

Revised Departmental Disclosure Statement

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill
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A revised 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 2017–18, Employment and Investment Income, and Remedial Matters) Bill, dated 17 March 2017, can be found at <http://disclosure.legislation.govt.nz/bill/government/2017/249/>.

This revised 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.

13 February 2018

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The Main Areas of Change to the Original Disclosures

This is a revised disclosure statement for the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill.

A revised disclosure statement incorporates the content of the original disclosure statement for the Bill, but also includes and highlights the changes needing 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 revised disclosure statement will note these if relevant but will not explain them further.

The main area of change to the original disclosure statement is:

- including the proposed government amendment in a Supplementary Order Paper to extend the current “bright-line” land sale test from a two-year period to a five-year period.

Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following enactments:

- Income Tax Act 2007
- Tax Administration Act 1994
- KiwiSaver Act 2006
- Student Loan Scheme Act 2011
- Goods and Services Tax Act 1985
- Child Support Act 1991
- Accident Compensation Act 2001
- Income Tax Act 2004
- Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2014

This Bill also revokes the Income Tax (Payroll Subsidy) Regulations 2006.

Broadly, the policy proposals in this Bill fall into 2 categories. The first of these categories is proposals aimed at modernising and improving the settings for the administration of the tax system as part of the Government's programme of transforming the revenue system through business process and technology change (Inland Revenue's business transformation programme). This includes measures relating to employment and investment income information, the electronic filing threshold for goods and services tax (GST), amendments to the pay as you earn (PAYE) rules, and amendments to penalty and interest rules.

The second category is proposals aimed at improving the current tax settings within a broad-base, low rate (BBLR) 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 between the public and private sectors, 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. The Commentary will be available shortly after this Bill is introduced, at <http://taxpolicy.ird.govt.nz/publications/type/bill-commentary>.

The government has introduced Supplementary Order Paper which proposes to extend the current “bright-line” test from two years to five years. The amendment is intended to ensure that property speculators pay tax on the gains from their activity and also to improve housing affordability for owner-occupiers by reducing demand from speculators.

Employment income information

The Bill proposes to reform the administration of PAYE. The proposals are part of the Government’s plans to modernise the revenue system through business process and technology change. The proposed changes are intended to reduce compliance costs for employers by integrating the fulfilment of tax obligations into their normal business processes (for example, enabling employers to use their payroll software to meet their PAYE reporting obligations at the time they pay their employees), reduce administrative costs for Inland Revenue, enable more timely interventions by Inland Revenue to improve the accuracy of withholding and help prevent individuals getting into social policy debt, and create opportunities for Government to subsequently redesign social policies.

Requiring employers to provide PAYE information to Inland Revenue on a payday basis

The Bill proposes requiring employers to provide Inland Revenue with information about their employees’ income and deductions on a payday basis, rather than on the current monthly basis. The Bill proposes that employers over the threshold for mandatory electronic filing, employers using payroll software, and payroll intermediaries will have to provide this information within 2 working days of payday, with employers below the threshold for mandatory electronic filing not using payroll software having 7 working days from payday. The Bill proposes that reporting on a payday basis become mandatory from 1 April 2019, but permissible from 1 April 2018.

PAYE thresholds

The Bill proposes lowering the threshold for mandatory electronic filing of PAYE information from \$100,000 of PAYE and employer’s superannuation contribution tax (ESCT) in the preceding tax year to \$50,000 from 1 April 2019. The Bill proposes that those employers above the threshold who are unable to access digital services will be able to apply for an exemption from the requirement to file PAYE information electronically. The Bill proposes to allow future changes to this threshold, and the threshold above which employers are required to remit PAYE and other deductions twice-monthly, to be made by Order in Council following consultation.

Information about new and departing employees

The Bill proposes that employers be required to provide Inland Revenue with information about new and departing employees no later than the next return of payday information. Employers using payroll software will be able to provide the information about new and departing employees direct from their software at the time the employee

is added or removed. This is intended to help ensure that new employees are set up correctly from the beginning of their employment. To help ensure that identity is correctly assigned, the Bill proposes requiring employers to obtain date of birth information from new employees and pass it on to Inland Revenue. The Bill also proposes requiring employers to pass on to Inland Revenue contact details for all new employees.

Error correction

The Bill contains an empowering provision that would allow regulations to be made by Order in Council, following consultation, relating to the correction of errors in employment income information, including the nature and type of errors that may be corrected, the manner in which corrections may be made, and the periods to which corrections may relate.

Consequential changes to reporting of employee share scheme benefit information

From 1 April 2017, employers will be required, under the Income Tax Act 2007 and Tax Administration Act 1994, to disclose the value of share benefits employees receive under employee share schemes (and any tax they choose to withhold under the PAYE rules). This disclosure is to be captured on the employer monthly schedule as part of PAYE information reporting.

To ensure that employers are able to meet their employee share scheme benefit information reporting obligations in the proposed new PAYE reporting environment, the Bill proposes to defer the recognition of benefits derived by an employee under an employee share scheme by 20 days from when the employee receives the benefit, with effect from 1 April 2019, in order to provide all employers with sufficient time to compile information to support the required disclosures and deduction of tax, if to be withheld. The Bill also proposes to require early adopters of payday PAYE information reporting to apply the modified employee share scheme rules early.

Abolition of the payroll subsidy

The Bill proposes abolishing the existing payroll subsidy from 1 April 2018. This subsidy is paid to listed PAYE intermediaries that carry out PAYE and related payroll functions on behalf of employers who are only required to remit PAYE deductions monthly. It is paid for up to 5 employees per employer at \$2 per pay day per employee to subsidise the voluntary use of PAYE intermediaries. The subsidy incentivises only 1 model of digital provision of employment income information, potentially distorting employers' choice given that a range of payroll products and services exist in the market.

Investment income information

The Bill proposes a number of changes to the collection of investment income information. The proposals are part of the Government's plans to modernise the revenue system through business process and technology change. The proposed changes are intended to reduce compliance costs for recipients of investment income by enabling Inland Revenue to pre-populate their tax returns with their investment income information, enable Inland Revenue to improve the accuracy of withholding and help prevent individuals getting into debt, and create opportunities for Government to subsequently redesign social policies. The investment income information changes will apply from 1 April 2020 unless otherwise stated.

More frequent and comprehensive collection of investment income information

The Bill proposes that payers of interest, dividends and taxable Māori authority distributions will be required to provide detailed recipient information to Inland Revenue on a monthly basis, or for the months in which payments are made, if the payment frequency is less than monthly. The Bill proposes that payers may choose to file monthly from 1 April 2019, with monthly filing to become mandatory from 1 April 2020. Currently, payers of interest subject to withholding tax provide detailed recipient information to Inland Revenue, but only after the end of the tax year. No detailed recipient information is currently required to be provided to Inland Revenue for other types of investment income, such as dividends and Māori authority distributions.

The Bill proposes that payers of investment income that is exempt from withholding be required to report detailed recipient information yearly, or monthly, at the payer's preference. The Bill proposes that portfolio investment entities (PIEs) be required to provide detailed recipient information to Inland Revenue following the end of the tax year by 15 May instead of 31 May (applying from the tax year beginning 1 April 2018), and to report investors' prescribed investor rates 6 monthly.

To help ensure that identity is correctly assigned, the Bill proposes requiring investment income payers to provide the recipient's date of birth to Inland Revenue as part of the detailed recipient information reporting, if it is held.

To enable jointly earned income to be split between the joint owners, the Bill proposes requiring investment income payers to provide detailed recipient information regarding each of the owners of jointly owned investments, if it is held.

The Bill proposes requiring investment income payers to file their withholding tax returns, including the detailed recipient information, electronically unless they receive an exemption from Inland Revenue.

Increase in the non-declaration rate for interest income

The Bill proposes to increase the non-declaration tax rate for interest subject to resident withholding tax (RWT) from 33% to 45%, in order to encourage non-declared interest recipients to provide their IRD number to their interest payer.

Requiring new investors in PIEs to provide their IRD number

The Bill proposes requiring investors opening new investments in PIEs to provide their IRD number (unless they are non-resident, do not have an IRD number, and provide their foreign tax identification number) within 6 weeks of making the initial investment if they are to remain a member of the PIE. This requirement will apply from 1 April 2018.

RWT exempt status

Taxpayers holding a certificate of exemption from RWT are entitled to be paid interest and dividends without having any tax deducted by the payer. The existing certificate of exemption process involves compliance costs for payers as they need to receive exemption certificates from taxpayers, check the appropriate New Zealand *Gazette* to see if the taxpayer's certificate has been cancelled, and assess whether the customer can appropriately claim to be exempt under non-tax legislation.

The Bill proposes requiring Inland Revenue to make a source of information available to investment income payers that would enable them to confirm whether or not recipients have RWT exempt status. To ensure that all exempt recipients are included in this information source, the Bill proposes that recipients that are tax exempt under

Acts other than the Income Tax Act 2007 be required to have RWT exempt status, in order to be treated as exempt by investment income payers.

Removal of requirement to provide end of year withholding tax certificates

The Bill proposes removing the requirement for interest payers to provide end of year withholding tax certificates to recipients of interest income who have provided their IRD number to the interest payer. If Inland Revenue receives recipients' investment income information throughout the year and pre-populates the information for the recipients in their tax records, this will make the end of year withholding tax certificate requirement unnecessary, and removing it is intended to reduce compliance costs for interest payers.

Error correction

In order to reduce compliance and administration costs, the Bill proposes that investment income payers will be allowed to correct errors in previous withholding tax returns in their next return without incurring penalties or interest, subject to restrictions for errors being corrected in the following income year.

Taxation of employee share schemes

The Bill proposes a number of changes to the taxation of employee share schemes (ESS), which are intended to modernise and improve the taxation of ESS so that it is simple, efficient, and fair. The general objective of the proposed reforms is to achieve neutral tax treatment of ESS benefits – that is, to the extent possible, the tax position of both the employer and the employee are the same whether remuneration for labour is paid in cash or shares. In other words, the policy intent underlying the proposed reforms is that ESS are not at a tax advantage or disadvantage compared to cash salary. This is consistent with New Zealand's BBLR tax policy framework and is intended to ensure employees are remunerated in the most economically efficient (rather than the most tax efficient) form.

Value and timing of benefits under ESS

Broadly, the Bill proposes aligning the income tax treatment of employees receiving ESS benefits with the tax treatment of other forms of employment income. This means that employees would be taxable on the value of their shares when they have done everything they need to earn them and hold them like any other shareholder (for example, they are not protected from suffering a loss if there is any drop in share price). The proposed changes are intended to address the concern that, under current law, ESS can be used to give employees tax-free remuneration. In particular, an employee can be given what is economically a valuable share option without being taxed on that benefit, whereas the provision of an actual option is taxable (when the option is exercised).

Allowing deductions for employers' costs

The Bill proposes allowing employers a tax deduction for the amount of the employee's income, at the same time as the employee is taxable, in order to align the tax treatment of employers providing ESS benefits with the tax treatment of paying other types of employment income. There is currently no statutory deduction for the cost of providing ESS benefits, though employers have found various ways to structure so that a deduction is available.

Changes for tax-exempt widely offered schemes

To minimise compliance costs, it is proposed that the tax-exempt widely-offered ESS are retained; however, the Bill proposes some amendments to modernise the rules and to close certain loopholes that are currently being used to obtain unintended deductions.

The Bill proposes to remove the 10% deemed interest deduction (with some grandparenting), and remove the requirement for Inland Revenue to approve schemes, but require the schemes to be registered with Inland Revenue. The Bill also proposes that value of the shares when granted to the employee or trustee on their behalf must not exceed \$5,000 per annum, and that the difference between the value of the shares at that time and their cost to the employee must not exceed \$2,000 per annum.

Transitional rules

The Bill contains proposed transitional rules that would, generally speaking, allow businesses 6 months after the enactment of the reforms to amend their ESS, if necessary.

PAYE rules amendments

In addition to the proposed reforms to improve the timeliness and quality of employment income information received by Inland Revenue, the Bill proposes several changes to the rules relating to the calculation of PAYE and related deductions.

To strike a balance between the desire for more accurate withholding of PAYE and the impact on compliance costs, the Bill proposes to give employers the option to tax holiday pay paid in advance (and salary or wages paid in advance) as if the lump sum payment was paid over the pay periods to which it relates, or under the existing extra pay method.

To reduce complexity and confusion for employers, the Bill proposes to align the rules in the Inland Revenue Acts about how legislated rate or threshold changes are applied across the different types of PAYE income payments and social policy initiatives administered through the PAYE system. The rates and thresholds to be applied would be those in force on the date the payment is made.

The Bill also proposes to repeal a redundant de minimis provision in relation to the tax treatment of a retrospective increase in salary or wages.

Petroleum mining decommissioning

At the end of production, a petroleum miner must incur significant decommissioning costs. This includes expenditure on the plugging of wells, and the removal of installations, pipelines and equipment. In the absence of specific rules, this expenditure would result in a loss carried forward that may be of limited or no value to the petroleum miner unless they had income from another source. The tax rules for petroleum mining currently include a spread-back mechanism, which allows returns for prior income tax periods to be reopened to include losses arising from decommissioning expenditure incurred in the current year. As the existing spread-back mechanism requires amendments to assessments for previous periods, it involves significant compliance and administration costs. To reduce compliance and administration costs, the Bill proposes to replace the existing spread-back mechanism for petroleum mining decommissioning expenditure with a refundable tax credit. This will be similar to other refundable tax credits already included in the Income Tax Act

2007, most relevantly the refundable tax credit for mineral mining rehabilitation expenditure, which was introduced in 2014.

The current spread-back results in a refund of tax paid in previous years. It was never intended that these refunds should be eligible for credit use of money interest. However, there is no provision that confirms this. To ensure that no credit use of money interest is paid before the refundable tax credit applies, the Bill also contains an amendment confirming that use of money interest will not be paid on a petroleum mining spread-back in a return filed after the introduction of the Bill.

Demergers

Under current legislation, the full value of the shares in a demerged company is treated as a dividend for the shareholder. This is problematic because a demerger is, in substance, the division of a corporate group rather than a distribution of income. The problem is particularly acute for demergers by listed Australian companies. The Bill proposes an amendment to create an exclusion from the meaning of the term “transfer of value” under the dividend rules in relation to company demergers. The proposed exclusion is limited to demergers by listed Australian companies.

Bank account requirement for IRD numbers

Since 1 October 2015, tax legislation has required offshore persons to provide evidence of a functioning New Zealand bank account before Inland Revenue is able to issue them with an IRD number. Some offshore persons have encountered practical difficulties with the requirement. The compliance costs of obtaining a New Zealand bank account can be significant for offshore persons, and there can be delays. To address these problems, the Bill proposes an amendment that would provide Inland Revenue with a discretion to issue IRD numbers to offshore persons without a New Zealand bank account if satisfied with their identity and background. This is intended to give Inland Revenue sufficient flexibility to deal on a timely basis with a range of different cases.

Lloyd's of London tax compliance simplification

Lloyd's of London has regulatory approval to write term-life insurance business in New Zealand. Lloyd's is an insurance market, not an insurance company. It is an institution where Members of the Society of Lloyd's, both corporate and individual, join together in syndicates to insure risk. Members are required to be United Kingdom residents under Lloyd's governance rules. Lloyd's unique structure means that any amount of business in New Zealand would require its non-resident syndicate members to file tax returns in New Zealand, which would have material compliance and administrative implications. As a tax compliance simplification measure for Lloyd's, the Bill proposes to create a special presumptive tax on premiums received by Lloyd's in connection with sales of term-life insurance in New Zealand. Tax would be calculated and paid by Lloyd's authorised New Zealand agents. The tax would work on the basis that 10% of premiums received by Lloyd's on its New Zealand business would be taxable income. The company tax rate (28%) would apply to the deemed taxable income.

GST treatment of Pharmac rebates

Owing to the unique way pharmaceuticals are publicly purchased in New Zealand, associated rebates paid by suppliers to Pharmac under an agreement for listing on the Pharmaceutical Schedule can have different GST treatment depending on whether the

pharmaceuticals are purchased in the community setting or the hospital setting. Currently, community rebates are not subject to GST, while hospital rebates are subject to GST. This gives rise to uncertainty and compliance costs for Pharmac and their suppliers in having to differentiate, for GST purposes, between community and hospital rebates. The Bill proposes to align the treatment of community and hospital rebates paid to Pharmac for products supplied under the Pharmaceutical Schedule by excluding these rebates from being an alteration of the previously agreed consideration under the Goods and Services Tax Act 1985.

Electronic filing threshold for GST returns

GST-registered persons can currently choose to file their GST returns on paper or in electronic form. Processing of paper returns is slower and more expensive, and paper returns are more prone to errors compared with electronically filed returns. To enable further encouragement of electronic uptake, if necessary in the future, the Bill contains an empowering provision that would allow for a threshold for mandatory electronic filing of GST returns to be set by Order in Council following consultation. The Bill proposes that GST-registered persons above the threshold who are unable to access digital services will be able to apply for an exemption from the requirement to file their GST returns electronically. In addition, the Bill proposes a \$250 penalty for GST-registered persons who are required to file their GST returns electronically but fail to do so.

Penalties and interest amendments

The Bill proposes several amendments that would modify the current rules around penalties and interest for taxpayers. They deal with when tax credits arise, the date use of money interest starts and the due date for default assessments. The proposed amendments are intended to simplify the rules and encourage voluntary compliance.

A taxpayer who has paid excess tax may request to transfer the excess credit to another period or another tax type. The Bill proposes to alter the time that an excess credit arises for GST purposes, in order to address voluntary compliance issues that exist under current legislation. The amendment will more appropriately deal with a situation where a taxpayer who files their return early or late has access to the credit.

The date interest starts for a GST refund is determined by the latest of several dates, one of which can be the 15th working day after the taxpayer provides a tax return for the return period to which the GST refund relates. The Bill proposes to change the date interest starts for a GST refund by reducing the number of working days after a return is filed from 15 to 10, to reflect the shorter time period that will be required to process returns with the introduction of Inland Revenue's new computer system, START.

Currently, electronic default assessments (EDAs) and non-electronic default assessment (NDAs) have different due dates for payment, and also different treatments for when any tax payable from a subsequent amendment is payable. For one type a new due date is set, while for the other the original due date applies until an amendment is made to that default assessment, in which case the taxpayer is given a new due date. In both cases a non-compliant taxpayer gets a benefit over a compliant one, which is not conducive to voluntary compliance. To address this, for taxes that have been migrated to the new START system and where incremental penalties have been removed from the particular tax type, the Bill proposes to align the treatment of default assessments so that they are due and payable at the original due date for the tax as under the current treatment for an EDA, and change the treatment for all default assessments that are reassessed so that any subsequent reassessment of the default assessment when the taxpayer files their tax return is also due at the original due date.

Trustee capacity amendments resulting from recent cases on corporate trustees

Two recent High Court decisions, *Concepts 124 Ltd v Commissioner of Inland Revenue* [2014] NZHC 2140 and *Staithes Drive Development Ltd v Commissioner of Inland Revenue* [2015] NZHC 2593, have changed how the voting interest test, which is used to measure the ownership of companies, including their association, is applied to corporate trustees. The Court decisions may result in overreach of the application of the associated person rules. This comes about because the Court held that the voting interests in the relevant companies were held by the legal owner of shares, and effectively ignored the capacity in which those shares were held. This means that the voting rights attached to shares owned by a corporate trustee are attributed to that corporate trustee's natural person shareholders in their personal capacity. Applying this approach, if a solicitor holds shares in a trustee company, which in turn holds shares on trust in a number of unrelated client companies, the client companies would be associated for tax purposes, which would be contrary to the policy intent. The Bill proposes an amendment to align the legislation with the original policy intent, which is that a corporate trustee should not be looked through when testing association. The proposed amendments address this by introducing a general rule for trustee capacity and some consequential changes to defined terms and operative provisions.

Schedule 32 donee status

The Bill proposes to amend the Income Tax Act 2007 by adding 5 charities to the list of donee organisations in schedule 32. New Zealand charities that support activities overseas must be listed in schedule 32 in order for their donors to be eligible for tax benefits (in particular, the donations tax credit). The proposed new additions to schedule 32 are Byond Disaster Relief New Zealand, Flying for Life Charitable Trust, Médecins Sans Frontières New Zealand Charitable Trust, Tony McClean Nepal Trust, and Zimbabwe Rural Schools Library Trust.

Confirmation of annual rates of income tax for the 2017–18 tax year

The Bill sets the annual rates of income tax for the 2017–18 tax year at the same rates that apply for the 2016–17 tax year.

Remedial amendments

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

- clarifying the meaning of “employer’s workplace” for the purposes of the exemption from income tax for payments made to employees for certain work-related meals when the employee is required to work away from their employer’s workplace;
- clarifying that the PAYE rule that requires multiple payments of salary or wages made to an employee in a week to have the same total amount of tax withheld as if 1 combined payment had been made only applies to payments made by the same employer;

- ensuring that extra pays paid to non-resident seasonal workers and employees on non-notified tax codes have tax withheld at rates of 10.5% and 45%, respectively, consistent with the policy intent for these classes of employees;
- clarifying that non-resident investment funds are exempt from tax on their gains made on the sale of New Zealand securities;
- providing taxpayers with a foreign tax credit in relation to attributable controlled foreign company (CFC) income when the foreign income tax is paid by the taxpayer's parent or another member of the taxpayer's group;
- allowing taxpayers to use part-year accounts in the year of acquisition or disposal to calculate a CFC's ratio of passive income to total income under the accounting standards test, provided that other standard requirements for the accounting standards test are met;
- removing the 30 June 2009 ownership requirement from the Tax Administration Act 1994, allowing taxpayers with insurance company CFCs acquired after 30 June 2009 to apply to Inland Revenue for a determination that the insurance company CFC passes the active business test;
- ensuring that a non-cash dividend derived from a non-resident company by an intermediary on behalf of natural persons resident in New Zealand is not over-taxed when the dividend is on-paid to that shareholder;
- adding notification requirements to the Tax Administration Act 1994 for when a PIE elects a calculation methodology;
- requiring a provisional tax PIE that is carrying forward losses before electing to use the quarterly or exit calculation method to treat those losses as a formation loss;
- restricting PIEs from holding investments with a market value over 20% rather than just voting interests over 20%;
- removing the "trust that would be a unit trust" entrance criteria for collective schemes and foreign PIE equivalents;
- adding Animal Control Products Limited and Kordia Group Limited to the list of State enterprises in part A of schedule 36 of the Income Tax Act 2007;
- clarifying that donation tax credits for donations made to community housing entities can only be claimed for the period the entity qualifies for the income tax exemption for community housing entities;
- clarifying that the net assets tax relating to charities applies to the accumulated assets and income of non-registered entities with an income tax exemption that cease being charitable at law;
- clarifying that entities that cease to be charitable at law must transfer their accumulated income and assets for charitable purposes;

- correcting an inadvertent drafting error to reinstate the prohibition on local authorities from being eligible to form or join a consolidated group;
- repealing the largely spent rules relating to specified activity net losses (which arose prior to 1992), and incorporating residual specified activity net losses into the general loss use and carry-forward rules;
- ensuring that the memorandum account provisions work as intended for the carrying forward of the balance of a memorandum account from year to year;
- clarifying the relationship between dividends and gains relating to attributing interests in a foreign investment fund, which are disregarded in calculating assessable income, and the core provisions of the Income Tax Act 2007;
- ensuring that the provisions in the Income Tax Act 2007 that limit the use of pre-consolidation imputation credits, and that set out the eligibility requirements to form or join a consolidated group, or to continue to be part of a consolidated group, reflect the pre-rewrite law set out in the Income Tax Act 2004;
- correcting an unintended change to the reciprocal shipping exemption in the Income Tax Act 2007 that arose during the rewrite of the Act;
- clarifying that incentive payments to prisoners who participate in prisoner employment activities are not treated as income for the purpose of granting the exemption for prisoners from payment of financial support under the Child Support Act 1991;
- denying a deduction for an excepted financial arrangement (EFA) acquired on revenue account by a company that forms a consolidated group with the issuer of the EFA and subsequently the EFA is cancelled.

Supplementary Order Paper: Extending the bright-line test from two to five years

A Supplementary Order Paper proposes an amendment to extend the current “bright-line” test from two years to five years.

The current bright-line test requires income tax to be paid on any gains from residential property disposed of within two years of acquisition, subject to some exceptions.

The Government has committed to extending the current bright-line test from two years to five years. The Government’s objective in extending the bright-line test is to ensure that speculators pay tax on the gains from property speculation and also to improve housing affordability for owner-occupiers by reducing demand from speculators.

The proposed five-year bright-line test has the same structure and design features as the two-year bright-line test. These design features include:

- The five-year period for the bright-line test runs from the date of settlement to the date a person enters into an agreement to sell the property. An additional rule applies for sales “off the plan”.
- The extended bright-line test applies only to properties for which an agreement to purchase the property was entered into from the date of enactment of the bill.

- The bright-line test applies only to residential land. Residential land includes empty land planned to be used for residential purposes but excludes business premises and farmland.
- The bright-line test does not apply to a person's main home. A person can only have one main home. The main home exception is available to properties held in trust.
- There are exceptions for relationship property and inherited property.
- Taxpayers are allowed deductions for property subject to the bright-line test according to ordinary tax rules.
- Losses arising from the bright-line test are ring-fenced so they may only be used to offset taxable gains from other land sales.

Extending the bright-line test from two years to five years has a consequential effect on the current residential land withholding tax rules. These rules generally require a conveyancer to withhold tax from the proceeds of the sale of residential land by an offshore person when the disposal would be subject to the bright-line test. Consequential amendments have been made to these rules to align them with the extended bright-line test.

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
<p>A Commentary on the Bill is available at http://taxpolicy.ird.govt.nz/publications/type/bill-commentary.</p> <p>The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.</p> <p>In addition, the documents listed in Appendix One are all publicly available at the locations indicated.</p>	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A number of regulatory impact statements (RISs) have been prepared by Inland Revenue and are available at http://taxpolicy.ird.govt.nz/publications/type/ris and can also be found at http://www.treasury.govt.nz/publications/informationreleases/ris. These RISs are listed in Appendix One.</p> <p>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 to improve legislative clarity and understanding (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Other items repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities.</p> <p><i>Bright-line test extension</i></p> <p>A regulatory impact statement on the extension of the bright-line test has been prepared by Inland Revenue and the Treasury. This RIS is available at http://taxpolicy.ird.govt.nz/publications/type/ris and can also be found at http://www.treasury.govt.nz/publications/informationreleases/ria.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The RISs dated 2 June 2016 and 8 November 2016, entitled <i>Proposed changes to PAYE and GST</i> and <i>Changes to the tax administration of investment income information</i>, respectively, met the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. Their opinions for Cabinet on these RISs are set out in full in Appendix One of this disclosure statement.</p> <p>The other RISs identified in Appendix One did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.</p> <p><i>Bright-line test extension</i></p> <p>The RIS for the extension of the bright-line test met the threshold for receiving an independent opinion on the quality of the RIS from the RIA team based in the Treasury. Their opinion for Cabinet on this RIS is set out in full in Appendix One of this disclosure statement.</p>	

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?	YES
<p>The aspects of the policy to be given effect by this Bill that were not addressed by, or now vary materially from, the policy options analysed in these RISs are set out in Appendix One.</p>	

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
<p>No significant bits of further impact analysis have become available for any aspects of the policy to be given effect by the Bill. Therefore, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 29 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).</p> <p>However, the Commentary on the Bill, which is available at http://taxpolicy.ird.govt.nz/publications/type/bill-commentary, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a RIS, may provide impact analysis of the proposals.</p>	

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
<p>2.5.(a) Size of potential costs and benefits</p> <p>The RISs listed in Appendix One provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are 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 of potential costs and benefits, as these items have been assessed as having no or a very minor impact on businesses, individuals or organisations.</p> <p>Where appropriate, the Commentary on the Bill (available at http://taxpolicy.ird.govt.nz/publications/type/bill-commentary) may provide some additional information on the potential costs and benefits of individual policy items.</p> <p>2.5.(b) Potential for any group of persons to suffer a substantial unavoidable loss of income or wealth</p> <p>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 and organisations.</p> <p>Analysis on the potential for any particular group of persons to suffer a substantial unavoidable loss of income or wealth may be available in the RISs listed in Appendix One or, where appropriate, in the Commentary on the Bill. For the majority of the items in the Bill, there is no analysis available that indicates that any group of persons has the potential to suffer a substantial unavoidable loss of income or wealth because of these policy changes.</p> <p><i>Abolition of the payroll subsidy</i></p> <p>Listed payroll intermediaries and subsidised employers may lose financially from the proposal to abolish the payroll subsidy. The subsidy offsets certain employers' payroll costs, if they outsource the work to a listed payroll intermediary, by a maximum of \$10 a pay run.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards, and the nature of regulator effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill. For the appropriate policy items, this may be discussed in more detail in RISs listed in Appendix One or, where appropriate, in the Commentary on the Bill.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

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

The controlled foreign company remedial 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 obligations.

Extended bright-line test

The extension of the bright-line test will also result in the residential land withholding tax rules applying in more cases for offshore persons. The residential land withholding tax is considered to be consistent with New Zealand's international obligations regarding non-discrimination as it is a collection mechanism rather than imposing a new tax type.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Unless it has been identified in the development of the policy that there may be implications for the rights and interests of Māori protected by the Treaty of Waitangi, no formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

Under the GTPP (described in Part One of this statement), there is focus on consultation (both with Māori and non-Māori interested parties) during the development of the relevant policy measures contained in the Bill. This is directly in line with the "duty to consult" principle of the Treaty of Waitangi.

The Māori authority investment income information changes were identified as having an impact on Māori. Inland Revenue consulted with Te Puni Kōkiri in developing the proposals and made specific efforts to consult with Māori authorities and their advisors. No concerns about any inconsistencies with the principles of the Treaty of Waitangi were raised.

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 on this bill is available on the Ministry of Justice's website. Such advice is accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>.

Bright-line test extension

Advice was not provided to the Attorney General on the bright-line test extension as it is not common practice for advice to be provided to the Attorney-General on government Supplementary Order Papers. However, advice was provided to the Attorney-General on the introduction of the two-year bright-line test in 2015 for the Taxation (Bright-line Test for Residential Land) Bill. Such advice is 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)?	NO
<p>Clause 187(26) amends the definition of “tax shortfall” to ensure that employers who fail to take reasonable care in calculating the amount of ESS benefits face a penalty, even if they do not pay PAYE.</p> <p>Clause 268 amends the existing late filing penalty for an employer monthly schedule. The clause proposes that the late filing penalty for employment income information will remain one that is not imposed for a first instance of late filing of employment income information in a 12 month period. It is also proposed that the late filing penalty will remain a monthly penalty. The maximum penalty that could be imposed for a failure to file employment income information on time is proposed as \$250 a month regardless of the number of failures to file on time in that month. This is the same as the penalty that currently applies for late filing of an employer monthly schedule.</p> <p>Clause 269(1), (5) and (6) amends the non-electronic filing penalty for employment income information, so that it remains a monthly penalty. Regardless of how often an employer who is required to file electronically fails to do so, in a calendar month, the maximum penalty will be the greater of \$250 or \$1 for each employee for whom information was returned in that month. The amount of this penalty is the same as currently applies.</p> <p>Clause 269(2), (4) and (8) amends the non-electronic filing penalty, so that a \$250 penalty applies to payers who fail to provide their investment income information in a prescribed electronic format. Clause 122 also waives penalties and interest in relation to error correction for investment income (see the response to question 3.5 and Appendix Two).</p> <p>Clause 269(3), (4) and (7) creates a penalty of \$250 for not complying with the proposed electronic filing requirement for GST registered persons above a threshold. Similar penalties at a comparable level are currently imposed for not complying with other existing electronic filing requirements (for example, for the provision of PAYE information).</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>The Ministry of Justice was not consulted about these provisions as they are minor or consequential amendments that are consistent with the existing policy framework for tax penalties.</p>	

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
The provisions in this Bill that create, amend or remove provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information are identified and explained in Appendix Two.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES and NO
The nature and extent of consultation undertaken with the Office of the Privacy Commissioner in relation to the provisions in this Bill that create, amend or remove provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information, and the nature of any action taken to address issues raised, is outlined in Appendix Two.	

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 (questions 2.1 and 2.3) for further information on the various parties consulted and the form in which consultation was undertaken for the policy items.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Preliminary (high level) testing of the employment and investment income information proposals with internal subject matters experts and solution architects has been undertaken, and no issues with the workability or completeness of the proposals were identified. Detailed design work and business process modelling is scheduled to commence in March 2017. At this stage, this will include unit and scaled business simulation testing to test end-to-end processes, including integration testing of external interfaces that will be used by customers to submit information. Throughout the detailed design and implementation phases of stage 2 of its business transformation programme, Inland Revenue will continue to work closely with external parties affected by the employment and investment income information proposals in order to ensure that they can electronically interact/transact with Inland Revenue. This will involve working with employers, PAYE intermediaries, payroll software providers, and payers of investment income, such as banks and companies (including intermediaries).</p> <p>All other proposals in the Bill have been reviewed by internal operational subject matter experts under Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out. Other than the employment and investment income information proposals, none of the measures in the Bill have required formal testing.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
Given the nature of tax, 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?	NO
Given this Bill is amending tax legislation, it does contain provisions that create or amend a power to impose a charge that is a tax. However, for the purposes of this statement, the answer is "No" as per the scope of this question explained in page 53 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

Retrospective effect

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

Strict liability or reversal of the burden of proof for offences

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

Civil or criminal immunity

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

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>While not satisfied that disclosure is required as per the scope of this question explained in page 65 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013), Inland Revenue has chosen to make the following disclosure.</p> <p>Generally, offshore persons must have a New Zealand bank account in order to obtain an IRD number. This is generally necessary in order to pay taxes, or buy or sell property in New Zealand. This requirement was proving overly burdensome in practice. Consequently, clause 244 proposes to give the Commissioner of Inland Revenue the discretion to dispense with the bank account requirement for offshore persons applying for IRD numbers. The proposed amendment would relax the bank account requirement for cases where the Commissioner is satisfied with the applicant's identity. A set of internal guidelines will be prepared to assist the Commissioner's exercise of this discretion. The discretion would be subject to normal judicial review processes.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill contains several provisions that allow the Commissioner of Inland Revenue to vary particular legislative requirements for a person or class of persons. The scope of these provisions broadly parallels powers delegated to the Commissioner under existing legislation. Further information on these provisions is set out in Appendix Three.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>This Bill creates several other powers to make delegated legislation. Information on the empowering clauses is set out in Appendix Three. Some of these delegated legislation making powers are subject to consultation requirements, as noted in Appendix Three. Any regulations will be drafted by Parliamentary Counsel, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. The regulations will be subject to the Acts and Regulations Publication Act 1989, disallowance under the Regulations Disallowance Act 1989, and subject to review by the Regulations Review Committee under Standing Order 314.</p>	

Any other unusual provisions or features

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

Published reviews or evaluations – question 2.1

Inland Revenue's business transformation programme

Programme Update and Detailed Business Case: Business Transformation Programme, Inland Revenue, November 2015, available at <http://www.ird.govt.nz/transformation/bt-reports-publications/business-cases/business-cases.html>

Administration of PAYE and GST

Making Tax Simpler: Better administration of PAYE and GST, Government discussion document, Inland Revenue, November 2015, available at <http://taxpolicy.ird.govt.nz/publications/2015-dd-mts-4-payee-gst/overview>

Investment income information

Making Tax Simpler: Investment income information, Government discussion document, Inland Revenue, July 2016, available at <http://taxpolicy.ird.govt.nz/publications/2016-dd-mts-6-investment-income/overview>

Taxation of employee share schemes

Taxation of employee share schemes, officials' issues paper, Inland Revenue and the Treasury, May 2016, available at <http://taxpolicy.ird.govt.nz/publications/2016-ip-employee-share-schemes/overview>

Tax treatment of employee share schemes – further consultation, Inland Revenue, September 2016, available at <http://taxpolicy.ird.govt.nz/publications/2016-ip-employee-share-schemes-update/overview>

Regulatory impact analysis – question 2.3

Proposed changes to PAYE and GST, Inland Revenue, 2 June 2016

Insurance businesses and the controlled foreign company rules, Inland Revenue, 22 June 2016

Demergers, Inland Revenue, 17 October 2016

Lloyd's of London – tax simplification, Inland Revenue, 17 October 2016

Tax treatment of petroleum mining decommissioning, Inland Revenue, 17 October 2016

Changes to the tax administration of investment income information, Inland Revenue, 8 November 2016

Taxation of employee share schemes, Inland Revenue, 28 November 2016

Requiring non-resident IRD number applicants to have a New Zealand bank account, Inland Revenue, 30 November 2016

Extension of the bright-line test for the taxation of residential property, Inland Revenue, The Treasury, 23 November 2017

Regulatory impact analysis – question 2.3.1

Proposed changes to PAYE and GST

Date of opinion: 31 May 2016

Verbatim text of opinion:

“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.

The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the RIS prepared by Inland Revenue. RIAT considers that the information and analysis summarised in the RIS meets the quality assurance criteria.”

Changes to the tax administration of investment income information

Date of opinion: 7 November 2016

Verbatim text of opinion:

“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.

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 meets the quality assurance criteria.”

Extension of the bright-line test for the taxation of residential property

Date of opinion: 23 November 2017

Verbatim text of opinion:

The Treasury’s comments are based on revised expectations for Regulatory Impact Assessments covering 100 Day Plan priorities.

The Regulatory Impact Assessment describes how the proposed action will meet the intended objectives and also explains the uncertainties and risks around its likely impact on the broader housing market. The impact on different parties including speculators, investors, tenants and parties in related markets who experience demand fluctuations for their goods or services that correlate with housing market activity, such as conveyancers, are well explained. The analysis of the overall impact on housing markets is more limited, due to limited empirical evidence and the uncertainty around the behavioural response and future markets conditions, recognising that there may be possible unintended consequences.

In addition, as noted in Section 1 of the Regulatory Impact Statement - “Key Limitations or Constraints on Analysis” - only the proposed option has been assessed. Consequently, it is not possible to be confident that the Government’s objectives are being met in the best way and with the least unintended consequences. It would therefore be desirable to monitor and evaluate the outcomes in practice. It is noted that IRD will continue to evaluate its programmes in terms of taxpayer compliance with the current law, including the bright-line test and that officials will monitor the general housing market indicators collected by the Ministry of Business, Innovation and Employment (MBIE). We would recommend that further thought be given to possible ways of observing the specific impact of this policy on market outcomes, as this could be of value in future policy decision making.

Regulatory impact analysis – question 2.3.2

PAYE information reporting – correction of errors

In the description of the policy options relating to the frequency and timeliness of PAYE information reporting obligations in the *Proposed changes to PAYE and GST RIS*, dated 2 June 2016, it was noted that, under all options other than the status quo, it was intended that simple payroll errors would be able to be self-corrected in a subsequent period. Inland Revenue has commenced early consultation with payroll providers and groups of employers aimed at determining whether a distinction between simple and more complex errors is workable and sufficient. The objective is to identify acceptable means of error correction that minimise compliance and administrative costs, whilst being fair to employees.

Compared with annual tax process, such as filing an individual or company income tax return, PAYE and related withholding processes are characterised by high volumes of data and short turnaround times. Some employers have commented that it is more important to pay employees on time than to pay them 100% correctly and, as such, large employers with complex payrolls see PAYE 'errors and adjustments' as part of business.

To recognise the need for error correction processes to work for employers, employees, and Inland Revenue, the Bill proposes that the manner in which PAYE and related errors may be corrected may be set out in regulations, and that the Minister of Revenue must consult appropriately before recommending the content of such regulations.

The early consultation currently underway will inform more comprehensive consultation in 2017.

Payday, rather than pay period, basis for PAYE information reporting

In the description of the policy options relating to the reporting of PAYE information in the *Proposed changes to PAYE and GST RIS*, dated 2 June 2016, reference was made to employers providing pay period PAYE information. The Bill proposes that all employers be required to provide PAYE information on a payday basis. The Bill proposes that employers over the threshold for mandatory electronic filing, employers using payroll software, and payroll intermediaries will have to provide this information within two working days of payday. The Bill proposes that other employers will have seven working days from payday. This is similar to option 3 in the RIS except for the requirement to provide PAYE information on a payday, rather than pay period, basis. Another difference is that it allows two working days rather than one for the submission of information.

Employers generally pay employees on regular paydays. However, some employers also make 'ad hoc' pays, for example, to pay a departing employee, or a new employee who was not brought onto the payroll in time for the regular pay run.

The effect of requiring PAYE information on a payday, rather than pay period, basis is that the PAYE information relating to the ad hoc pay will be reported to Inland Revenue when the payment of PAYE income is made, rather than being held over and included with the next regular pay run.

The risk with allowing employers to report on a pay period basis, by including information relating to ad hoc pays with the next regular pay run, is that calculations of ad hoc pays may be made outside the payroll system and/or that the subsequent need

to add the ad hoc payment to the next regular pay, for reporting purposes, may be overlooked.

Inland Revenue's understanding is that payroll software is set up to manage ad hoc pays as 'mini pay runs' and, as such, requiring PAYE information to be provided on a payday basis allows for better integration with payroll software and will simplify the process of reconciling PAYE information and payments.

Shortfall penalties for not taking reasonable care in reporting ESS benefits

It is important for employers to have an incentive to take reasonable care in complying with their obligation to report ESS benefits. If they elect to pay PAYE on these benefits, shortfall penalties can apply if the employer fails to take reasonable care in reporting ESS benefits. However, if they do not pay PAYE, under current law there is no specific penalty. The Bill therefore proposes an amendment to ensure shortfall penalties can apply to employers who fail to take reasonable care in calculating the amount of ESS benefits, even if they do not pay PAYE.

The intention is that such an employer is exposed to the same amount of shortfall penalties as they would have been exposed to if they did elect to pay the PAYE. There is no basis for differentiating in this respect between employers who do and those who do not withhold PAYE.

Appendix Two: Further Information Relating to Part Three

Privacy issues – question 3.5

Employment income information

Clauses 200 and 284(1)(b) propose to insert new sections 23B to 23P and schedule 4 into the Tax Administration Act 1994. Proposed new section 23K, together with proposed new schedule 4, table 2, requires employers to disclose their employees' date of birth details to Inland Revenue. Proposed new section 23K, together with proposed new schedule 4, tables 2 and 3, also requires employers to disclose their employees' contact details to Inland Revenue.

Investment income information

Clauses 212 and 284(1)(d) propose to insert new sections 25B to 25S and schedule 6 into the Tax Administration Act 1994, which relate to the collection, correction and disclosure of information relating to the amount of income taxpayers earn from investments, and their name, address and date of birth. Proposed new sections 25F to 25O relate to payers of different types of investment income and require them to provide Inland Revenue with specified information about payees listed in proposed new schedule 6. The information that will typically be required from payers of investment income is:

1. The name of the payer
2. The IRD number of the payer
3. The contact details of the payer (address)
4. The name of the investor
5. The IRD number of the investor, if held by the payer
6. The contact details of the investor (address)
7. The date of birth of the investor, if held by the payer
8. The amount and type of income of the investor for the period
9. The tax withheld on behalf of the investor for the period
10. The date on which or period in which the tax was withheld
11. The tax rate of the investor for the period, if applicable
12. The prescribed investor rate of the investor, if applicable
13. For PIEs, whether the PIE is a superannuation fund or a retirement savings scheme or not
14. The imputation credits attached, if applicable
15. The Māori authority credits attached, if applicable
16. The names, IRD numbers, tax rates and contact details of persons who are joint owners, if held by the payer.

Payers of interest currently provide most of the required information to Inland Revenue for interest subject to RWT or NRWT but will have to additionally provide date of birth information (if held) and identifying information about joint account owners (again, if held) and will have to provide the information in respect of interest subject to approved issuer levy or that is exempt from RWT. Payers of dividends and Māori authority distributions do not currently provide any detailed recipient information to Inland Revenue.

In some other instances the new provisions substantially re-enact the current law in order to improve legislative navigability.

Clause 122 amends section RA 11 of the Income Tax Act 2007 to improve payers' ability to correct errors in respect of RWT and NRWT. The amendment provides payers with the ability to correct errors relating to underpayments of RWT and NRWT during the year in which the error was made, as well a restricted ability to correct these errors the following year, without the imposition of penalties or interest.

Share purchase scheme information

Clause 248 requires employers to disclose details to Inland Revenue when they grant shares to an employee under a tax exempt share purchase scheme.

Extension of the bright-line test

An offshore person must currently provide certain information to the withholding agent if they sell residential land that is potentially subject to the bright-line test. Under the proposed extension to the bright-line test, this disclosure will be required in more circumstances.

Privacy issues – question 3.5.1

Employment income information

Inland Revenue provided the Office of the Privacy Commissioner with a draft version of the discussion document, and associated Cabinet paper, containing proposals for public consultation. The Office did not identify any concerns that they needed to raise with Inland Revenue before the document was issued.

The Cabinet paper seeking policy approval for the changes was also referred to the Office of the Privacy Commissioner for comment. In response the Office commented that “we have identified no issues of concern for us and are pleased to be noted as having been consulted”.

Investment income information

Inland Revenue initially provided the Office of the Privacy Commissioner with a draft version of the discussion document, and associated Cabinet paper, containing proposals for public consultation. The Office made the following comments:

“...key areas of interest for us referred to in the paper we'd like to discuss further as the proposals develop include:

- the development of a searchable exemptions database (the papers do not describe the mechanism anticipated e.g. how data will be made accessible, and to whom, and any access or identity validation restrictions that would apply)
- pro-rata allocation to joint account holders/joint owners of investments where previously IR may have received information relating to only one individual (and particularly how information on proportionality will be collected and verified)
- increased use of date of birth information to ensure matching accuracy (confidence in data will be particularly important for any pro-rata allocations)
- the scope of the individuals likely to be affected (i.e. the numbers of individuals likely to be impacted by adjustments to social assistance obligations and entitlements that will ensue from increased timeliness and accuracy of information)

- impacts for changes relating to Maori Authorities where there is currently no requirement for the agencies to provide IR with detailed distribution information
- private peer-to-peer lending (we note no withholding tax changes are proposed, however, this could be an area where there is room for some clear communications to ensure people are aware of the implications of this relatively new but increasingly common form of investment)."

These areas were dealt with in more detail in developing final policy recommendations for Ministers, and Inland Revenue consulted the Office of the Privacy Commissioner on the draft Cabinet paper seeking policy approval for the changes, which the Office raised no issues with.

Share purchase scheme information

The Office of the Privacy Commissioner was not consulted with respect to this provision as it is a minor change to the legislation and is consistent with the overall policy of requiring employers to disclose details of remuneration provided to employees to Inland Revenue.

Extension of the bright-line test

The Office of the Privacy Commissioner was not consulted on extending the bright-line test as any impact to the information requirements for residential land withholding tax is consequential to the extension of the bright-line and the substance of the information requirements remain unchanged.

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 the consultation took, what was covered, and the nature and the extent of feedback received is available for viewing in:

- The Commentary on the Bill, which is available at <http://taxpolicy.ird.govt.nz/publications/type/bill-commentary>.
- Public consultation documents on specific measures contained in the Bill, available at <http://taxpolicy.ird.govt.nz/publications/type/consultation-document>.
- Online consultation on the proposed changes to the administration of PAYE and GST, available at <http://taxpolicy.ird.govt.nz/archived-websites>.
- A summary of feedback on the Making Tax Simpler: Better administration of PAYE and GST consultation document, available at <http://taxpolicy.ird.govt.nz/publications/2016-other-mts-payee-feedback/overview>.
- Online consultation on the proposed changes to the collection of investment income information, available at <http://taxpolicy.ird.govt.nz/archived-websites>.
- Various RISs outlining consultation that was undertaken on various measures contained in the Bill, available at <http://taxpolicy.ird.govt.nz/publications/type/ris>.

The following is a list of the main government bodies (excluding New Zealand government departments), representative organisations, and other groups, organisations and entities that have been consulted in the preparation of this Bill.

Government bodies

- Accident Compensation Corporation
- Callaghan Innovation
- Education Payroll Limited
- Environmental Protection Authority
- Office of the Privacy Commissioner
- Pharmac
- Te Tumu Paeroa (Māori Trustee)

Representative organisations

- Accountants and Tax Agents Institute of New Zealand
- Angel Association New Zealand
- BusinessNZ
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Financial Services Council
- Online Tax Association of New Zealand
- New Zealand Bankers' Association
- New Zealand Bookkeepers Association
- New Zealand Law Society
- New Zealand Private Equity and Venture Capital Association
- New Zealand Shareholders' Association
- Petroleum Exploration & Production Association New Zealand
- Securities Industry Association
- Small Business Development Group
- Tax Simplification Panel
- Trustee Corporations Association of New Zealand

Other parties/organisations/entities

- ADP
- Advanced Management Systems
- AMP Capital
- ANZ Bank New Zealand
- ASB
- Australian Taxation Office
- AWE Taranaki
- BDO
- BNZ
- Canada Revenue Agency
- Chapman Tripp
- Citizens Advice Bureau
- Computershare Investor Services

- Contact Energy
- Crowe Horwath
- Crystal Payroll
- Datacom
- Deloitte
- Downer Group
- EY
- Fisher & Paykel Healthcare
- FlexiTime Payroll
- FNZ
- Her Majesty's Revenue and Customs
- iPayroll
- KPMG
- Link Market Services
- Lloyd's of London
- Mercer
- MYOB
- National Treasury (South Africa)
- New Zealand Oil & Gas
- Olivershaw
- PwC
- Russell McVeagh
- Simmonds Stewart
- SmartPayroll
- Spark
- TAG Oil (NZ)
- Te Awanui Huka Pak
- The Warehouse Group
- Westpac New Zealand
- WM Petroleum
- Xero

Appendix Three: Further Information Relating to Part Four

Retrospective effect – question 4.3

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

Taxation of employee share schemes

Clause 42, which denies employers a deduction for the cost of acquiring shares provided under a tax-exempt, widely offered share purchase scheme, applies from the date of the Bill's introduction. If this measure applied from the date of enactment there would be an incentive for companies to accelerate the purchase of shares to be held in trust and allocated to employees over time. This would allow employers to continue to claim a deduction for tax-exempt benefits which, while available under current law, is unintended.

Petroleum mining decommissioning

Clause 99 applies for the 2008–09 and later income years to correct an incorrect cross reference introduced by the rewrite to the Income Tax Act 2007. This amendment is taxpayer friendly.

Clause 265 applies for a taxpayer and to a tax position taken by the taxpayer in a tax return filed after the date on which the Bill is introduced. The amendment aligns the treatment of use of money interest with its policy intent and the equivalent treatment applying to other sections.

Demergers

Clauses 8, 45, 172(3) and 182, which propose to ensure that certain transfers of shares received by New Zealand shareholders as a result of a company split (demerger) by a listed Australian company are not treated as a dividend, apply from the start of the 2016–17 income year. This taxpayer friendly amendment ensures that, for the current income year, taxpayers affected by the amendment do not need to declare the shares as dividend income in a tax return.

Lloyd's of London tax compliance simplification

Clauses 16, 43, 62, 76, 78, 91, 172(31), 172(33), 172(38), 172(55), 179 and 180(1) apply to term life insurance policies by Lloyd's of London sold on and after 1 April 2017. Lloyd's intends to start selling term life insurance in New Zealand from 2017 and the specified application date ensures that Lloyd's have certainty about its obligations under the Income Tax Act and can ensure the requisite compliance systems are in place. Tax returns relating to term life insurance sales for the 2017–18 income year are not due until after April 2018.

Schedule 32 donee status

Clause 183 has effect for the 2017–18 and later income years (starting 1 April 2017). The date ensures the named charities have certainty about when monetary donations they receive are eligible for tax benefits for the purposes of fundraising and promotional communications. For the most part, tax benefits for monetary donations to the named charities would be realised by donors after April 2018.

Confirmation of annual rates of income tax for the 2017–18 tax year

Clause 3, which sets the rates of income tax imposed by section BB 1 of the Income Tax Act 2007, will apply for the 2017–18 tax year.

Remedial amendments

Meaning of “employer’s workplace”

Clause 24 applies from 1 April 2015. It proposes to insert a definition of the term “employer’s workplace”, used in section CW 17CB of the Income Tax Act 2007, to clarify its meaning. It is being defined as the workplace of the employer at which the employee normally works. The proposed application date coincides with the application date of section CW 17CB. Making this amendment retrospective is unlikely to have any impact on employers or employees as they are likely to have been interpreting the term this way anyway.

Trading gains of non-resident investment funds

Clauses 26 and 30 apply from 1 April 2012. These clauses clarify that non-resident investment funds are exempt from tax on their gains made on the sale of New Zealand securities. The proposed application date is aligned with the application date of the foreign investor variable rate PIE rules which form part of the policy that supports this remedial change.

Foreign tax credits for controlled foreign company income

Clause 112 applies for income years beginning on or after 1 July 2009. It provides taxpayers with a foreign tax credit in relation to attributable controlled foreign company (CFC) income when the foreign income tax is paid by the taxpayer’s parent or another member of the taxpayer’s group. The proposed application date is aligned with the introduction of the active business test and is taxpayer friendly.

Part-year accounts for CFC calculations

Clauses 58(2) and (3) and 59 apply for income years beginning on or after 1 July 2009. They allow taxpayers to use part-year accounts in the year of acquisition or disposal to calculate a CFC’s ratio of passive income to total income under the accounting standards test, provided that other standard requirements for the accounting standards test are met. The proposed application date is aligned with the introduction of the active business test and is taxpayer friendly.

Memorandum credit accounts and opening balances

Clauses 116, 117 and 121 apply from 1 April 2008. These clauses ensure that the memorandum account provisions work as intended for the carrying forward of the balance of a memorandum account from year to year. The retrospective effect prevents the potential for adverse outcomes arising for taxpayers.

Tax credits for donations to community housing entities

Clause 109 applies from 14 April 2014. It clarifies that donation tax credits for donations made to community housing entities can only be claimed for the period the entity qualifies for the income tax exemption for community housing entities. The proposed application date is aligned with the application date of the original amendment that made donations to community housing entities eligible for donation tax credits.

Charity deregistration tax remedials

Clause 90 applies from 14 April 2014. The amendment clarifies that the net assets tax relating to charities applies to the accumulated assets and income of non-registered entities with an income tax exemption that cease being charitable at law, and that entities that cease to be charitable at law must transfer their accumulated income and assets for charitable purposes. The proposed application date is aligned with the application date of the original amendment that introduced the tax on net assets for deregistered charities. The Bill contains a savings provision (clause 90(2)) for taxpayers who relied on the existing law in taking tax positions in returns filed prior to the introduction of the Bill.

Exemption for prisoners under the Child Support Act

Clauses 313 and 314 have a commencement date 1 April 2017. The amendments clarify that incentive payments to prisoners who participate in prisoner employment activities are not treated as income for the purpose of granting the exemption for prisoners from payment of financial support under the Child Support Act 1991. There are no adverse impacts on liable parents from applying these changes retrospectively from 1 April 2017. This is the beginning of the new child support year and the amendments will have the effect of maintaining exemptions from payment of financial support that have already been granted for this year in line with existing policy.

Preventing an unintended deduction for consolidated groups

Clause 29 applies for the 2016–17 and later income years. The amendment denies a deduction for an excepted financial arrangement (EFA) acquired on revenue account by a company that forms a consolidated group with the issuer of the EFA and subsequently the EFA is cancelled. The amendment is necessary to deny the possibility of a deduction where no economic loss has been incurred and where allowing a deduction is inconsistent with the existing policy intent. The amendment will only affect a very limited number of persons; it is highly unlikely that any will have filed a tax return for the 2016–17 tax year and, in many instances, they will not have completed their 2016–17 income year at the time the Bill is introduced.

Rewrite issues

A number of amendments address unintended legislative changes that came about during the rewrite of the Income Tax Act. The following clauses relating to rewrite amendments apply from the beginning of the 2008–09 income year, and ensure that the law has the same effect as set out in the 2004 Act:

- Use of pre-consolidation imputation credits – limitation on the use of pre-consolidation imputation credits, clauses 118 to 120.
- Eligibility requirements to form or join a consolidated group, or to continue to be part of a consolidated group, clause 69.
- The reciprocal shipping exemption – clarification in respect of the jurisdictions that the exemption can be applied to, clause 178.

Miscellaneous

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

Powers to make delegated legislation – question 4.7

Employment income information

Clause 200 proposes to insert new section 23P into the Tax Administration Act 1994 to give the Commissioner of Inland Revenue the power to vary the requirements of proposed subpart 3C and schedule 4 of that Act for an employer or class of employers. These provisions relate to the definition of employment income information and the filing requirements for employers. Clause 204 proposes to replace section 24H of the Tax Administration Act 1994 to give the Commissioner the power to vary tax code requirements for a person or class of persons. The scope of the proposed provisions broadly parallels the Commissioner's existing powers to vary requirements under sections 24P and 46(2) of the Tax Administration Act 1994, and the definition of "employer monthly schedule" in section YA 1 of the Income Tax Act 2007, which includes "other particulars required by the Commissioner for a class of employer". Proposed new section 23P, however, does not include the limitation in section 46(3) of the Tax Administration Act 1994 that any variation to the requirement for employers to provide particulars of their employees' commencement or cessation should not impose a more onerous requirement on an employer than is imposed by the employer monthly schedule.

Investment income information

Clause 212 proposes to insert new section 25S into the Tax Administration Act 1994 to give the Commissioner of Inland Revenue the power to vary the requirements set out in proposed subpart 3E and schedule 6 of that Act for a person or a class of persons. This would enable the Commissioner to vary the investment income information provision requirements and is intended to allow the Commissioner to make minor changes to the information requirements where particular requirements cause specific problems for a person or a class of persons or where there is a specific type of information that is held by a specific class of persons that would help with the administration of investment income information.

The proposed provision allows for the variation of the requirements for a person or a class of persons and, as such, it does not allow the Commissioner to make changes for all payers. The making of wholesale changes would require the legislation to be amended by Parliament. The proposed section carries over the power currently delegated to the Commissioner under sections 49(5) and 51(6) of the Tax Administration Act 1994.

Powers to make delegated legislation – question 4.8

Power to amend threshold for mandatory employer electronic filing of PAYE information

Existing legislation requires employers to file PAYE information electronically if their PAYE and employer's superannuation contribution tax withheld exceeds an annual threshold amount. Clause 200 proposes to insert new section 23F(6) into the Tax Administration Act 1994 which provides that the threshold amount for mandatory electronic filing of PAYE information may be altered by Order in Council. The provision is necessary to provide flexibility to adjust the threshold periodically to reflect changes in business practice, or the benefits that would be derived from earlier receipt of PAYE information, without having to occupy Parliamentary time. The provision requires the Minister of Revenue to undertake consultation that is appropriate and reasonable

before recommending that the threshold is changed. Clause 200 also contains an exemption provision (proposed new section 23G) which enables an employer over the electronic filing threshold to seek an exemption if they are unable to access suitable digital services or if providing the information electronically would impose unreasonable compliance costs.

Power to amend threshold for twice-monthly remittance of PAYE and other deductions

Existing legislation requires employers to withhold tax from PAYE income payments and to pay it to Inland Revenue twice-monthly if the amount they withhold exceeds an annual threshold amount. Clause 130 proposes to replace section RD 4 of the Income Tax Act 2007. Proposed new section RD 4(7) provides that the threshold amount for twice-monthly remittance of PAYE and other deductions may be altered by Order in Council. The provision is necessary to provide flexibility and the potential for a swift response, such as was required in response to the global financial crisis, without having to occupy Parliamentary time. The provision requires the Minister of Revenue to undertake consultation that is appropriate and reasonable before recommending that the threshold is changed.

PAYE information reporting – correction of errors

Clause 200 contains an empowering provision (proposed new section 23M of the Tax Administration Act 1994) that would allow regulations to be made by Order in Council relating to the correction of errors in employment income information, including the nature and type of errors that may be corrected, the manner in which corrections may be made, and the periods to which corrections may relate. The provision is necessary because it would not be appropriate to utilise Parliamentary time for such technical matters. The provision requires the Minister of Revenue to undertake consultation that is appropriate and reasonable before recommending that regulations be made.

Power to set a threshold for mandatory electronic filing of GST returns

Clause 231 enables an electronic filing requirement for GST registered persons over a certain threshold of taxable supplies to be set by Order in Council. The provision is necessary to provide flexibility to set and periodically adjust the threshold to reflect changes in business practice, or to further encourage electronic filing, without having to occupy Parliamentary time. An exemption provision is proposed which would enable GST registered persons to seek an exemption if they are unable to access suitable digital services and if filing electronically would impose unreasonable compliance costs. The provision requires the Minister of Revenue to undertake consultation that is appropriate and reasonable before recommending the making of regulations.

Application dates for new due dates for certain assessments

Clause 274 contains an empowering provision that enables the Governor-General by Order in Council to set the date from which proposed new section 142AB of the Tax Administration Act 1994 will apply. The empowering provision allows one or more orders to be made appointing different dates for different tax types and for different purposes. Proposed new section 142AB will apply to set a new due date for certain assessments. It is intended that as tax types are migrated to Inland Revenue's new computer system, START, the new rules will apply. The delegated legislation making power is the best way to implement the change, as Inland Revenue is unable to apply the proposed new rules until the taxes are in START.