

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **APPROVAL FOR RELEASE OF SUPPLEMENTARY ORDER PAPERS**

### **Proposal**

1. This paper seeks the approval of the Cabinet Legislation Committee for the release of two Supplementary Order Papers (SOPs) to the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill prior to the Bill's Committee of the whole House stage. The proposed SOPs introduce amendments to the following legislation:
  - Income Tax Act 2007;
  - Tax Administration Act 1994; and
  - Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018.
2. The Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill (the Bill) is currently awaiting its second reading.

### **Policy**

3. The first SOP for consideration is in relation to the *New Zealand Memorial Museum Trust – Le Quesnoy* policy item. The other SOP (“other policy matters SOP”) is in relation to the other policy items listed below. The SOPs are necessary as amendments to existing legislation are required to implement the proposed policy changes in a timely manner.

### ***Policy item with prior Cabinet approval***

*New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations (CAB-18-MIN-0535, 29 October 2018)*

4. Cabinet agreed on 29 October 2018 to grant the *New Zealand Memorial Museum Trust – Le Quesnoy* overseas donee status to support its fundraising efforts to develop a war memorial museum and accommodation complex in Le Quesnoy, France. The Trust's purposes are to raise awareness of New Zealand's participation in and contribution to the First World War, through the memorial museum, and develop a programme of cultural and educational exchanges between New Zealand and France. Granting overseas donee status allows monetary donations to the Trust to be eligible for tax benefits, such as the donations tax credit for individuals or tax deductions for companies and Māori authorities.
5. In the Le Quesnoy SOP it is proposed that the Trust will have overseas donee status starting from 1 April 2018 and ending three years after the Taxation (Annual Rates

for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill is enacted (expected to be March 2019).<sup>1</sup>

*Disability Support System Transformation: Policy and Regulatory Issues (SWC-18-MIN-0107, 15 August 2018)*

6. Cabinet agreed on 20 August 2018 to the direct funding of disability support payments, which are payments made directly to a disabled person (or a person on their behalf) to purchase disability support services or products, being treated as exempt income in the hands of the disabled person for income tax purposes. This decision was made in the context of a wider disability support system transformation agreed to by Cabinet (SWC-18-MIN-0029). The direct funding disability support payments currently covered by this income tax exemption would be:
  - “Enabling Good Lives” Waikato payments which have been made to disabled people since mid-2015;
  - “MidCentral prototype” payments which have been made to disabled people since October 2018 (these payments are expected to be rolled-out nationwide post 2020); and
  - “Flexible Respite Budgets” which will be made to unpaid full-time caregivers of disabled people to purchase relief disability support services, enabling them to take a short break from their role as full-time carer, from early 2019.
7. Exempting these payments from income tax as proposed in the other policy matters SOP ensures that recipients are not financially worse-off than they would be under other existing disability support arrangements (which are not subject to income tax as they do not involve disabled people receiving funding directly).

***Items not requiring Cabinet approval in the second SOP***

8. I also propose that a number of other remedial changes in relation to policy issues be included in the other policy matters SOP. These changes described below are consistent with their policy intent.
9. The changes are not considered significant in nature, and do not have any revenue or other fiscal effect, so reference to Cabinet is not considered necessary to confirm these changes – rather they have been approved in my capacity as the Minister of Revenue.
10. The changes of this nature that have been approved for inclusion in the other policy matters SOP are as noted below.

***Company demerger rules***

11. The other policy matters SOP proposes remedial changes to the company demerger rules, enacted by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018. The company demerger rules are intended to provide tax relief for New Zealand taxpayers who receive shares

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<sup>1</sup> Advice from the Legislative Design and Advisory Committee in 2016 to Inland Revenue confirmed that the use of legislation to implement Cabinet decisions giving overseas donee status to organisations is appropriate.

because of a demerger by an ASX-listed Australian company. Tax practitioners have raised technical concerns regarding the efficacy of the rules and the amendments in the other policy matters SOP are intended to ensure the demerger rules operate as intended.

#### *START tax types*

12. The other policy matters SOP proposes an amendment to the definition of START tax types in the Tax Administration Act to accommodate income tax, Working for Families tax credits and donations tax credits in the START use of money interest regime set out in s 183 of the Tax Administration Act. The proposed addition of these tax types to the definition will align with the transfer of the administration of these tax types from the FIRST computer system to the START computer system.

#### *Hybrids grandfathering*

13. The other policy matters SOP proposes to broaden the grandparenting protection for certain cross border debt issued by registered banks. It was always intended that where a banking group issued capital for regulatory purposes before the introduction of the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, that capital would not be subject to the hybrid rules introduced by enactment of that Bill. However, the grandparenting protection in section 35(3) of the corresponding Act are not sufficiently broad, and amendments the other policy matters SOP are intended to correct this.

#### *Updating the list of organisations in schedule 32 of the Income Tax Act*

14. The other policy matters SOP also proposes remedial changes to update the list of organisations in schedule 32 of the Income Tax Act 2007 by replacing the name “Partners Relief and Development New Zealand” with “Circuit International”, with effect from 10 April 2016. This is a housekeeping matter and provides certainty and clarity to donors who wish to check whether the charity has overseas donee status.

#### *Minor remedial and maintenance items and minor clarifications of items in the Bill*

15. The other policy matters SOP proposes a number of minor remedial and maintenance items and minor clarifications of items in the Bill. These include minor changes to clarify the remedial amendments relating to the hybrid and branch mismatch rules and the rules relating to honoraria payments received by Fire and Emergency volunteers that were recommended to be included in the Bill by officials and accepted by the Finance and Expenditure Committee, minor amendments to clarify the KiwiSaver provisions in the Bill, a minor amendment to clarify the application of the tax write off rules for qualifying individuals, and two minor amendments to the information collection and disclosure provisions inadvertently omitted in the rewrite of these provisions to ensure that the current position is maintained.

## **Impact Analysis**

16. A regulatory impact assessment was prepared for *New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations* and is attached to this paper.
17. The regulatory impact analysis requirements do not apply to the other items in the SOPs, as the proposed changes result in little or no change to the policy position and/or impact on effected individuals.

## **Compliance**

18. The proposed SOPs comply with:
  - 18.1. the principles of the Treaty of Waitangi;
  - 18.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 18.3. disclosure statement requirements (a draft revised disclosure statement for the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill has been prepared and is attached to this paper);
  - 18.4. principles and guidelines set out in the Privacy Act 1993;
  - 18.5. relevant international standards and obligations; and
  - 18.6. the Legislation *Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Consultation**

19. The issues to which these SOPs are intended to give effect were subject to public and other consultations in accordance with the Generic Tax Policy Process.

### ***Relevant government departments and other public bodies***

20. The Treasury was consulted in the development of many of the proposals in the SOPs. In addition, the ministry of Health and the Ministry of Social Development were also consulted in relation to disability support payment income tax exemption. The New Zealand Defence Force, the Ministry of Foreign Affairs and Trade, and the Ministry of Cultural and Heritage were consulted and the Department of the Prime Minister and Cabinet were informed in relation to New Zealand Memorial Museum Trust – Le Quesnoy.

### ***Relevant private sector organisations and public consultation processes***

21. A number of the proposals in the SOPs were subject to public consultation, which was undertaken in various forms.
22. Various private sector organisations were consulted on the specific matters of relevance to them. The feedback provided by these stakeholders was taken into account when finalising the proposals.

23. The attached draft revised disclosure statement for the wider Bill provides further information on the various parties consulted and the form in which consultation was undertaken.

### ***The government caucus and other parties represented in Parliament***

24. Caucus, coalition and support party consultation will be undertaken on these SOPs prior to their proposed release.

### **Binding on the Crown**

25. A number of Inland Revenue Acts currently bind the Crown (including the Income Tax Act 2007). The provisions in these SOPs do not alter the status quo in this respect.

### **Creating new agencies or amending law relating to existing agencies**

26. The SOPs will not create a new agency.
27. The SOPs will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

### **Allocation of decision making powers**

28. The SOPs do not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

### **Associated regulations**

29. No regulations are required to bring the proposed legislation into operation.

### **Other instruments**

30. The SOPs do not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

### **Definition of Minister/department**

31. The SOPs do not contain a definition of Minister, department, or chief executive.

### **Parliamentary stages**

32. The SOPs should be released before the Committee of the whole House stage of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill.
33. Each provision of the SOPs comes into force on the date specified in the SOP for that provision.

### **Proactive release of Cabinet paper and accompanying documents**

34. I propose to proactively release this Cabinet paper, the associated Cabinet minute and the attached Supplementary Order Papers in full shortly after the proposed release of the Supplementary Order Papers.

## Recommendations

The Minister for Revenue recommends that the Committee:

1. **note** that the attached Supplementary Order Papers are proposed to be released and considered as part of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill;
2. **note** that the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill is proposed to be a category 2 priority (must be passed in the year) on the 2019 Legislation Programme;
3. **note** that the Supplementary Order Papers make substantive and remedial amendments to the Income Tax Act 2017, the Tax Administration Act 1994 and the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018;
4. **approve** the Supplementary Order Paper relating to the *New Zealand Memorial Museum Trust – Le Quesnoy* for release, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
5. **approve** the Supplementary Order Paper relating to the remainder of the policy matters discussed in this paper for release, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **delegate** to the Minister of Revenue authority to make minor amendments of a technical nature to the measures recommended in this paper without further reference to Cabinet;
7. **agree** that the Supplementary Order Paper relating to the *New Zealand Memorial Museum Trust – Le Quesnoy* should be released prior to the Committee of the whole House stage of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill;
8. **agree** that the Supplementary Order Paper relating to the remainder of the policy matters discussed in this paper should be released prior to the Committee of the whole House stage of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill;
9. **agree** that the Government propose that the Supplementary Order Paper relating to the *New Zealand Memorial Museum Trust – Le Quesnoy* be considered at the Committee of the whole House stage of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill;
10. **agree** that the Government propose that the Supplementary Order Paper relating to the remainder of the policy matters discussed in this paper be considered at the Committee of the Whole House stage of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill;
11. **agree** that this Cabinet paper, the associated Cabinet minute and the attached Supplementary Order Papers should be released in full shortly after the release of the Supplementary Order Papers.

Authorised for lodgement

Hon Stuart Nash  
**Minister of Revenue**