a payment of non-resident passive income (such as interest or dividends) is required to withhold non-resident withholding tax (NRWT) but fails to do so. The provisions became unclear during the 2007 rewrite of the Act. The Bill proposes the following amendments:

- Confirming that the payer remains liable to satisfy unpaid NRWT amounts.
- Confirming that the Commissioner has the right to choose whether to recover NRWT from the payer, the payee or both.
- Confirming that the payer has the right to recover from the payee any amount of NRWT that it fails to withhold when the payment is made but must subsequently pay to the Commissioner.

These amendments would apply retrospectively from 2008−09 and later income years from when the Income Tax Act 2007 became effective.

Nature of interaction between transfer pricing rule and deemed dividend rule

The relevant provisions in the Income Tax Act 2007 could be interpreted to mean that the dividend rule does not apply where there is a transfer pricing adjustment unless the other party applies for a matching treatment. The Bill proposes amendments to the Act to clarify that the transfer pricing and deemed dividend rules apply concurrently, regardless of the matching treatment. This amendment would apply retrospectively from 1 July 2009 to align with the date the provisions were previously amended.

Thin capitalisation changes

The debt percentage calculation under the thin capitalisation rules was amended in 2021 so that the debt percentage is deemed to be zero where non-debt liabilities exceed assets. This should result in the full denial of the interest deductions in New Zealand. However, there is a missing legislative link, which means that it is not clear that an interest apportionment is required where non-debt liabilities exceed assets.

The Bill proposes amendments to the requirements to apply interest apportionment calculations for both entities and natural persons. This will ensure that entities or natural persons with non-debt liabilities greater than their total assets are required to reduce their total interest deductions. These amendments would apply retrospectively from the dates the provisions were previously amended (1 July 2018 for the changes to entity's requirement and 1 April 2011 for the changes to natural person's requirement).

Foreign investment fund cost method eligibility

The current wording of the relevant provision in the Income Tax Act 2007 could be interpreted to mean that an investor may not be able to access the cost method to calculate foreign investment fund income if they have the valuation skills and experience to determine the market value of the investments for themselves. The Bill proposes an amendment to the provision to clarify that eligibility to use the cost method is determined by the availability of the market value of the investment so that it aligns with the policy intent and existing practice. This amendment would apply retrospectively from the income years beginning on or after 1 July 2011 to align with the date the provision was previously amended.

Revised introductory wording for livestock valuation

The Bill proposes that the Income Tax Act 2007 is amended to clarify the livestock that is subject to the valuation provisions. The current wording of the introductory provision is too narrow and excludes livestock that is held for income producing purposes other than for sale or exchange. This excludes, for example, livestock held for milk or wool production, or to breed replacement livestock, which was never the intent. The amendment would apply retrospectively from 1 April 2008 to align with the coming into force of the Income Tax Act 2007.

Motor vehicle used wholly and exclusively for business purposes

The Bill proposes that the Income Tax Act 2004 and Income Tax Act 2007 are amended to confirm that motor vehicles must be used wholly and exclusively for business purposes in the context of determining whether a deduction is available. During the rewrite of the Income Tax Act in 2004 the word "exclusively" was unintentionally removed, which has led to an arguable widening of the business use deduction. This amendment would apply retrospectively from 1 April 2005 (i.e. the date of the re-write of the Income Tax Act in 2004 to align with the date the provision was unintentionally changed).

Clarifying application of associated persons definitions to certain structures involving limited partnerships

The Bill proposes that the Income Tax Act 2007 is amended to clarify the application of the associated persons definitions to certain structures involving limited partnerships. This would be achieved by treating a limited partnership as a company in certain situations. The amendments would address an unintended gap in the rules. This unintended gap means that certain structures involving limited partnerships, such as a chain of limited partnerships where a limited partnership is a limited partner in a second limited partnership, can result in a break in association between closely connected entities, which is not consistent with the policy intent. The amendments would apply retrospectively from the date of the introduction of the Bill. This retrospective effect is to ensure taxpayers are not able to take advantage of the unintended gap in the period between the Bill being introduced and enacted.

The Bill also proposes amendments to the definition of "company", "voting interest" and "market value interest" in the Income Tax Act 2007 to reflect the existing provision, which treats limited partnerships as companies for the purpose of applying the tripartite test in the associated persons definitions. To align with when the existing provision applies from, the amendments would apply retrospectively from 1 April 2010, with application from 6 October 2009 for the purpose of the land provisions, and for all other purposes for the 2010−11 and later income years.

Clarifying the application of the limited partnership and look-through company associated person aggregation rules

The Bill proposes that the Income Tax Act 2007 is amended to clarify that, as a result of applying the associated persons aggregation rules, a person that is not a partner can be associated with a limited partnership and a person that is not an owner of an effective look-through interest can be associated with a look-through company. The amendments would address ambiguity that arises due to the current wording of the legislation.

The amendments relating to the limited partnership aggregation rules would apply retrospectively from 6 October 2009 for the purpose of the land tax provisions, and for all other purposes from 1 April 2010 for the 2010−11 and later income years. The amendments relating to the look-through company aggregation rules would apply retrospectively from 1 April 2011 for income years beginning on or after 1 April 2011. The retrospective effect is to align with the original application dates of the relevant provisions. Savings provisions are also proposed, so any taxpayers that have taken a tax position that is inconsistent with the amendments before the introduction of the Bill will not be affected.

Partnership and limited partnership remedial amendments

The Bill proposes a number of changes to the Income Tax Act 2007, Stamp and Cheque Duties Act 1971 and Tax Administration Act 1994 relating to the application of tax rules to partnerships and limited partnerships. A number of these amendments will apply from the date that the limited partnership rules were enacted. These provisions provide for existing administrative practice:

- ensuring a limited partnership can obtain an RWT exemption certificate; and
- ensuring the RWT exemption criteria work appropriately for limited partnerships.

In addition, the following changes will have retrospective effect back to the date the limited partnership rules were enacted but with a savings provision if a taxpayer has taken a filing position that is contrary to the proposed provisions:

- clarifying which year income from a partnership with a non-standard balance date should be returned by the partner;
- the application of transparency rules for limited partnerships; and
- clarifying when the safe harbour transfer rules apply.

Disposals of land to the Crown – repeal of income spreading rule

The Bill would repeal a concession in the Income Tax Act 2007 that allows taxpayers that derive taxable income from disposing of their land to the Crown to apply to the Commissioner to spread that income over a four-year period. This concession is outdated and does not align with income tax principles. Use of the provision is very limited. For these reasons the repeal would take effect retrospectively for all disposals of land to the Crown made after the date of introduction of the Bill. This would protect the position of the few taxpayers who are currently spreading their income under the rule.

Taxation of certain lump sum payments made by Veterans' Affairs New Zealand

This change amends the Income Tax Act 2007 to treat the payment of certain lump sum amounts paid by Veterans' Affairs New Zealand under the same recently enacted rules that apply to lump sum payments made by the Accident Compensation Corporation (ACC). This amendment is retrospective to, 1 April 2024, the date the change to the taxation of ACC payments was made because these payments were only omitted at the time due to time constraints.

Maintenance items

Several retrospective maintenance items also appear in the Bill. These items correct matters such as cross-references, grammar, compilation issues, and drafting inconsistencies, including in the use of terminology and definitions. They clarify existing provisions and generally establish the position in law that has been followed in practice. Taxpayers are not adversely affected by these items.

Powers to make delegated legislation − question 4.8

Generic response to emergency events

The Bill proposes a new Order in Council mechanism under section 6 of the Tax Administration Act 1994 to switch on any of the generic emergency event provisions that will be contained in the Income Tax Act 2007. In the event of a future emergency, this Order in Council process would enable the listing and activation of the generic tax relief measures relevant for that event. In this context, Ministerial discretion would be maintained over which of the measures to activate and the Governor-General would also need to agree to any Order in Council.

The Bill also proposes altering a current power provided in the Tax Administration Act from an Order in Council mechanism to a Commissioner of Inland Revenue discretion. This relates to the remission of use of money interest. The purpose of the proposed change is to expedite the process. The Commissioner would still be constrained by other legislative criteria, such as maintaining the integrity of the tax system, and would not be obligated to exercise the power.

Approved taxable period end dates

The rules currently in section 15E(2B) and (2C) of the Goods and Services Tax Act 1985 are proposed to be replaced with a power for the Commissioner to prescribe a method for certain registered persons that are approved to have taxable period end dates based on their accounting cycle to determine which of the reporting or "cut-off" dates in their accounting cycle are their approved taxable period end dates. The rules currently in section 15E(2B) and (2C) are complex to apply, and do not work as they were intended to.

Given those rules are only relevant for a very small number of GST-registered businesses (being those with approved taxable period end dates based on a four-weekly accounting cycle) and are more prescriptive and complex than they need to be, the Bill proposes to replace the rules with a power for the Commissioner to prescribe methods (which would be published in Inland Revenue guidance shortly after enactment of the legislation) that affected taxpayers could use. The prescribed methods would include the method currently set out in section 15E(2B) and (2C), along with at least one alternative method that would be simpler for taxpayers to apply.

The proposed power is very limited in its scope because it would only apply to a very small number of businesses and only for the purposes of determining what their approved period end dates and corresponding filing and payment due dates are. It is also taxpayer-friendly in nature because it is about allowing registered persons to have taxable period end dates that are aligned with their accounting cycle to reduce their compliance costs.

Non-taxable government grants and subsidies in Goods and Services Tax Act 1985

The Bill proposes to shift the schedule of non-taxable government grants and subsidies currently included in the Goods and Services (Grants and Subsidies) Order 1992 into the Goods and Services Tax Act 1985. The Bill makes a consequential amendment to the existing power in the Goods and Services Tax Act 1985 that empowers the making of Orders in Council to add to the schedule of non-taxable government grants and subsidies. The Bill does not propose changes to the scope of the regulation-making power itself.https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#child-13 (click 'next page' at the bottom of the page)

Crypto-Asset Reporting Framework

The Bill proposes a regulation-making power to allow for the cancellation, reversal or non-application of changes to the CARF by way of Order in Council. The default position is that any changes made at the OECD level to the CARF will automatically flow into New Zealand law. However, the purpose of this regulation-making power is it allows New Zealand to block any potential future changes to the CARF if they are not appropriate for New Zealand. This regulation-making power provides greater legislative flexibility than if changes were required to be made to primary legislation.