

**POLICY AND STRATEGY**

**Tax policy report:** **Draft Cabinet paper – Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill: Approval for introduction**

---

<b>Date:</b>	20 May 2019	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2019/186

**Action sought**

---

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Agree</b> to recommendations <b>Authorise</b> the lodgement of the attached Cabinet paper	10am, Thursday 13 June 2019

**Contact for telephone discussion (if required)**

---

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
s 9(2)(a)	Bill Manager	s 9(2)(a)
	Policy Analyst	

20 May 2019

Minister of Revenue

## **Draft Cabinet paper – Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill: Approval for introduction**

---

1. This report asks you to approve and lodge the attached Cabinet paper and accompanying draft disclosure statement with the Cabinet Office by 10am Thursday 13 June 2019 for consideration at the Cabinet Legislation Committee meeting on Tuesday 18 June 2019. This report also seeks your approval to include a number of additional remedial amendments in the Bill and your approval to seek a minor amendment to a policy change that Cabinet has already approved.
2. The Cabinet paper seeks approval to introduce the Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill on or after 26 June 2019 and recommends that at its first reading the Bill is referred to the Finance and Expenditure Select Committee. We have drafted the paper on the basis that you agree to the recommendations to this report. Please advise if there are any changes to the Cabinet paper or Bill that you wish to make.
3. A draft disclosure statement is attached to accompany the Cabinet Paper in accordance with Cabinet guidelines. This document is still subject to some change. The draft disclosure statement is referred to Cabinet along with the Cabinet paper. The draft statement is finalised by Inland Revenue with the Parliamentary Counsel Office three days before the introduction of the Bill, and is made public when the Bill is introduced.
4. The Bill contains the items listed below.

### **Policy items approved by Cabinet**

- Business Transformation: KiwiSaver Changes (DEV-19-MIN-0038.01 and CAB-19-MIN-0109 refer)
- Student Loan Business Transformation Policy Changes (SWC-19-MIN-0014 and CAB-19-MIN-0085 refer)
- Granting overseas donee status to four charities (DEV-19-MIN-0055 and CAB-19-MIN-0142 refer)
- Extending the refundability of research and development tax credits, subject to Cabinet approval in late May.

### **Policy/remedial items approved by Minister of Revenue**

5. The Bill contains several remedial amendments to Inland Revenue Acts (4 March 2019, IR2019/099, refers). These relate to:
  - Income attribution rules
  - Tax treatment of trusts
  - Disclosure of information about the misconduct of bookkeepers
  - Tax treatment of non-resident international aircraft operators

- Māori authority tax credits
  - Resident withholding tax for registered charities
  - Consideration for grant of an easement
  - Employee Share Schemes.
6. The Bill also contains a number of provisional tax remedial amendments (10 April 2019, IR2019/170 refers).
7. Your approval is also sought in this report for the following changes to previously approved remedial items:
- We propose that the application date for the amendment allowing the granting of an income tax exemption to non-resident aircraft carriers be 1 April 1984, this being the original application date of the law, rather than the application date of the oldest active agreement under the legislation (1 June 1990).

s 9(2)(f)(iv)



8. A number of minor maintenance items have also arisen during the Bill's compilation. These correct minor faults of expression, reader's aids, and incorrect cross-references. It is proposed that these be included in the Bill.

### **Further remedial items requiring approval by the Minister of Revenue**

9. Approval is additionally sought in this report for the following new remedial items.
10. Inland Revenue will be able to issue short-process binding rulings from 1 October 2019. This is a new form of binding ruling service targeted at small-to-medium sized taxpayers. We propose an amendment to allow the Commissioner to withdraw short-process rulings, based on the existing provision which allows her to withdraw private binding rulings. This will allow the Commissioner to withdraw a ruling where there has been a change in the interpretation of the law (either by the courts or the Commissioner). Withdrawals will apply prospectively, meaning that if taxpayers have entered into an arrangement before the ruling is withdrawn, the Commissioner is still bound by the ruling. We propose that this amendment applies from 1 October 2019 to align with beginning of the short-process rulings process. The Commissioner will not need to apply this provision before the Bill passes into law.
11. Recent changes made to the binding rulings rules also enable the Commissioner to issue binding rulings on matters without the need for an arrangement (for example, on a person's New Zealand tax residence). We propose an amendment to ensure that where a binding ruling is withdrawn, taxpayers can continue to rely on the ruling for the duration specified in the ruling. We propose this amendment applies from 18 March 2019, which is the date from which the Commissioner can issue binding rulings without the need for an arrangement.
12. The main home exclusion for the bright-line test requires that a person use the land as their main home for most of the time they own the land. The term "own" is defined in the Act. However, the period that a person owns land under this general definition can differ from the period that the bright-line test applies to. This means

that it is possible that taxpayers may not be eligible for the main home exclusion because, although they have used land as their main home for most of the bright-line period, they have not used it as their main home for most of the time they owned the land. The opposite could also occur. An amendment is recommended to align the period of ownership for the main home exclusion for the bright-line test with the bright-line period.

13. Under the current law a New Zealand taxpayer does not have to make adjustments for being over the thin capitalisation threshold provided they have less than \$1 million of group finance costs (and have a reduced adjustment if their group finance cost is less than \$2 million). This de minimis was not intended to be available if the New Zealand taxpayer borrowed from a non-resident related party; however, the legislation currently only removes access to the de minimis if the taxpayer has owner-linked debt (which is debt borrowed from an owner who is not a member of the same group). An amendment is recommended to reduce access to the de minimis for non-resident related party borrowing, to apply for income years starting on or after 1 July 2018 to align with the introduction of the de minimis.
14. The PIE tax rules apply to collective investment vehicles, including KiwiSaver funds. Investors in a PIE fund are expected to elect a tax rate, called a Prescribed Investor Rate (PIR). If an investor does not notify the PIE of their PIR the top rate will apply by default. Unless the investor has nominated a lower PIR than they should have the tax is final and the investor will not get a refund for any overpayments. Inland Revenue is able to provide an alternative PIR for an investor where the investor has provided a tax rate to the PIE that is different from what it should be. However, Inland Revenue cannot currently use this power where an investor has not notified the PIE of a PIR to use. Officials recommend that the existing rule that allows Inland Revenue to correct an investor's PIR be extended to investors who have been defaulted on to the top rate. This would reduce the overpayment of PIR tax. It is proposed that this would apply from 1 April 2020.
15. The impact of Inland Revenue's Business Transformation Programme is already accounted for in the Government's fiscal forecasts. These forecasts take into account the broad direction of policy intent, including the better use of income information and analytics to determine individuals' tax rates, in addition to the further changes that will be delivered as part of Business Transformation. The recommended amendment to the Commissioner's power to correct an investor's PIR does not alter the amount already accounted for in these fiscal forecasts.

#### **Items requiring Cabinet approval**

16. The attached Cabinet paper seeks cabinet approval for a minor change to a previously agreed policy change. Previously, Cabinet agreed to reduce the period in which a KiwiSaver provider must provide member information and transfer funds to a new provider if a member changes schemes from 35 days to 10 days [DEV-19-MIN-0038.01 and CAB-19-MIN-0109 refer]. Approval is sought to specify that the 10-day period would be measured in working days, rather than calendar days.

#### **New Zealand Bill of Rights Act 1990**

17. Officials believe the provisions in the proposed Bill are consistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990. The Bill will be sent to the Ministry of Justice today for its BORA vet. While it is not expected that there would be any problems, we will advise if any issues arise.

## Support party and caucus consultation

18. We recommend that the Bill is introduced on or after 26 June 2019. To achieve this, support party and caucus consultation will need to occur in advance of Cabinet's final decision. Officials can provide any further briefing material required on the content of the Bill to support your caucus, coalition and support party consultation in relation to the introduction of the Bill.

## Recommended action

---

We recommend that you:

1. **note** the contents of this report and attached Cabinet paper;  
Noted
2. **agree** that the amendment to allow Inland Revenue to grant an income tax exemption to non-resident international aircraft operators should apply from 1 April 1984;  
Agreed/Not agreed

s 9(2)(f)(iv)

4. **agree** to amendments allowing the Commissioner of Inland Revenue to have the power to withdraw short-process rulings from 1 October 2019;  
Agreed/Not agreed
5. **agree** to changes to allow taxpayers to rely on withdrawn binding rulings on matters not relating to an arrangement for the duration specified in the ruling from 18 March 2019;  
Agreed/Not agreed
6. **agree** to an amendment to align the period of ownership for the main home exclusion for the bright-line test with the bright-line period;  
Agreed/Not agreed
7. **agree** to the remedial amendment to the thin capitalisation de minimis to ensure that the de minimis is not available if the taxpayer has non-resident related party borrowing with effect from 1 July 2018;  
Agreed/Not agreed
8. **agree** to an amendment to allow Inland Revenue to correct the PIR of an investor on the default rate;  
Agreed/Not agreed
9. **agree** to seek Cabinet approval that the 10-day period for KiwiSaver providers to transfer information and funds when a member changes scheme be measured in working days; and  
Agreed/Not agreed

10. **sign** and **refer** the Cabinet paper, to the Cabinet Office by 10 am Thursday 13 June 2019.

Signed and referred/Not signed and referred

s 9(2)(a)  
Bill Manager  
Policy and Strategy

**Hon Stuart Nash**  
Minister of Revenue  
/ /2019