

# Supplementary Departmental Disclosure Statement

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Taxation (Business Tax, Exchange of Information, 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 (Business Tax, Exchange of Information, and Remedial Matters) Bill, dated 27 July 2016, can be found at this link: <http://disclosure.legislation.govt.nz/bill/government/2016/149/>

This supplementary disclosure statement was prepared by Inland Revenue.

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

16 August 2016.

**Contents**

Contents..... 2

The Main Areas of Change to the Original Disclosures ..... 3

Part One: General Policy Statement ..... 4

Part Two: Background Material and Policy Information ..... 6

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features ..... 10

## **The Main Areas of Change to the Original Disclosures**

This is a supplementary disclosure statement for the Taxation (Business Tax, Exchange of Information, 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.

The only area of change to the original disclosure statement is the addition of a transitional regulation-making provision.

## Part One: General Policy Statement

*This Bill introduces an amendment to the Tax Administration Act 1994.*

The policy of the amendment is to provide a prompt legislative response (if required) to the issues that may arise during Inland Revenue's business transformation process. The policy is aimed at reducing hurdles that may delay the business transformation process and impede the orderly transition from the old system (FIRST) to the new system (START).

The proposal involves an amendment to the Tax Administration Act 1994 to enact an empowering provision to provide for transitional regulations and exemptions to be made by Order in Council during the business transformation process.

The empowering provision will relate to the administration of tax, rather than the substantive quantification of a taxpayer's tax liability. In other words, it will relate to the processes and administration of the tax system under the Tax Administration Act 1994 and not the quantification of tax liabilities under the Income Tax Act 2007.

It is envisaged there will be two main situations when the regulations may need to be made. The first situation is when a process aligned with the current computer system is examined and found to be inconsistent with the current law because of the limitations of the current system. A regulation could provide a bridge between the current process and the correct process in the new computer system. The second situation is when the new computer system offers a more efficient or different process to that currently legislated. A regulation may be able to reduce the delay in getting the law to line up with the new process, so as to provide a smooth transition from the old system to the new system.

The proposal is modelled on the requirements in the Legislation Advisory Committee Guidelines (2014 edition) (the LAC Guidelines). The power to create the regulations and exemptions would be specifically limited to tax administration issues that arise as a result of the business transformation process. As the transformation is intended to affect a substantial amount of the tax administration rules and processes, and it is impossible to anticipate where any issues will arise, the empowering provision needs to be sufficiently broad. However, the power will not be so broad as to be an unfettered power (consistent with guideline 13.2 and [7.79] of the Cabinet Manual). In other words, it will be drafted in the most limited terms possible while still allowing issues arising under the transformation process to be remedied by regulation when appropriate (consistent with guideline 13.5). The scope of the empowering provision will be modelled on previous transitional regulation-making provisions.

Inland Revenue would only provide advice recommending a transitional regulation or exemption be used to remedy an issue after other alternatives had been considered. Inland Revenue would weigh various considerations in determining whether to advise that regulations are the appropriate vehicle to remedy an issue. The different considerations would have different weightings depending on the nature of the issue.

The power would specifically provide that the transitional regulations could have retrospective effect (noting guidelines 13.1 and 13.5 and [7.77] of the Cabinet Manual). This may be especially useful in reducing compliance costs for taxpayers for issues that date back several years.

Given the similar nature of the regulation-making power and the exemption-making power it is considered that similar safeguards should apply. The safeguards, modelled on the Guidelines, are:

- **Exercise consistent with policy intent:** Any regulations or exemptions made will have to be consistent with the policy intent of the primary legislation, and will not allow for any general policy-making ability.
- **Parliamentary scrutiny:** The regulations and exemptions would be disallowable instruments, and so would be subject to disallowance under the Legislation Act 2012 by resolution of the House of Representatives.
- **Judicial review:** The courts would have a role in determining whether the delegated law-making power had been lawfully exercised. The High Court may declare that the subordinate legislation is invalid on a variety of grounds if it is outside the scope of the empowering provision.
- **Subject to time limits:** Any regulations or exemptions made under the power to address a transitional issue would expire after three years, consistent with the principles prescribed by the Regulations Review Committee. Further, it is proposed that the empowering provision would only apply for the duration of the business transformation process, and would expire at the end of Stage 4 in 2021. If the relevant issue was ongoing after the expiry date, it would need to be amended in the primary legislation. Such issues would be included in a tax bill before the expiry date.
- **Necessity for consultation:** Before advising on any proposed regulations or exemptions, Inland Revenue would be required to undertake consultation. This will be in line with the Generic Tax Policy Process (GTPP). Depending on the issue, consultation could take a variety of forms, including broad public and private sector consultation or targeted consultation (if the particular issue had no visible impact on taxpayers). The empowering provision would require Inland Revenue to include the outcome of that consultation in the advice on the regulation or exemption.
- **Transparency:** Assisting taxpayers to meet their tax obligations is an important part of Inland Revenue's role in the tax system. Taxpayers must be informed if they are to understand their rights and obligations. A legislative instrument made under the proposed amendment would be required to be published in the legislative instrument (LI) series in accordance with the Legislation Act 2012.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
Legislation Advisory Committee Guidelines (2014 edition) <i>Regulation-making powers that authorise transitional regulations to override primary legislation</i> (Report of the Regulations Review Committee, I.16J, July 2014)	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Title: Transitional regulations during Inland Revenue's business transformation Authorising agency: Inland Revenue Date: 4 August 2016  A copy of the document can be found at: <a href="http://taxpolicy.ird.govt.nz/publications/type/ris">http://taxpolicy.ird.govt.nz/publications/type/ris</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.</p> <p>Treasury's Regulatory Quality Team has reviewed the RIS prepared by Inland Revenue and associated supporting material, and considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria.</p> <p>The analysis provides reasonable support for the conclusion that exemptions and additional regulation-making powers may be required during Inland Revenue's business transformation process, and for a decision on the preferred choice of mechanism.</p> <p>However, the analysis does not appear sufficiently complete or convincing to give Ministers confidence in taking an informed decision on the appropriate scope of the exemption and regulation-making powers, given the range and importance of the matters covered by the Tax Administration Act. This conclusion is reinforced by an inadequate level of consultation for a proposal that would create such a wide-ranging power to amend or override an Act.</p>	

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

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Analysis available as part of the regulatory impact statement referred to in box 2.3. Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
Analysis available as part of the regulatory impact statement referred to in box 2.3. Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The policy is not discriminatory between residents and non-residents so it is consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Bill is consistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
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It is not common practice for advice to be provided to the Attorney-General on government Supplementary Order Papers. Advice was provided on the Bill as introduced.
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.
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## 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>Consultation has been undertaken with the Legislation Design and Advisory Committee. The committee considers that the proposal seems to be consistent with the LAC Guidelines (2014 edition), subject to sufficient and appropriate safeguards.</p> <p>No wider consultation was undertaken on the proposal because of time constraints. The time constraints resulted from the need to have the proposal enacted as soon as possible given the benefits of the transitional regulation-making provision and the timing of the second business transformation phase. Any delay in enacting the empowering provision could delay the business transformation process (or increase the cost), create uncertainties for taxpayers, and risk taxpayers and Inland Revenue having to commit resources to dealing with issues that are inconsistent with the current policy intent..</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?	NO
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
<p>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).</p> <p>Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.</p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>The empowering provision could allow regulations to be made that could amend a power to impose a fee, levy or charge in the nature of a tax. Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>The empowering provision could allow regulations to be made that retrospectively impose obligations. Any impact of regulations or exemptions made under the empowering provision will need to be considered at the time.</p>	

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

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

### Civil or criminal immunity

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

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

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>The proposal involves an amendment to the Tax Administration Act 1994 to enact an empowering provision to provide for transitional regulations and exemptions to be made by Order in Council during the business transformation process. The exemption and regulation-making power will enable the delegated legislation to expressly or impliedly:</p> <ul style="list-style-type: none"><li>• Amend, suspend or override a provision in the Tax Administration Act 1994;</li><li>• Define or amend a term in the Tax Administration Act 1994;</li><li>• Exempt a person from the provision of the Tax Administration Act 1994.</li></ul> <p>Such regulations are only justifiable in limited circumstances. The current proposal is for transitional regulations to apply during a significant reform process, which is one situation when such regulations are considered appropriate if sufficient safeguards are in place:</p> <ul style="list-style-type: none"><li>• The empowering provision has been drafted in the most limited terms possible, given the broad nature of the transformation process. The empowering provision will relate to the administration of tax, rather than the substantive quantification of a taxpayer's tax liability. In other words, it will relate to the process and administration of the tax system under the Tax Administration Act 1994 and not the quantification of tax liabilities under the Income Tax Act 2007. The power to create the regulations and exemptions would be specifically limited to tax administration issues that arise as a result of the business transformation process;</li><li>• Any regulations made under the provision must be consistent with policy intent;</li><li>• Both the regulations and the empowering provisions are subject to sunset clauses;</li><li>• Consultation is required prior to the making of any regulations.</li></ul>	

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

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