

Supplementary Departmental Disclosure Statement

Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill
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A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill (the Bill), dated 20 February 2015, can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2015/7/>.

A further supplementary disclosure statement for the Bill, dated 12 May 2015 can be found at this link:

<http://disclosure.legislation.govt.nz/sop/government/2015/77/>.

This supplementary disclosure statement was prepared by the Inland Revenue Department.

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

2 November 2015

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

Changes made at select committee

- Child support legacy debt
- Cashing out R&D tax losses
- GST and bodies corporate
- Additional remedial items

Changes proposed in this SOP

- Implementing the tax provisions relating to community housing entities
- Updating the name of the donee organisation *Children on the Edge (NZ) Trust* to *SpinningTop Trust*
- Saving positions taken by taxpayers who adopted a “look through” approach to claiming GST inputs of a body corporate, in taxable periods beginning prior to the introduction of the new rules;
- Additional minor amendments to cashing out R&D tax losses and child support

Part One: General Policy Statement

This taxation omnibus Bill, as amended by the SOPs to the Bill and the changes at select committee, introduces further amendments to the following enactments:

- Child Support Act 1991
- Child Support Amendment Act 2013
- Income Tax Act 2007
- Income Tax Act 2004
- Income Tax Act 1994
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014
- Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013
- Social Security Act 1964

The following is a brief summary of the additional policy measures added to the Bill since introduction, or significant changes to the policy measures described in the original disclosure statement.

Main changes at the select committee stage

Cashing-out R&D tax losses

Rate

The maximum 28% of company's tax losses that may be claimed under the R&D tax loss credit is amended by the select committee to a more generic reference to the basic tax rate for a company, allowing for changes to the company tax rate to automatically flow through to the R&D tax loss credit. Equivalent changes are made where deductions are provided for the repayment of the tax credit and reinstatement of losses.

Eligibility

Start-up firms engaging in intensive R&D are eligible where they meet a number of criteria. The select committee has removed some of the restrictions on eligibility. The Bill no longer excludes qualifying companies or groups of companies that include a foreign company. Limited partnerships will also be treated as falling within the grouping rules. The exclusion for special corporate entities has been narrowed to focus on publicly-funded entities such as Crown Research Institutes. The provision that the company needs to have complied with its tax obligations is altered so that a taxpayer will not be disqualified because of an unrelated, immaterial dispute with the Commissioner.

Amount cashed-out

The wage intensity criteria have been amended by the select committee to allow fringe benefits and superannuation contributions to be included in the range of remuneration used in the formula when determining labour costs.

The SOP clarifies that the additional items are included or not in their entirety.

Reinstatement of losses

Triggers for the reinstatement of losses are: the sale of R&D assets; liquidation, amalgamation, or migration of the company; or the sale of the company. The select committee amended these provisions so that the amalgamation of two companies does not trigger a repayment. Instead, the amalgamated company takes on any liability for R&D repayment tax.

Administration

The select committee has inserted provisions to allow for the sharing of information between Inland Revenue, Callaghan Innovation and the Ministry of Business, Innovation and Employment.

GST and bodies corporate

An output tax liability is imposed for any funds held by a body corporate for a unit title development when the body corporate becomes registered. The select committee has clarified the definition of funds as meaning the value of money and assets received as exempt supplies excluding common property of the body corporate.

Child support reforms

The select committee has included the amendments in SOP 77 on child support legacy debt. These amendments were discussed in the supplementary disclosure statement of 12 May 2015.

Remedial items

A number of additional remedial matters were added to the Bill by the select committee.

- The Bill extends the rules for employer-provided overseas accommodation to also include accommodation payments and accommodation allowances provided by an employer.
- The Bill clarifies that wholly owned subsidiaries of community housing entities or charitable entities can be tax-exempt.

Main changes proposed in the current SOP

Community Housing tax exemption

The SOP proposes amendments that will set the level of the income threshold and the assets cap for determining whether a person qualifies as an “eligible recipient” of a

community housing entity. This is one of the tests for determining eligibility for the current income tax exemption and donee status for community housing entities in the Income Tax Act 2007. The proposed amendments will enable the tax exemption and donee status provisions to become operational once the legislation is enacted. The thresholds and caps are contained in a schedule to the Income Tax Act for ease of reading. A further amendment to section 225D of the Tax Administration Act 1994 will enable the thresholds and caps to be updated by way of an Order in Council in the future.

Schedule 32 donee status

The SOP proposes that reference to the *Children on the Edge (NZ) Trust*, which already has donee status, be updated to *SpinningTop Trust* to reflect the fact that the name of the Trust was changed in 2011. The amendment is retrospective to the date of the name change.

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
Changes recommended by the select committee are contained in Commentary: <i>Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill, Government Bill</i> , as reported from the Finance and Expenditure Committee. The Commentary can be viewed at the following link: http://www.parliament.nz/en-nz/pb/sc/documents/reports/51DBSCH_SCR64797_1/taxation-annual-rates-for-2015-16-research-and-development .	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A regulatory impact statement (RIS) was prepared to support the proposed amendments relating to the tax provisions for community housing entities and is publicly available at the link: http://taxpolicy.ird.govt.nz/publications/type/ris. The remaining policy items in the SOP are exempt from the regulatory impact analysis (RIA) requirements, as these items result in little or no change to the status quo legislative position.</p> <p>A number of RISs were prepared by Inland Revenue to support the major policy measures in the Bill as introduced. A further RIS relating to Child Support was prepared to support measures contained in the previous SOP to the Bill. All of these RISs are publicly available at the link: http://taxpolicy.ird.govt.nz/publications/2015-ris-arrdrm-bill/overview.</p> <p>All RISs covering policy measures in the Bill (including the amendments in the SOPs to the Bill) are listed in Appendix One.</p>	
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 Child Support RIS of 4 June 2014 and the Child Support RIS dated 6 May 2015 met the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. Their opinions on those RIS' are set out in full in Appendix One of this disclosure statement.

The Treasury's RIA team did not provide an independent opinion on the quality of the other RISs, as none of the policy items discussed in the RISs are likely to have a significant impact or risk that requires certification of, or opinion on, the adequacy of the RIA and the RIS.

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

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?	NO
<p>2.5.(a) and (b)</p> <p>The <i>Implementing the tax provisions for community housing entities</i> RIS, dated 10 June 2015, and available at http://taxpolicy.ird.govt.nz/publications/type/RIS provides analysis on the size of the potential costs and benefits for the policy item relating to the amendments to implement the tax exemption and donee status provisions for community housing entities.</p> <p>For the other items in the current SOP 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 policy changes.</p> <p>Impact analysis available on other matters in the Bill</p> <p>2.5.(a)</p> <p>The RISs listed in Appendix One provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are the subject to the RIA 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 and potential costs and benefits, as these items have been assessed as having no or very minor impact on businesses, individuals or organisations.</p> <p>The Commentary on the Bill (which was available shortly after the Bill was introduced at: http://taxpolicy.ird.govt.nz/bills) may have provided some additional information on the potential costs and benefits of individual policy items in the Bill.</p> <p>2.5.(b)</p> <p>The Bill contains amendments to tax legislation which, by their nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses, organisations, entities, and the Crown. Analysis on the potential for any particular group or person to suffer a substantial unavoidable loss of income or wealth may be available in the RISs above or, where appropriate, in the Commentary on the Bill (which is available at http://taxpolicy.ird.govt.nz/bills). 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 policy changes.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

2.6.(a) and (b)

The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards, and the nature of regulator effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill. For the appropriate policy items, this is discussed in more detail in the RISs listed in Appendix One that are available at <http://taxpolicy.ird.govt.nz/publications/type/RIS> or where appropriate in the Commentary on the Bill (available at <http://taxpolicy.ird.govt.nz/bills>).

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?

Technical amendments to Foreign superannuation, Foreign Investment Funds and Controlled Foreign Companies tax rules have been considered in the light of rules that apply under New Zealand's double tax agreements and are considered to be consistent with New Zealand's international tax 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?

As noted in the original disclosure statement and the previous supplementary disclosure statement, no separate formal steps have been taken to determine whether the policies to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi, as no policy measures in this Bill have been identified, as part of the normal policy process, as having a significant impact on Maori. However, Inland Revenue policy staff who have expertise in Treaty of Waitangi and Maori matters have been involved in the preparation of the Bill.

As per the GTPP, the inherent focus on consultation (both with Maori and non-Maori interested parties) during the development of the relevant policy measures as contained in this Bill is directly in line with the "duty to consult" principle of the Treaty of Waitangi. If it has been identified in the policy development that there are impacts on Maori, consultation with Maori stakeholders was conducted. As noted above, no consultation with Maori stakeholders was conducted for the purposes of the Bill as no significant impacts were identified.

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?

NO

As noted in the original disclosure statement and the previous supplementary disclosure statement, advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is available at the following link:
<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/taxation-annual-rates-for-2015-16-research-and-development-and-remedial-matters-bill>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

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

NO

The changes made by the Finance and Expenditure select committee and the amendments in this SOP do not create, amend or remove offences or penalties or the jurisdiction of a court or tribunal. Some amendments clarify the operation of provisions concerning child support penalties, offences and court procedures without changing the way the provision is intended to operate. Changes to the child support penalties in SOP 77 were considered in the earlier disclosure statement that accompanied SOP 77.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
No consultation with the Ministry of Justice has taken place on the amendments in the current SOP. This is because the amendments either seek to implement existing government policy or are minor and remedial in nature and do not change current legislative settings.	

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?	NO
The Finance and Expenditure select committee recommends inserting clause 232B to amend section 81(4) of the Tax Administration Act 1994 to allow for the sharing of company information between the Inland Revenue Department, Callaghan Innovation and the Ministry for Business, Innovation and Employment for the purpose of the cashing out R&D tax loss credit.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
The information to be shared is not personal information.	

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
<p>The Finance and Expenditure select committee called for submissions and received a number of written and oral submissions on the Bill, which resulted in some of the changes recommended by the select committee.</p> <p>Officials also consulted with housing sector representatives on the proposed amendments to implement the tax provisions for community housing entities.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Tax policy is developed using the Generic Tax Policy Process. The policy details are tested or assessed by the parties that have been consulted in the development of the specific policy item. On most occasions, tax policy is jointly developed by Inland Revenue and the Treasury. Where there is no joint policy development, the Treasury is regularly informed or consulted in the development of the policy item.</p> <p>The amendments to implement the tax provisions for community housing entities were considered by Inland Revenue operational experts and tested against different scenarios. In addition, the Housing group at the Ministry for Business, Innovation, and Employment were also involved in the development of these amendments.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
Given the nature of tax, the changes by the select committee do 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 guidance for completing the disclosure statement.	

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?	YES
<p>Given this Bill is amending tax legislation, the select committee changes and the changes in the proposed SOP contain amendments that create or amend a power to impose a charge that is a tax, or in the nature of a tax.</p> <p>The select committee has endorsed changes to how the cashing out R&D tax losses expenditure provisions will apply, including the R&D repayment tax.</p> <p>The amendments to implement the tax provisions for community housing entities will ensure the income of qualifying community housing entities is exempt from tax and donations made to these entities qualify for charitable tax relief.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The current SOP contains the following measures which have retrospective effect:</p> <ul style="list-style-type: none"> • <i>SpinningTop Trust</i> – clauses 218(2B) and (2C) will apply from 28 March 2011, the date the trust renamed itself. The change is necessary to retrospectively confirm tax benefits donors may have received for any monetary donations to the Trust since the 2011-12 income year. • <i>Amendments to implement the tax provisions for community housing entities</i> – clauses 75D, 218B and 247B will apply from 14 April 2014, the application date of the original tax provisions. • <i>Savings provision for GST and bodies corporate</i> – although clauses 251BA and 251D will apply to past GST input tax deductions claimed and received by taxpayers. This is necessary to preserve deductions or refunds received by some taxpayers prior to the new rules, which apply retrospectively, <p>A number of provisions that had retrospective application dates at introduction have been amended by the select committee.</p> <p>New clauses have been introduced, some of which have retrospective application:</p> <ul style="list-style-type: none"> • Clauses 261D and 261E come into force on 1 April 1988 • Clauses 260B(1) and (3) and 261B(1) and (3) come into force on 1 April 1995 • Clauses 257B and 258B come into force on 1 April 2005 • Clauses 149B and 149E come into force on 1 April 2008 • Clause 75C will clarify that certain entities have tax-exempt status and comes into force on 1 July 2008. • Clause 151B comes into force on 6 October 2009 • Clauses 87B, 149C, 188B, 188C, 188D, 213(33B), 213(33C), 213(54), 213(62B) and 251C come into force on 1 April 2011 • Clause 84(6) comes into force on 20 May 2013 • Clause 265B comes into force on 17 July 2013 • Clauses 71(8B) to (9B) come into force on 1 April 2014 • Clause 75D comes into force on 14 April 2014 • Clause 263B comes into force on 30 June 2014 • Clause 251B comes into force on 26 February 2015 • Clauses 69B, 75B, 121(3) and (4), 153B, 213(29B), 213(57B), 213(57C) come into force on 1 April 2015 	

Strict liability or reversal of the burden of proof for offences

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

Civil or criminal immunity

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

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

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The amendments to implement the tax provisions for community housing entities provide for increased income thresholds and asset caps based on the levels provided for by HomeStart. These income thresholds and asset caps will be used to determine the eligibility of clients and beneficiaries of a CHE for the purposes of the CHE tax exemption and donee status provisions.</p> <p>The proposed amendments include the thresholds and asset caps in the primary legislation but allow for the thresholds and caps to be amended by regulation. The justification for this approach is to ensure that the CHE related thresholds and caps can be amended in line with changes to HomeStart in a timely manner. The HomeStart thresholds and caps are set by Cabinet and therefore are able to be changed almost immediately. As a result, there is a need to be able to amend the CHE exemption thresholds at the same time, otherwise the two will be inconsistent. In addition, it is sought to make the legislation easier to follow by including the thresholds and caps in a schedule to the Income Tax Act 2007.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Two

Question 2.3 - Regulatory impact statements

- Review of child support scheme reform, Inland Revenue, 4 June 2012
- Cashing-out losses for research and development expenditure, Inland Revenue, 21 March 2014
- Black hole tax treatment of research and development expenditure, Inland Revenue, 27 March 2014
- Review of the implementation of the simplified filing requirements for individuals' legislation, Inland Revenue, 22 July 2014
- Calculating the fringe benefit arising from employment-related loans, Inland Revenue, 10 October 2014
- Bodies corporate GST obligations, Inland Revenue, 25 November 2014
- Child support debt amendments, Inland Revenue, 6 May 2015
- Implementing the tax provisions for community housing entities, Inland Revenue, 10 June 2015

Question 2.3.1 - Did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?

Child Support RISs

June 2014

The Regulatory Impact Analysis Team (RIAT) have reviewed the Child Support RIS prepared by Inland Revenue dated June 2014, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

The problem being addressed here is one limited to implementation of previously-agreed policy, so the range of feasible options considered has been necessarily limited. While the options reduce risks to the Government, the lack of consultation on the preferred option does not reassure that all impacts on affected parties have been considered.

May 2015

The Regulatory Impact Analysis Team (RIAT) have reviewed the Child Support RIS prepared by Inland Revenue dated 6 May 2015 and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

RIAT notes that although Inland Revenue are able to draw on some evidence, the modelled impact assessment is described as optimistic and depends on assumptions about behavioural responses to measures which have not yet been implemented. Further, the proposed measures have not in themselves been consulted on. If it is decided to proceed with the approach on the timescale envisaged, careful attention to information emerging from the monitoring, evaluation and review process set out in the RIS, so as to establish whether the expected outcomes eventuate, will be important.