

Short-Form Supplementary Departmental Disclosure Statement

Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill, dated 24 June 2019, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2019/158/>; and the revised disclosure statement for the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill dated 12 August 2019, which can be found at this link <http://disclosure.legislation.govt.nz/sop/government/2019/293/>.

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

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

25 February 2020

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
Given the SOP 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 the guidance.	

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The SOP contains changes to clarify that gifts to donee organisations made by way of debt forgiveness are not eligible for donation tax concessions or gift deductions. This is consistent with the longstanding policy intent, but the Court of Appeal has recently ruled that the current legislation allows donation tax credits for debt forgiveness. The application date of the remedial amendment is 1 April 2008, but a savings provision would apply for tax positions taken before the Minister of Revenue's announcement of the change on 17 December 2019.</p> <p>The SOP proposes a change to the reverse hybrid payment rules contained in section FH 7 of the Income Tax Act 2007. This will ensure that deductions are available to a New Zealand resident company that makes a payment to a related non-resident company which is exempt under foreign tax laws but taxable in New Zealand through the non-resident company's New Zealand branch. Denying a deduction in this situation is not consistent with the policy intent of the rule but is an unintended effect of the current drafting. To provide taxpayers with certainty when filing income tax returns for the 2018/19 tax year, the SOP proposes amending the rule with retrospective effect from 1 July 2018 (the date that the hybrid rules came into force).</p> <p>The SOP contains a minor change to the overseas donee organisations in Schedule 32 of the Income Tax Act. The SOP would replace Medicine Mondiale with the Sir Ray Avery Foundation from 28 May 2018. The organisation changed its name on this date.</p>	

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

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

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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