Supplementary Departmental Disclosure Statement

Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill

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 dated 20 February 2015, can be found at this link: http://disclosure.legislation.govt.nz/bill/government/2015/7/

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.

12 May 2015

Contents

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 additional amendments to address child support debt. The proposed amendments will:

- Extend the mandatory write-off of monthly incremental penalties for payment arrangements, subject to 26 week review, to payment arrangements where a liable person has not explicitly agreed to the arrangement; and
- Amend the discretionary penalty write-off tests to adopt a more pragmatic test based on “fair and reasonable”.

These amendments will address older, legacy child support debt by incentivising parents to re-engage with their child support obligations and strengthening Inland Revenue’s ability to work with parents to control and manage their child support debts and pragmatically manage the debt book.

Part One: General Policy Statement

This taxation omnibus Bill introduces 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
- Goods and Services Tax (Grants and Subsidies) Order 1992
- Finance Act (No. 2) 1990

Generally speaking, the taxation amendments contained in this Bill are aimed at improving the current tax settings within a broad-base, low rate framework. Under this framework, the tax treatment of alternative forms of income and expenditure is intended to be as even as possible. This ensures that overall tax rates can be kept low, while also minimising the biases that taxation introduces into economic decisions. This framework underpins the Government's Revenue Strategy and helps maintain confidence that the tax system is broadly fair, which is crucial to encouraging voluntary compliance.

Although New Zealand has relatively strong tax settings, it is important to maintain the tax system and ensure that it continues to be fit for purpose. Changes in the economic environment, business practice, or interpretation of the law can mean that the tax system becomes unfair, inefficient, complex, or uncertain. The tax system needs to be responsive to accommodate these concerns.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). This is a very open and interactive process which helps ensure that tax and social policy changes are well thought through. This process is designed to ensure better, more effective policy development through early consideration of all aspects – and likely impacts – of proposals, and increased opportunities for public consultation.

The GTPP means that major tax initiatives are subject to public scrutiny at all stages of their development. As a result, Inland Revenue and Treasury officials have the opportunity to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected.

The final stage is a post-implementation review of new legislation and identification of remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy

The following is a brief summary of the policy measures contained in this Bill. A comprehensive explanation of all the policy items will be included in a Commentary on the Bill, that will be available shortly after this Bill is introduced at http://taxpolicy.ird.govt.nz/bills.

Cashing-out losses for research and development expenditure

The Bill proposes to allow tax loss-making research and development (R&D) companies to "cash out", their tax losses from R&D expenditure. They will be able to claim up to 28% (the current company tax rate) of their losses from R&D expenditure in any given year. Because the cash out is administered through the tax system, it is delivered in the form of a tax credit.

The proposed changes focus on start-up companies engaging in intensive R&D, and are intended to reduce their exposure to market failures and tax distortions arising from the current tax treatment of losses. The time at which those losses are recognised will be brought forwards allowing companies to access these losses early, provided they meet certain criteria. This will help to reduce the bias against investment in these firms produced by current tax settings.

The initiative is intended to provide a temporary timing benefit. When businesses make a return on their R&D, they will be required to repay some or all of the amounts cashed out. New deductions will reinstate corresponding losses that will be available to offset future income.

Eligibility

The proposed eligibility requirements are intended to focus the initiative on start-up firms engaging in intensive R&D. To access the cash out, the entity must be a loss-making company resident in New Zealand, with sufficient intensity of activity in R&D. The proportion of expenditure on labour that is engaged in R&D is used as a proxy to measure this intensity. If the company is part of a group of companies, some of the eligibility requirements will need to be met as a group. The company must not be a listed company, nor one that is owned by the Crown. It needs to have complied with its tax obligations.

Amount cashed-out

The amount of losses that can be cashed out is capped at $500,000 for the first year, increasing by $300,000 over each of the next five years to $2 million. The amount that can be cashed out in any year is the lowest of that cap; the company's net loss for the year; the company's total R&D expenditure for the year; and 1.5 times the company's labour costs for R&D for the year.

Eligible R&D expenditure is more targeted than the general deductibility provisions for R&D expenditure. Expenditure on certain activities is excluded because they generally take place in a post-development phase, are related to routine work or have an indeterminate relationship with economic growth. Similarly, some items of expenditure are excluded on the basis that their inclusion could create an economic distortion, inequity between taxpayers in a similar position, or risk compromising the integrity of the initiative.

Tax losses that are cashed-out will be extinguished.

Reinstatement of losses

The initiative is intended to provide a temporary timing benefit. A cashed-out loss can be thought of as an interest-free loan from the government. When the business makes a return on their R&D, they will be required to repay some or all of the amounts cashed

out. Those amounts will be reduced by income tax paid by the company from the time that losses were cashed out.

When repayments are made, corresponding losses will be reinstated using a deduction mechanism. Therefore losses will be available to offset future income. 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.

Imputation

New imputation credits will not be available to a company that has cashed-out a loss until that company has repaid the cashed-out amounts. This maintains neutrality with taxpayers who are not able to cash out losses.

Administration

Companies will need to apply to cash out their tax losses at the time they file their corresponding income tax return. Like other tax credits, cashed- out amounts may be offset against tax payable by the company.

Black hole expenditure

Several amendments are proposed relating to business expenditure that is not immediately deductible for income tax purposes, and also does not form part of the cost of a depreciable asset for income tax purposes and, therefore, cannot be deducted over time as depreciation. Such expenditure is commonly referred to as "black hole" expenditure.

The proposed amendments are primarily targeted at black hole R&D expenditure. The proposed amendments aim to reduce distortions discouraging investment in R&D caused by current tax law, under which development expenditure incurred subsequent to the recognition of an intangible asset for accounting purposes is generally unable to be deducted for income tax purposes. The proposed amendments seek to allow capitalised development expenditure to be either deducted over time as depreciation (where the R&D results in a depreciable intangible asset) or deducted upon the intangible asset being written off for accounting purposes (where the R&D does not result in a depreciable intangible asset).

Other proposed amendments include:

- making registered designs, applications for the registration of a design, and copyright in an artistic work that has been applied industrially, depreciable for income tax purposes. This will enable capital expenditure on these assets to be deducted over their lives, thereby reducing tax distortions against investment in these assets; and
- clarifying that capitalised expenditure incurred by a person in the successful development of software for use in their own business is depreciable.

GST and bodies corporate

An amendment to the Goods and Services Tax Act 1985 is proposed to address uncertainty in the application of the GST rules to bodies corporate. The proposed amendment has the effect of giving bodies corporate the choice of registering for GST.

Currently, most bodies corporate are not registered for GST and Inland Revenue's historic position has been that bodies corporate are not allowed to register. In recent years, however, Inland Revenue has been asked to consider whether bodies corporate should be able to register for GST. To answer this question, Inland Revenue undertook a legal analysis and came to a view that, under the current law, a body corporate could be considered to make supplies for consideration to its owners. A consequence of this view is that a body corporate making supplies exceeding the $60,000 threshold would be required to register for GST.

Given the historic position, the new interpretation may have an adverse impact on thousands of property owners, as it would require a large number of bodies corporate to register for GST. Given that bodies corporate are primarily tax neutral for GST purposes, the government is largely indifferent as to whether a body corporate is registered or not.

The proposed amendment clarifies that, for GST purposes, a service provided by a body corporate to a member is a supply for consideration. However, the value of such a supply is not included in the total value of the body corporate's supplies when determining whether the body corporate is required to register. The effect is that bodies corporate have the option to register if they do not make significant supplies to non-members. One result is that bodies corporate that are not currently registered will not have to do so. On the other hand, bodies corporate that have already registered for GST are able to remain registered.

The proposed amendment also includes rules that protect the tax base from possible adverse consequences of allowing this choice. An output tax liability is imposed for any funds held by a body corporate when the body corporate becomes registered. This prevents a body corporate from obtaining a tax advantage by accumulating untaxed funds while it is not registered and then registering so that it can claim input tax deductions when it spends the funds. The proposed amendment ensures bodies corporate remain GST neutral.

A four year lock-in rule is also proposed to prevent bodies corporate from continually changing their registration status.

Child support reforms

The Bill proposes changes to simplify the administration of the child support scheme, and in some cases, reduce compliance costs.

The definition of social security benefit (and beneficiary) is changed to exclude sole parents who are full time students and who claim a Jobseeker Support payment on the grounds of student hardship between academic years. For child support purposes, they will be treated in the same manner as full-time students receiving a student allowance.

The new compulsory automatic deduction of child support from wages for liable parents is to be replaced with a voluntary wage deduction process (although compulsory deductions remain for parents in default and social security beneficiaries). This will reduce compliance costs for some employers and provide greater choice for compliant liable parents to choose the method of payment that best suits them. A liable parent can also request that voluntary wage deductions stop (unless they are in default or a social security beneficiary).

The provisions for prescribed payments to be made to meet child support liabilities are to be repealed. The provisions were to allow recognition of certain payments in specific situations and required all parties to agree to the payment. Instead, if liable parents and receiving carers agree, they can have all or some of the child support liability "uplifted" from Inland Revenue and payment treated as a private matter.

The definition of adjusted taxable income is simplified by removing reference to additional adjustments of the type used in the definition of family scheme income, such as income from certain trusts. The administrative review process remains available for people to request that other types of income be recognised in the child support formula assessment. The definition of adjusted taxable income is also made subject to the provisions that allow a person to make an estimate of their taxable income.

The administrative review process will also be expanded to allow for the offsetting of debt. This replaces a Commissioner discretion to offset one liability against another in specific situations. The administrative review process allows for the consideration of offsetting debt to be made where this is just and equitable and in the best interest of the child and utilises existing formula departure rules.

The administrative review ground for recognising a re-establishment cost situation is also being amended to clarify its intent. The amount that can be taken into account is limited to the amount of income from additional work that has been, is, or will be used to re-establish a person following separation, up to a maximum of 30% of their adjusted taxable income. The section also makes it clear that it can apply to receiving carers as well as liable parents.

The Bill also makes changes to the process for ending a formula assessment. Previously, this could be requested by the receiving carer only as long as they were not a social security beneficiary. However, under the new formula assessment, the assessment is now based around the child and it may be unclear who the receiving carer is due to estimates of income and changes in shared care arrangements. This could mean elections to end are later overturned, with retrospective liabilities being imposed and additional cost and debt for all parties. The new process now requires the agreement of all receiving carers and liable parents with recognised care of a child for an election to end to be accepted, and confirms that the decision will not be undone based on a later determination of who is a receiving carer.

The changes also seek to reduce child support debt, by clarifying the penalty and write-off rules, and bringing forward the commencement of some debt write-off provisions. Specifically:

- underestimation penalties for an estimate of income are to be removed for child support years beginning 1 April 2015;
- clarifying that some penalty debt write-off can occur if some of the benefit component of the core debt owed to the Crown is written-off;
- expanding the mandatory write-off of incremental late payment penalties subject to 26-week review;
- penalty write-off under section 135GA can also be provided on the grounds of serious hardship; and
- providing a more pragmatic test based on "fair and reasonable" for discretionary penalty write-off provisions under sections 135FA, 135G and 135GA.

The Bill also seeks to ensure that the policy objectives in the Child Support Amendment Act 2013 are achieved by making a number of remedial amendments. These include clarifying:

- the process and requirements for requesting a child support assessment and when an application can be refused;
- the information to be included on a notice
- the interactions between a formula assessment and a voluntary agreement;
- who can make objections or be a party to proceedings

Consequential changes are also proposed including transitional provisions to ensure pre-2015 assessments can continue to be considered under the relevant provisions, and updating the names of welfare benefits to reflect changes to the Social Security Act 1964.

Foreign superannuation

The Bill proposes various remedial amendments to the rules governing the tax treatment of income received by individuals from a superannuation scheme resident outside New Zealand.

Some of the changes apply to a person who has an investment in a foreign superannuation scheme that would usually give rise to Foreign Investment Fund (FIF) income for the person in the period before 1 April 2014. A person who makes the investment while non-resident and receives in that period payments from the scheme, while resident, is treated as meeting their tax obligations for the investment and the period if the payments are solely of a pension and the person provides the Commissioner with returns of income for the payments and for the appropriate income years by the due date.

Changes are also made to requirements regarding the residence of people affected by the rules, to take into account the effect of double tax agreements on the tax status of a person in New Zealand.

A resident who acquires an interest in a foreign superannuation scheme may not have FIF income from the interest because the value of the person's interests in FIFs is below the threshold for the application of the FIF rules. Currently, the tax obligations of such a person depend on the legal form of the superannuation provider. Changes are made to simplify those obligations; the person may use the schedule method which is one of two methods currently restricted to people who acquire an interest in foreign superannuation while non-resident and do not choose to have the interest come under the FIF rules.

Other changes provide that interests in registered Australian superannuation schemes do not give rise to FIF income and confirm that a transfer of an interest in a foreign superannuation scheme that was acquired while non-resident into a non-Australian foreign superannuation scheme does not give rise to an attributing interest in a FIF.

Controlled foreign companies and foreign investment funds

The Bill proposes changes to the controlled foreign companies (CFC) and FIF rules governing the attribution of income to the owners of interests in overseas entities that are CFCs and FIFs. Some entities and individuals that own interests in a FIF, and meet various requirements, may calculate their income from the FIF using the fair dividend

rate method. There are two variants of the method and individuals with access to the information required for the more complex method may choose which variant method they use. It is proposed that such individuals be required to use a variant method for four income years after changing from the other variant. It is also proposed that people who can choose between variant methods be allowed to make a choice for each FIF.

Another change proposed relates to the method by which a person calculates their income from a CFC. Currently, the person is allowed to take into account, as a deduction from the CFC's income, all expenditure of the CFC on ongoing supplies. By contrast, the deduction allowed to a resident company would be reduced by prepayments relating to supplies in a future income year. It is proposed that the formula giving the income from a CFC be changed to allow for prepayments.

Currently, the income of a person who provides personal services overseas through a CFC has income attributed to them under the CFC rules. A person who provides personal services overseas through a foreign entity other than a CFC is attributed income under another, similar, method. It is proposed that if a person provides services through a CFC, the person who makes a return of the attributed income or loss from the CFC, who is usually the person providing the services, may choose which method applies to attribute the income. The method cannot be changed in a later return.

A further proposed change is to the exemption allowed in the calculation of FIF income for an interest in a FIF resident in Australia. The exemption is available if the interest held by a person in the Australian FIF averages at 10% or more over the year. It is proposed that the availability of the exemption depends on the level of the person's interest averaged over the total period in the year during which the person holds an interest of more than zero.

Two changes are proposed to the CFC test grouping rules. Providing certain conditions are met, the test grouping rules allow a person to elect to group a CFC together with other CFCs and determine whether the CFC is a non-attributing active CFC by testing the whole group (test group) rather than the individual CFC. The first proposed change to these rules will allow a person who acquires or disposes of a group of CFCs part way through an accounting period to group those CFCs together as a test group for an accounting period, provided that the person has a sufficient ownership interest in all of the CFCs for the part of the accounting period in which they hold the interest. The second proposed change to the test grouping rules is intended to stop a person from opting in and out of test groups in different accounting periods to minimise income when the CFC is in a test group and to maximise losses when the CFC is not in a test group.

The Bill also proposes various minor technical changes to the CFC and FIF rules that do not change the effect of the rules.

Grace period for deregistered charities

The Bill proposes to delay the application date of the net assets tax rules for any charities that are deregistered (removed from the Charities Register) which have housing as a purpose or activity from 1 April 2015 to 1 April 2017. This will extend the net assets tax grace-period to ensure that any current community housing providers which are removed from the Charities Register are not subject to the new rules relating to the net assets tax for deregistered charities.

Working for Families tax credits

Income equalisation scheme

The definition of "family scheme income" which is used to determine social policy recipients' entitlements was broadened on 1 April 2011. Deposits made by persons and their associated companies and trusts into the main income equalisation scheme were included in the broader definition and withdrawals by the person excluded, to prevent double counting. The proposed amendments will ensure that funds deposited into a main equalisation scheme by associated companies and trusts do not reduce a person's Working for Families (WFF) tax credit entitlement a second time when they are withdrawn.

Scholarships and bursaries

A number of payments that are treated as exempt from income tax are also not intended to affect Inland Revenue social policy entitlements. Two of these payments are scholarships and bursaries for attendance at educational institutions. Although these payments are of a similar nature, on 1 April 2011, "scholarship" but not "bursary" was added to the list of payments exempt from "family scheme income". An amendment is proposed to ensure that bursary payments do not reduce people's WFF tax credit entitlements.

Family scheme income statements

Inland Revenue sends out notices of entitlement (NOE) to confirm a person's social policy entitlements and obligations. The person is then required to give Inland Revenue a statement that confirms or adds to the information in the NOE, including the family scheme income of their spouse, civil union partner, or de facto partner. However, this requirement does not work if the person is unaware of the income details of the other person. An amendment is proposed to enable a person and their spouse, civil union partner, or de facto partner to submit separate family scheme income declaration forms.

Working for Families Tax Credit details not needed

Currently WFF recipients are required to give the Commissioner details of each WFF tax credit paid to them in each tax year. However, Inland Revenue does not request or need to acquire this information from them. The proposed amendment will remove the requirement to provide this information.

Schedule 32 donee status

The Bill proposes to amend the Income Tax Act 2007 by adding 10 charities to the list of donee organisations in schedule 32 and renaming an existing charity on the list.

It is proposed to give Adullam Humanitarian Aid Trust; Bicycles for Humanity, Auckland; Face Nepal Charitable Trust Board New Zealand; Hagar Humanitarian Aid Trust; Himalayan Trust; International Needs Humanitarian Aid Trust; Mercy Ships New Zealand; Orphans Aid International Charitable Trust; ShelterBox New Zealand Charitable Trust; and So They Can donee status under schedule 32 of the Income Tax Act 2007. Monetary gifts to these charities may qualify for tax benefits.

It is also proposed that Aotearoa Development Cooperative, which already has donee status, be renamed to ADC Incorporated (Aotearoa Development Cooperative).

Simplifying filing requirements for individuals

The Bill proposes to repeal legislation that was enacted in November 2012 but which is not due to take effect until the 2016-17 tax year. The 2012 legislation was aimed at simplifying the filing requirements for individual salary and wage earners (the SFRI legislation).

The SFRI legislation consists of two initiatives:

- 4 + 1 square-up: Individuals who are not required to file a tax return, but who choose to do so anyway, will be required to file tax returns for the previous four years in addition to the year in which they have chosen to file; and
- Working for Families delinking: The link between the receipt of WFF tax credits and the requirement to file an annual income tax return will be removed.

These initiatives were seen as an indirect solution to the problem of inaccurate PAYE deductions during the year, leading to the need to square-up and file a tax return at the end of the year.

The policy underlying the SFRI legislation was set three years ago, when it was not clear how Inland Revenue's Business Transformation programme would unfold. A high-level review of the implementation of the SFRI initiatives has concluded that the initiatives are no longer a sound investment, given Inland Revenue's Business Transformation programme will address the issue of inaccurate PAYE deductions directly.

Exceptions to requirement to file a return of income

Schedular payment filing exemption

The Bill proposes to limit the situations in which a person who receives schedular income is required to file a tax return. Currently, a person receiving an amount of schedular income must file a return if the person has assessable income of more than $200. It is proposed that the person be required to file a return if the schedular income is more than $200, with the requirement not depending on the amount of the person's assessable income.

Income statements for IR 56 taxpayers

The Bill will also ensure the Commissioner is not required to issue an income statement to all employees who do not have to file an income tax return when their employer fails to withhold and pay PAYE to Inland Revenue.

Employee's obligations

An earlier amending Act replaced, with delayed effect, a rule governing the situations in which an employee is not required to file a return of income. Under the current form of the new rule, a person must file a return if the person has assessable income of more than $200 that is subject to the PAYE rules and for which the obligations of the employer or PAYE intermediary are not met. The Bill proposes to change the latter

part of this rule to reinstate the earlier provision so that a person must file a return if the person has assessable income of more than $200 that is subject to the PAYE rules and for which the obligations of the person are not met.

Tax pooling

The current tax pooling rules only allow taxpayers to withdraw sufficient money from a tax pool to cover any core tax owing as a result of an amended assessment or the resolution of challenge proceedings. This means that if an amount of interest is owed that is in addition to the core tax, the taxpayer will not be able to withdraw enough money to cover the core tax plus the interest. This can result in further interest accruing on the remaining amount.

The proposed amendment will enable taxpayers to access money from a tax pool to pay interest imposed as a result of an amended tax assessment or the resolution of challenge proceedings.

Provisional tax – GST option

The proposed amendment applies to a person who has chosen to use the GST ratio method of determining provisional tax for a tax year. The proposed amendment clarifies that the person must stop using the GST ratio method if:

- they file a return of income during that tax year; and
- the residual income tax calculated in that return of income is outside the range of $2,501–$150,000.

Depending on when the return of income is furnished, the taxpayer must then apply either the estimation method or a standard method for calculating their provisional tax.

Bad debt deductions and the capital limitation

The proposed amendment corrects an unintended legislative change made in rewriting income tax legislation in relation to the bad debt deduction rule and the capital limitation.

The amendment clarifies that a bad debt deduction is allowed for a person carrying on a business of holding or dealing in financial arrangements for both accrued interest and the principal amount of a debt if that loan is entered into in the normal or ordinary course of business. This amendment also ensures that the application of the capital limitation must continue to be considered in determining if a bad debt deduction is allowed for a loan entered into by a business holder or dealer outside the ordinary course of business.

This amendment does not alter the bad debt deduction rule in relation to debts between associated people, for which a bad debt is allowed only for accrued interest and not for the principal amount of the debt.

Financial Markets Conduct Act – related changes

The Bill proposes to remove the requirement for certain public unit trusts to make regulated offers under the Financial Markets Conduct Act 2013. This provision was

originally introduced to replace the requirement that the public unit trust offers securities to the public under the Securities Act 1978, which has been repealed.

A regulated offer under the Financial Markets Conduct Act is not directly equivalent to an offer of securities under the former Securities Act. To ensure that unit trusts that previously met the public unit trust definition continue to do so, the requirement to make regulated offers has been removed, with appropriate changes to ownership thresholds to ensure such public unit trusts are widely held (there being no equivalent concept of offers to the public in the Financial Markets Conduct Act 2013).

FBT on employment-related loans

The Bill proposes an amendment to enable employers who are in the same group of companies as a person in the business of lending money to the public, to apply the market interest rate method contained in section RD 35 to calculate the fringe benefit arising from an employment-related loan.

When the market interest rate method was introduced, only persons in the business of lending money to the public were eligible to use the method, as it required the person to track market interest rates. Other persons were not expected to be able to do so without incurring significant compliance costs. However, non-lenders may be closely associated with such lenders, and have access to their information on interest rates. Such non-lenders should also have the option of using the market interest rate method.

Annual rates

The Bill sets the annual rates of income tax for the 2015-16 tax year, at the same rates that apply for the 2014-15 tax year.

Remedial items

A number of remedial matters are proposed in the Bill. In addition to fixing minor faults of expression, readers' aids, and incorrect cross-references, the following specific issues are addressed:

- *· technical changes in the thin capitalisation rules to the provision that deems a company's worldwide group to be the same as its New Zealand group, ensuring the provision operates as originally described;*
- *· ensuring the lower tax rate on unimputed dividends of 15% for investors in a foreign investment portfolio investment entity applies only for investors residing in countries with which New Zealand has a full double tax agreement and not simply a tax information exchange agreement;*
- *· allowing a trust to continue to be treated as a complying trust after the settlor migrates from New Zealand if, since that time, the trustee has continued to comply fully with its New Zealand income tax obligations;*
- *· clarifying that a subscription paid, that does not confer any rights arising from membership, will only qualify as a charitable or other public benefit gift if it meets the same criteria as a gift would have to meet;*
- *· clarifying that if a taxpayer is late in issuing a disputes document, the Commissioner's response period starts from the time when it is decided that the taxpayer's late dispute document is allowed;*

- *· allowing truncation in a taxpayer-initiated dispute after the taxpayer has issued a statement of position without requiring the Commissioner to issue a statement of position;*
- *· removing the requirement for agricultural, horticultural or viticultural employers to provide certain information in their Employer Monthly Schedule in relation to schedular payments made to contractors who hold an exemption certificate or special tax rate certificate;*
- *· removing the requirement for the Commissioner to issue determinations on cost of timber;*
- *· ensuring amounts of income or expenditure that arise when a financial arrangement ends are spread correctly under the financial arrangement rules;*
- *· ensuring that on an amalgamation, income and expenditure under a financial arrangement are appropriately allocated between the amalgamating company and the amalgamated company;*
- *· further amendments to ensure that the bad debt rules work as intended;*
- *· amendments to the mixed use asset rules introduced in 2013;*
- *· amendments to the asset transfer rules in subparts FB and FC;*
- *· further amendments for herd scheme livestock held by a company - where annual changes in value are treated as capital gains to prevent them from being taxed;*
- *· correcting unintended legislative changes made in rewriting the definitions of "mining permit" and "petroleum exploration expenditure" to ensure they apply as intended to petroleum privileges issued under the Petroleum Act 1937, a number of which continue to be in existence.*
- *· ensuring that recently introduced provisions relating to the taxable value of accommodation provided by religious organisations to their ministers of religion apply from 1 July 2013, as originally intended, and clarifying the meaning of remuneration for the purposes of those provisions;*
- *· excluding from the definition of transitional resident a person who chooses not to be a transitional resident;*
    - *· ensuring approved unit trusts continue to be taxed as a trust under the Income Tax Act 2007;*
    - *· repealing references to "new start grants" in the Inland Revenue Acts as they are no longer part of the suite of responses that Government uses for a primary sector adverse event;*
    - *· changing two references to the defined term tax position, where the intended meaning differs from the usual defined meaning;*
    - *· widening the income tax exemption for a Tertiary Education Institute (TEI) to include the income earned by a subsidiary for the benefit of the TEI;*
    - *· ensuring transactions involving an exchange for non-monetary consideration are included, where required, in provisions that currently use the terms "sale"," buy", "purchase" and variations of these terms;*
    - *· a specific rule relating to expenditure on items of commercial fit-out to be removed from a subpart intended for general provisions relating to deductions and re-enacting the rule in a more appropriate place.*

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* will be made available at http://taxpolicy.ird.govt.nz/bills shortly after the Bill is introduced. This commentary will provide a more detailed explanation of the main proposed legislative changes in the Bill. In addition, the documents listed in Appendix One have been authored by Inland Revenue and are all publicly available at http://taxpolicy.ird.govt.nz/publications.	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**
A number of regulatory impact statements (RISs) have been prepared by Inland Revenue and are all publicly available at http://taxpolicy.ird.govt.nz/publications/2015-ris-arrdrm-bill/overview. These RISs are listed in Appendix One. A RIS was also prepared to support measures to address child support legacy debt and is also publicly available at http://taxpolicy.ird.govt.nz/publications. The remaining policy items in the Bill are exempt from the regulatory impact analysis (RIA) requirements, as 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 in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Such changes are therefore exempt from the regulatory impact analysis requirements.	

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 RIS', as none of the policy items discussed in the RIS' are likely to have a significant impact or risk that requires certification of, or opinion on, the adequacy of the RIA and 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?	**YES**

2.5.(a)
The RIS' listed in Appendix One and available at http://taxpolicy.ird.govt.nz/publications 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.
Where appropriate, the *Commentary on the Bill* (available shortly after the Bill is introduced at: http://taxpolicy.ird.govt.nz/bills) may provide some additional information on the potential costs and benefits of individual policy items.

2.5.(b)
This omnibus Bill contains amendments to tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses, 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 at the page reference listed above or, where appropriate, in the *Commentary on the Bill* (available at http://taxpolicy.ird.govt.nz/bills shortly after the Bill is introduced). 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.

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?	**YES**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**YES**

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 documents listed in Appendix One that are available at http://taxpolicy.ird.govt.nz/publications or where appropriate in the *Commentary on the Bill* (available at http://taxpolicy.ird.govt.nz/bills shortly after the Bill is introduced).

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 some impact on New Zealand's international obligations, there have been no formal steps to determine whether the policy to be given effect is consistent with New Zealand's international obligations. The item specifically identified is listed below. ▪ **Foreign superannuation** The technical amendments have been considered in light of the 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?
No separate 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, as no policy measures in this Bill have been identified, as part of the normal policy process, as having 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 this 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 is impact on Maori, consultation with Maori stakeholders is conducted. As noted above, no consultation with Maori stakeholders was conducted for the purposes of this 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?	**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 accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/	

Offences, penalties and court jurisdictions

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)?	**YES**
Changes to child support penalties are detailed in Appendix Two.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO

- **Child support**

No consultation with the Ministry of Justice has taken place as the amendments seek to simplify the administration of the child support scheme – they also seek to ensure that the policy objectives in the Child Support Amendment Act 2013 are achieved by correcting errors, clarifying wording and making additional consequential changes to simplify the child support scheme.
No consultation with the Ministry of Justice has taken place on the penalty write off provisions detailed in the May 2015 RIS as the amendments are being made by supplementary order paper.

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

- **Child support**

Disclosure of information relating to domestic maintenance restored
Remedial change on the ability to disclose information relating to domestic maintenance is restored after having been inadvertently removed.

Notice requirements regarding the child dependent allowance and adjusted taxable income
Remedial amendment will also be made which will provide greater discretion to not have to provide details, such as a per child dependent child allowance or adjusted taxable income on a notice of assessment in respect of child support, where it is not feasible or relevant.

- **Working for Families**

Family scheme income statements
This bill will enable a person and their spouse, civil union partner, or de facto partner to submit separate family scheme income declaration forms.

Working for Families Tax Credit details not needed
This bill will remove the requirement for Working for Families recipients to provide Inland Revenue with details of each Working for Families Tax Credit paid to them in each family scheme income tax year.

- **Approved Information Sharing Agreement**

This bill amends the authority to share information under an Approved Information Sharing Agreement by allowing the Commissioner to supply information despite any provisions in any Inland Revenue Act, rather than just despite provisions in the Tax Administration Act.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

- **Child support**

The ability to disclose information is not being changed in practice in relation to all the child support amendments.

The Privacy Commissioner was consulted on the original reform legislation in the Child Support Amendment Act.

The Privacy Commissioner was not consulted on the additional debt write off provisions as they do not alter any information disclosure requirements for individuals.

- **Approved Information Sharing Agreement**

The Privacy Commissioner was consulted

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 external consultation on much of the policy to be given effect by this Bill, as per the GTPP (described in Part One of this statement). Please refer to Appendix Two of this statement and the documents listed in Appendix One (question 2.1) for further information on the various parties consulted 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

As per the policy statement, tax policy is developed using the GTPP. Therefore, 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.

- **Child support**

The amendments have been considered by operational experts and tested against different scenarios. Some remedial changes arise as a result of testing carried out on previous legislation.

- **Foreign superannuation**

Internal subject matter experts have assessed the provisions using their experience with actual cases.

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 page 50 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?	**YES**
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, other than as covered below, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 53 of the *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013). ▪ **Cashing-out losses for R&D expenditure** The proposal creates a variant of income tax, an existing tax that forms part of the general revenue of the Crown. Like other refundable credits of income tax, the initiative changes applicants' income tax liability - cashing out an income tax loss will create a refundable credit of income tax. The repayment of the cashed-out amount will be collected as a form of income tax. For administrative purposes, to identify these repayments, it is necessary for them to have a unique label, separate from income tax. Therefore, the draft legislation identifies these repayments as R&D repayment tax.	

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. A list of all items which are proposed to apply prior to the enactment of this bill is included in Appendix Three. Further information on the retrospective application of these amendments can be found in the *Commentary on the Bill*, which will be made available at http://taxpolicy.ird.govt.nz/bills shortly after the introduction of the Bill.	

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**

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?	**NO**

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**

Appendix One: Further Information Relating to Part Two

Publicly available inquiry, review or evaluation reports question 2.1

Cashing-out losses for research and development expenditure
R&D tax losses An officials' issues paper, July 2013 see
http://taxpolicy.ird.govt.nz/sites/default/files/2013-ip-r-and-d-tax-losses.pdf

R&D black hole expenditure
Black hole R&D expenditure, discussion document, November 2013, see
http://taxpolicy.ird.govt.nz/sites/default/files/2013-dd-black-hole-r-and-d-expenditure.pdf

GST and Bodies Corporate
GST treatment of bodies corporate, discussion document, June 2014, see
http://taxpolicy.ird.govt.nz/sites/default/files/2014-dd-bodies-corporate.pdf

Child support
Supporting Children Inland Revenue discussion document, September 2010, see
http://taxpolicy.ird.govt.nz/publications/2010-dd-supporting-children/overview

Supporting children - a summary of feedback on the discussion document, Inland Revenue, July 2011, see http://taxpolicy.ird.govt.nz/publications/2011-other-supporting-children-feedbacksummary/overview
There are also a number of remedial items that clarify or amend the current law to realign with the original policy intent. The following documents provide analysis on the original policy intent.

Foreign superannuation
Taxation of foreign superannuation, A special report from Policy and Strategy, Inland Revenue, April 2014, see http://taxpolicy.ird.govt.nz/sites/default/files/2014-sr-foreignsuperannuation_0.pdf

Thin capitalisation
Review of the thin capitalisation rules, An officials' issues paper, January 2013, see
http://taxpolicy.ird.govt.nz/sites/default/files/2013-ip-thin-capitalisation.pdf
Thin capitalisation review: technical issues, An officials' note, Inland Revenue, June 2013, see
http://taxpolicy.ird.govt.nz/sites/default/files/2013-ip-thin-capitalisation-technical-issues.pdf

Controlled foreign companies and foreign investment funds
Changes to the controlled foreign company rules in the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012, A special report from the Policy Advice Division of Inland Revenue, January 2012, see http://taxpolicy.ird.govt.nz/sites/default/files/2012-sr-cfcs.pdf
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Foreign investment PIEs: access to lower treaty rate
Foreign Investment PIEs A special report from the Policy Advice Division of Inland Revenue, September 2011, see http://taxpolicy.ird.govt.nz/sites/default/files/2011-sr-foreign-investmentpies.
pdf

Mixed use assets
Mixed use assets, A special report from the Policy Advice Division of Inland Revenue, August 2013, see http://taxpolicy.ird.govt.nz/sites/default/files/2013-sr-mixed-use-assets.pdf

Regulatory impact analysis question 2.3

Regulatory Impact Statements:

- 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.
- Bodies corporate GST obligations, Inland Revenue, 25 November 2014
- Review of child support scheme reform, Inland Revenue, 4 June 2012.
- 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

A Child Support RIS has also been prepared for the additional child support debt amendments included in the SOP to the bill. It will be released to the public after sighted by Ministers at Cabinet alongside the LEG paper. This is anticipated to be after related Budget 2015 annoucements.

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 RIS'

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.

Appendix Two: Further Information Relating to Part Three

New offences or penalties – question 3.4

- **Child support**

Underestimation penalty
The underestimation penalty for child support is removed.

Discretionary relief from incremental penalties
This relates to discretionary relief from incremental penalties. The amendment affects recovery of incremental penalties if such an approach would place a person in serious hardship.

Writing off benefit debt and corresponding penalty debt and writing off penalties under serious hardship
There is an amendment to allow penalty debt to be written off when the corresponding benefit component of child support debt has been written off. Amendment has also been made which will enable penalties to be written off when recovery would cause serious hardship.

Extend the mandatory write-off of monthly incremental penalties
The mandatory write-off of monthly incremental penalties for payment arrangements has been extended, subject to 26 week review, to payment arrangements where a liable person has not explicitly agreed to the arrangement.

Fair and reasonable test
The discretionary penalty write-off tests have been amended to adopt a more pragmatic test based on “fair and reasonable”.

Jurisdiction of court to hear parties in step-parent and appeal proceedings
The court’s jurisdiction over the particular parties it can hear in appeals and declarations in respect of step-parents has been narrowed to the extent that only relevant parties are given the opportunity to become part of the court proceedings.

Offsetting of child support liabilities
The family court’s jurisdiction in terms of a departure to a child support formula assessment has been extended and it will be able to hear a matter in relation to offsetting of child support liabilities against past child support debt.

Re-establishment costs situation if income increases
The ability to make a departure in relation to re-establishment costs has been clarified to match the original policy intent.

Allocation of child support payments
The court will also have jurisdiction to disregard the entitlement rules in terms of allocation of child support payments when determining a receiving carer’s entitlement if this is necessary to implement the intention regarding a departure application from the child support formula assessment.

External consultation – question 3.6

External consultation on numerous items contained in this Bill was undertaken in various forms. Information on the consultation, including the form that consultation took place, what was covered, and the nature and the extent of feedback received is available for viewing at:

- A *Commentary on the Bill* will be made available shortly after the Bill is introduced at: http://taxpolicy.ird.govt.nz/bills.

- Public consultation documents on measures contained in the Bill are available at: http://taxpolicy.ird.govt.nz/publications.

- Various RIS' outlining consultation that was undertaken on measures in the Bill are available at: http://taxpolicy.ird.govt.nz/publications/type/ris.

The following is a list of all the external agencies, representative parties, organisations and groups that have been consulted with in the preparation of this bill.

Government Agencies
Department of Internal Affairs (Charities Services)
Department of Prime Minister and Cabinet
Ministry of Business, Innovation and Employment
Ministry of Education
Ministry of Foreign Affairs and Trade
Ministry of Justice
Ministry of Social Development
New Zealand Police Vetting Service
Tertiary Education Commission
The Treasury (Tax Strategy Team)

Representative organisations
BusinessNZ
Chartered Accountants Australia New Zealand
Corporate Taxpayers Group
Inter Church Working Party on Taxation
New Zealand Bankers' Association
New Zealand Law Society
The Community Housing Association of Aotearoa
Trustee Corporations Association of New Zealand

Other parties/organisations/entities
Deloitte
EY
KPMG
PwC

Appendix Three: Further Information Relating to Part Four

Retrospective application dates – question 4.3

Items shown below include application dates that are proposed to apply prior to the enactment of this bill. Some of these items also include other items with prospective application dates.

Cashing-out losses for research and development expenditure

Clauses 88, 99, 117, 180, 181, 187, 192, 194, 195, 213(5), (6), (7), (8), (11), (27), (28), (31), (33), (35), (36), (39), (45), (56) to (59), (61) and (64), 217, 230, 238 and 267 apply from 1 April 2015, before the bill is expected to be enacted so will be retrospective. However, the measures are taxpayer friendly, optional and apply to companies rather than individuals.

R&D black hole expenditure

Clauses 105 and 109(2), (3) and (5) apply from the beginning of the 2011-12 income year. Clause 105, which inserts new section EE 18B into the Income Tax Act 2007, is necessary to ensure the validity of tax depreciation deductions claimed for capitalised expenditure incurred by taxpayers in the successful development of software for use in their own business, with retrospective effect from the statutory time-bar. It is understood that taxpayers who have developed software for use in their own business, based on a 1993 policy statement, have been depreciating all of the capitalised development costs. Although this is in accord with the policy intent, some doubt has been expressed about whether this approach is correct under current law. Clause 105 will resolve this uncertainty, by providing clarity that this expenditure is depreciable, and ensure that the law is aligned with the policy intent. The provision has been drafted to have a broader application to depreciable property than just software, applying to other items of depreciable intangible property if expenditure is incurred on an underlying item of intangible property, where it was the policy intent that the expenditure is depreciable and there may be similar uncertainty about the lawfulness of depreciation deductions claimed. The provision is beneficial to affected taxpayers. Clause 109(2), (3) and (5) amend section EE 33 of the Income Tax Act 2007 to make consequential changes to the definition of an item in a formula for calculating the annual rate of depreciation for items of fixed life intangible property. Clauses 72, 73, 85, 87, 104, 106, 107, 109(1), (4) and (6), 110 to 116, 213(2), (9), (10) and (12), and 216 apply from the beginning of the 2015-16 income year. Because the Bill is not expected to receive the Royal assent until after 1 April 2015, these clauses are expected to have retrospective effect. These clauses give effect to changes announced in Budget 2014, and provide tax deductibility for certain types of business expenditure that are currently non-deductible (commonly referred to as “black hole” expenditure). The changes are primarily targeted at black hole R&D expenditure. The changes are taxpayer friendly and are expected to be enacted prior to when 2016 income tax returns are due to be filed.

GST and Bodies Corporate

Clauses 250(2), 251(2), 253(2) and 254 apply from date of introduction. This is necessary to prevent bodies corporate receiving a tax advantage by registering for GST and avoiding the application of output tax on their funds before the rules are enacted. Clauses 249(1), 250(1) and 253(1) apply from 1 October 1986 (the date GST was first introduced), this ensures that bodies corporate (whether registered for GST or unregistered at the date of introduction) have certainty in regard to the tax positions they have taken prior to date of enactment.

Child Support

Clauses 5, 15, 23, 28(2), 49(1) and (2), and 50(2) to (7) clarify provisions to align with the policy intention for child support reform changes. These apply to the 2015-16 and later child support years, being the year the original changes came into effect.

The provisions which relate to expanding the mandatory write-off of incremental late payment penalties subject to 26-week review, and providing a more pragmatic test based on “fair and reasonable” for discretionary penalty write-off provisions under sections 135FA, 135G and 135GA will be introduced by supplementary order paper. Therefore, currently have no clauses in the bill.

Foreign superannuation
All but one of the proposed technical amendments relating to foreign superannuation (in clauses 71(1), (3), (5), (6), and (9), 75(1), 96(1), 133, 145, 213(22) to (26) and (29), 256 and 260) are to apply from 1 April 2014, which is the start date of the new foreign superannuation rules. The technical amendments are proposed either to fix obvious errors in the regime or are taxpayer

friendly. The other technical amendment in clause 71(2), (4), (7), and (8) is to apply from 1 April 2015 to ensure that taxpayers are not disadvantaged for taking a position based on the current legislation.

Thin capitalisation
Clauses 155, 156 and 158 amend drafting errors in previous amendments to the thin capitalisation rules. These apply for the 2015-16 and subsequent income years to align with the previous amendments.

Controlled foreign companies and foreign investment funds
The following remedial changes have been made with retrospective application as they are taxpayer friendly. Clause 128 and 129 in relation to test grouping rules for the acquisition and disposal of groups of companies applies from 1 July 2009. Clause 134 in relation to exemptions for interests in Australian FIFs applies from 1 July 2011.

Foreign investment PIEs: access to lower treaty rate
Clause 215 clarifies the policy intention applying since the introduction of the foreign investment PIE rules for the 2012-13 and later income years. A savings provision is proposed for taxpayers who have relied on the current drafting.

Election to be a complying trust
Clauses 167, 169 and 170 restore the legislation to align with the policy intention due to an unintended legislative change in a previous amendment. This will apply for the 2008-09 and later income years. The measure is taxpayer friendly.

Meaning of charitable or other public benefit
Clause 183 corrects a drafting oversight which occurred as part of the rewrite of the Income Tax Act 2004. The amendment will apply from 1 April 2008 to align with the commencement of the Income Tax Act 2007.

Grace period for deregistered charities
Clause 264 applies from 14 April 2014. However, due to the operation of the net assets tax which applies one-year after the charity is deregistered the retrospective nature of the amendment is unlikely to be a problem for them. The amendment is also taxpayer friendly because it will alleviate a tax impost on affected taxpayers.

Schedule 32 donee status
Clause 218(1) applies from 20 June 2014 to align with the incorporation of ADC Incorporated. Clause 218(2) removes the prior name of Aotearoa Development Cooperative from schedule 32 on 31 March 2015 to preserve donor entitlements to tax benefits in connection with any donations made to the charity for the 2014-15 income year. Clause 218(3) applies from 1 April 2015 to add additional charities to schedule 32 for the 2015-16 income year.

Working for Families tax credits
Clauses 188 and 189 will ensure bursaries and income equalisation account withdrawals are exempt from family scheme income from 1 April 2011. This was the date the broader definition of family scheme income came into effect.

We are not aware of any situations where income equalisation account withdrawals or bursary payments have been treated as family scheme income. Therefore, this retrospective change should not have any revenue implications. The retrospective change will ensure the policy intention is maintained if situations arose where Inland Revenue may want to apply the law to prior years.

Exceptions to requirement to file a return of income

Clause 231 clarifies the policy intention for the issue of income statements to IR 56 taxpayers and applies for the 2014-15 and later income years. This intention aligns with the current practice.

Clause 226 removes the requirement to file income tax returns for certain individuals with schedular payment income and applies for the 2014-15 and later income years. This amendment is taxpayer friendly as it removes the requirement, but not the ability for certain individuals to file returns.

Reporting requirements for the Agriculture, Horticulture and Viticulture industry

Clause 224 repeals these reporting requirements, which have never been enforced, from 1 April 2008 to align with their introduction to the Tax Administration Act 1994.

Cost of timber determinations

Clause 237 repeals the requirement for the Commissioner to issue cost of timber determinations, which have not been issued for many years, from the 2015-16 and later income years.

Tax pooling amendment

Clauses 207 to 212 reflect the original policy intent to enable taxpayers to access tax pooling funds to stop further interest from accruing on increased amounts of tax resulting from an amended assessment or the resolution of challenge proceedings.

In order to provide certainty to those taxpayers who have recently settled disputes, the amendment will apply from 3 July 2014, being the date of the Ministerial announcement of the Government's intent to change the legislation.

Financial arrangements

Clause 84(1), (2), (3), and (5) in relation to the bad debt deduction rules applies from 20 May 2013 to align with its original enactment date. Clause 121(3) in relation to the IFRS financial reporting spreading method applies for the 2015-16 and later income years.

Amalgamation of companies

Clauses 159 and 160 remove an inadvertent change created by a previous amendment. This will apply from the beginning of the 2008-09 income year to align with the previous amendment. A savings provision is proposed for taxpayers who have relied upon the current drafting.

Bad debt deductions and the capital limitation

Clause 257 removes an inadvertent change created by the rewrite to the Income Tax Act 2004. This will apply from the beginning of the 2005-06 income year to align with when that Act came into force. Clause 84(4) applies the same amendment to the Income Tax Act 2007 from the 2008-09 income year. These amendments are taxpayer friendly.

Mixed use assets

The mixed use asset remedial amendments (contained in clauses 89 - 95) are retrospective to the beginning of the mixed use asset regime - that is the 2013-14 and later income years for land and improvements, and the 2014–15 and later income years for aircraft and boats. These amendments are taxpayer friendly and necessary to ensure the original policy intent of the mixed use asset regime is achieved.

Asset transfer remedials

The asset transfer remedial amendments are retrospective to 1 April 2008 (the date the Income Tax Act 2007 came into force). The retrospective changes in clauses 103, 144, 149-152 and 213(53), (54), (62) and (74) are necessary to clarify the application of the rules, give certainty to taxpayers and ensure the original policy intent is achieved. We believe these changes generally accord with the way the rules have been applied to date.

Livestock
Clause 69 applies from 28 March 2012 to align with the date of the substantive amendments to the herd scheme rules. This amendment is taxpayer-friendly.

Petroleum mining
Clauses 97, 98, 100, 101, and 213(49) and (50) correct a rewrite error identified in the Income Tax Act 2007 and apply from 1 April 2008 to align with the date the Income Tax Act 2007 came into force. A savings provision in clause 213(72) and (73) is proposed for taxpayers who have relied upon the current drafting.

Employee allowances – accommodation for ministers of religion
Clauses 81 and 213(37) apply from 1 July 2013. Clauses 70 and 213(38) apply from 1 April 2015. This amendment is taxpayer-friendly.

New start grants
Clause 213(40) repeals new start grants from 1 April 2015 as they are no longer part of the suite of responses that Government uses for a primary sector adverse event.

Tertiary education institutes – wholly owned subsidiaries
Clause 76, and 213(67) and (75) apply from 1 July 2008 in order to restore the position TEI subsidiaries held prior to this date, and correct the unintended situation where they were required to register as charities to be exempt.

Transitional residence
Clauses 176 and 190 apply from 1 April 2008 to clarify that a person who chooses not to be a transitional resident will not be a transitional resident.

Non-monetary consideration in the context of sales
Clauses 102 and 219 clarify the policy intention for non-monetary consideration to be included within sale and related terms. This applies for the 2015-16 and later income years.

Commercial fit-out
Clause 82 repeals a provision relating to commercial fit out from 1 April 2011 and clause 83 reenacts it in a more appropriate place from the same date.

Miscellaneous
A number of minor faults of expression, readers' aids, and incorrect cross-references are corrected with various retrospective application dates. These amendments will not impact the interpretation or application of the existing legislation.