

Hon David Parker, Minister of Revenue

Information Release

Legislative approval for the introduction of a new top personal tax rate

December 2020

Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2020/2020-ir-cab-20-sub-0490>

Documents in this information release

#	Reference	Type	Title	Date
1	IR2020/485	Tax policy report	Draft Cabinet paper: Legislative approval for the introduction of a new top personal tax rate	25 November 2020
2	CAB-20-SUB-0490	Cabinet paper	Legislative approval for the introduction of a new top personal tax rate	30 November 2020
3	CAB-20-MIN-0490	Minute	Legislative approval for the introduction of a new top personal tax rate	30 November 2020

Additional information

The Cabinet paper was considered and confirmed by Cabinet on 30 November 2020.

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people
- 9(2)(f)(iv) to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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POLICY AND STRATEGY

Tax policy report: **Draft Cabinet paper: Legislative approval for the introduction of a new top personal tax rate**

Date:	25 November 2020	Priority:	High
Security level:	Sensitive	Report number:	IR2020/485

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations Authorise the lodgement of the attached Cabinet paper	10am Thursday 26 November 2020

Contact for telephone discussion (if required)

Name	Position	Telephone
Peter Frawley	Policy Lead	s 9(2)(a)
s 9(2)(a)	Senior Policy Advisor	

25 November 2020

Minister of Revenue

Draft Cabinet paper: Legislative approval for the introduction of a new top personal tax rate

1. This report asks you to approve and lodge the attached Cabinet paper with the Cabinet Office by 10am Thursday 26 November 2020 for consideration at Cabinet on Monday 30 November 2020.
2. The Cabinet paper seeks delegated authority for you to introduce the Taxation (Income Tax Rate) Bill on 1 December 2020, in consultation with the Minister of Finance and the Leader of the House.
3. The Bill contains the items listed below.

Introduction of a new top personal tax rate

4. On 23 November 2020, Cabinet approved the introduction of a new top personal income tax rate of 39% on annual income exceeding \$180,000 for the 2021-22 and later income years (CAB-20-MIN-0484 refers). It also approved consequential changes to tax rules flowing from the new 39% rate.
5. Cabinet deferred the decision about whether to align the trustee income tax rate with the top personal tax rate to a later date, pending further information and evidence on whether there is a behavioural response to avoid paying the new rate.

Information-collection measures

6. On 23 November 2020, Cabinet agreed to new information-collection measures to allow the Commissioner of Inland Revenue to collect further information from trustees, including information relating to prior years. It also approved a clarifying amendment to ensure that the Commissioner of Inland Revenue is able to collect information for tax policy purposes (CAB-20-MIN-0484 refers).
7. Cabinet requested you report back with advice from the Privacy Commissioner regarding the proposed new information-collection measures. This advice has been incorporated into the draft Cabinet paper attached.

Setting the minimum family tax credit threshold ^{s 9(2)(f)(iv)}

8. On 20 November 2020, officials reported to you, the Minister of Finance, and the Minister for Social Development and Employment on adjustments to the minimum family tax credit (MFTC) threshold ^{s 9(2)(f)(iv)} [redacted], which seeks Cabinet's approval to set the MFTC ^{s 9(2)(f)(iv)} [redacted].
9. In addition to setting the MFTC ^{s 9(2)(f)(iv)} [redacted], that paper also seeks Cabinet's approval to include the necessary legislative amendments in an omnibus tax bill.

10. Subject to Cabinet approval, the Taxation (Income Tax Rate) Bill will contain the necessary legislative amendments to give effect to Cabinet's decision s 9(2)(f)(iv) [REDACTED].

Consultation

11. Treasury has been consulted on the contents of this report and draft Cabinet paper.

Next steps

12. The attached draft Cabinet paper needs to be lodged with the Cabinet Office by 10am Thursday 26 November 2020 in order to be considered at the Cabinet meeting of 30 November 2020.
13. Subject to Cabinet approval on 30 November, we will report to you with the draft Taxation (Income Tax Rate) Bill and accompanying documents, including the disclosure statement.

Recommended action

We recommend that you:

14. **note** the contents of this report and attached Cabinet paper;
Noted
15. **sign** and **refer** the Cabinet paper to the Cabinet Office by 10am Thursday 26 November 2020; and
Signed and referred/Not signed and referred
16. **refer** a copy of this report to the Minister of Finance for his information.
Referred/Not referred

s 9(2)(a) [REDACTED]

Peter Frawley
Policy Lead
Policy and Strategy

Hon David Parker
Minister of Revenue
/ /2020

Sensitive

Office of the Minister of Revenue

Cabinet

LEGISLATIVE APPROVAL FOR THE INTRODUCTION OF A NEW TOP PERSONAL TAX RATE

Proposal

1. This paper seeks Cabinet's agreement to delegate authority to the Minister of Revenue, in consultation with the Minister of Finance and the Leader of the House, to introduce a bill as soon as practicable implementing a new top personal tax rate of 39% and other measures.
2. The Bill introduces amendments to the:
 - 2.1 Income Tax Act 2007; and
 - 2.2 Tax Administration Act 1994.
3. One of the policy proposals in the Bill relates to the collection of information by the Commissioner of Inland Revenue in relation to trusts, and for tax policy purposes. This paper sets out advice from the Privacy Commissioner regarding these proposals.
4. Additionally, this paper seeks Cabinet's agreement to retrospectively increase the 2020-21 minimum family tax credit (MFTC) threshold from \$27,768 (\$534 per week) to \$29,432 (\$566 per week) to account for the \$25 benefit increase from April 2020.

Policy items already approved by Cabinet

5. The Bill will implement the policy items listed below. A bill is necessary as amendments to existing legislation are required to implement the proposed policy changes.

Introduction of a New Top Personal Tax Rate of 39% (CAB-20-MIN-0484 refers)

6. The Bill proposes to introduce a new top personal income tax rate of 39% on annual income exceeding \$180,000 for the 2021-22 and later income years. The Bill also proposes amendments to other parts of tax legislation to ensure that the new rate can be effectively incorporated into the personal tax system. This includes the establishment of a new secondary code as well as changes to resident withholding tax on interest, fringe benefit tax, employer superannuation contribution tax and residential land withholding tax.
7. The introduction of a new top personal tax rate of 39% formed part of the Labour Party's manifesto for the 2020 General Election.

Information Collection by the Commissioner of Inland Revenue (CAB-20-MIN-0484 refers)

8. The Bill proposes an amendment to clarify that the Commissioner of Inland Revenue can collect information for tax policy development purposes. There is some uncertainty about whether the collection of such information is permitted under the current law. The proposed amendment in the Bill, in recognition that such information is critical to the development of good tax policy advice, would remove this uncertainty.
9. The Bill also proposes to collect information from trustees relating to any income year (including prior years). Cabinet deferred the decision on whether to increase the trustee income tax rate to 39% to a later date pending information on whether there is a behavioural response to paying the new top personal income tax rate. The proposed information-collection measures in this Bill are expected to assist in informing that decision by providing better information to understand and monitor the use of structures and entities by trustees.

Contentious Items

10. Stakeholders are likely to raise concerns with the lack of consultation on new information requirements for trustees. Inland Revenue will consult with interested parties on the compliance costs this may involve.

Further Advice from the Privacy Commissioner on Proposed Information-Collection Powers

11. While Cabinet agreed to the information-gathering measures outlined in paragraphs 8 and 9, it also requested further advice from the Privacy Commissioner on the proposals.
12. The Privacy Commissioner was consulted on the proposals to collect more information from trustees in relation to the introduction of the new 39% tax rate as well as to collect information from trustees from past periods. At this stage he considers that the proposed collection of personal information of beneficiaries poses a low privacy risk. The Privacy Commissioner welcomes the opportunity to work with officials to better understand the specific information to be collected and the drafting of the proposal.
13. Due to the insufficient information available on the specific use cases associated with the proposal to collect information for tax policy purposes, the Privacy Commissioner is unable to assess the privacy risks. However, as the proposal progresses the Privacy Commissioner welcomes the opportunity to work with officials.

Policy item requiring Cabinet approval

14. In addition to the policy items already approved by Cabinet, I recommend that Cabinet agrees to adjust the MFTC threshold for the 2020-21 tax year from \$27,768 to \$29,432 in response to the increase in main benefit rates made in April 2020.
15. I also seek Cabinet's agreement that the legislative amendment implementing this proposal be included in the Bill implementing the 39% rate and information-gathering measures.

Background

16. The MFTC is one of the Working for Families tax credits. The MFTC is paid to families for each week they work the required hours¹, have income below the prescribed weekly threshold, and do not receive a main benefit. Currently, the MFTC tops up a family's income to at least \$534 a week after tax (\$27,768 after tax on an annual basis).
17. The MFTC is intended to support the "making work pay" objective of the Working for Families package. Its purpose is to ensure that a family is financially better off by working full-time than they would be on the benefit.
18. Approximately 3,200 families currently receive the MFTC. The average MFTC payment in the 2019-20 tax year was \$3,100 per family at a total fiscal cost of approximately \$12 million. Around 90% of those who receive the MFTC are sole parents.
19. The MFTC threshold is set at \$1 above the maximum income a two-parent family could receive on a benefit. It is therefore sensitive to changes that impact the incomes of beneficiary families, such as benefit rates and abatement thresholds.
20. As part of the introduction of Working for Families, on 26 April 2004, Cabinet agreed to increase the MFTC on 1 April each year by an amount sufficient to ensure that couples do not suffer a reduction in income when moving off benefit into 30 hours of paid work a week, from 1 April 2006 onwards [CAB Min (04) 13/4 refers].
21. Consequently, the MFTC threshold has been increased in December each year since 2006 to reflect the latest changes to relevant settings (such as benefit rates, the minimum wage and abatement thresholds).

The MFTC was not adjusted to reflect the \$25 benefit increase from April 2020

22. In March 2020, the previous Government agreed to increase main benefit rates by \$25 per week from 1 April 2020 and temporarily doubled the Winter Energy Payment (WEP) for 2020 in response to COVID-19. This would normally have a flow-on impact to the MFTC threshold. Due to the urgent pace at which the benefit payments were changed, the decision to change the MFTC threshold was not considered.
23. As a consequence, some low-income working families may be able to receive a higher income by being on a benefit than if they were off benefit and working sufficient hours to qualify for the MFTC (20 hours or more for sole parent, and 30 or more for couples).

I recommend retrospectively increasing the 2020-21 MFTC threshold to reflect the \$25 benefit increase from April 2020

24. To account for the \$25 increase to main benefits that came into effect on 1 April 2020, the 2020-21 MFTC threshold would need to be increased from \$27,768 (\$534 per week) to \$29,432 (\$566 per week).
25. This change would support the incomes of low-income working families by increasing their weekly incomes from the current threshold (\$534) to the new threshold (\$566) for each week that the family qualifies for the MFTC in 2020-21. Using Inland Revenue

¹ 20 hours per week for a sole parent and a combined 30 hours per week for couples

administrative data, I expect approximately 3,600 families would benefit by an average of \$1,626.

26. Retrospectively increasing the MFTC threshold would incur an ongoing fiscal cost of \$4.6 million per annum or \$24.1 million over the forecast period. This change incurs an ongoing cost as it will also increase the MFTC threshold in future years to account for the \$25 benefit increase.
27. This retrospective increase does not account for the temporary doubling of WEP as the increase to WEP was a temporary and substantial increase to help families to adjust through the short-term impacts of COVID-19. The MFTC threshold would need to be increased considerably to reflect this change, which was only available between 1 May and 1 October 2020.
28. Inland Revenue could operationalise the new MFTC threshold from late December 2020, meaning increased payments could be made from then to customers on a weekly or fortnightly basis for the remainder of the 2020-21 tax year. For the period 1 April to December 2020, during which MFTC payments were made at the current rate, customers who were entitled to MFTC would receive a lump sum MFTC payment when they complete their end-of-year tax square-up.
29. To the degree the higher rate is prospective and can be received on a weekly or fortnightly basis, it ensures that there is an incentive for families to work the required hours and move off a benefit onto the MFTC for the remainder of 2020-21.
30. On equity and fairness grounds, MFTC recipients should also be retrospectively compensated for the increase in assistance to beneficiaries given the income assistance provided to those on benefit was increased and the MFTC is set relevant to the amount of income a beneficiary can receive. I note that the portion of the increase to the MFTC delivered by a lump sum at the end of the tax year cannot incentivise families to move off benefit after the fact.

s 9(2)(f)(iv)

31. s 9(2)(f)(iv)

32. s 9(2)(f)(iv)

33. s 9(2)(f)(iv)

34. s 9(2)(f)(iv)

Financial implications

35. A pre-commitment to Budget 2021 is required in order to increase the MFTC threshold for 2020-21. The proposed increases are estimated to cost \$24.1 million over the forecast period. The per annum cost of the change is \$4.6 million.
36. The change incurs an ongoing fiscal cost as any increase will flow through to future years. As such, it will reduce the fiscal cost associated with increasing the MFTC in response to any subsequent policy changes.
37. The fiscal cost incurred for the final quarter of the 2019/20 financial year will be rolled over into the 2020/21 financial year as the 2019/20 financial year accounts are closed.

Legislative implications

38. The retrospective change to the MFTC threshold must be made via an amendment to the Income Tax Act 2007.
39. Should Cabinet agree to the proposed changes to the MFTC, I recommend that Inland Revenue be instructed to draft the necessary amendments to the Income Tax Act 2007 to give effect to the revised threshold for 2020-21.

Impact Analysis

Regulatory Impact Assessment

40. A regulatory impact assessment was prepared in relation to the new top personal income tax rate and the proposal to gather further information from trustees in relation to future periods. This was submitted at the time that Cabinet approval for the policy item was sought.
41. Cabinet's regulatory impact analysis requirements apply to the MFTC threshold adjustment proposal but no accompanying Regulatory Impact Statement (RIS) has been prepared. The Treasury and Inland Revenue have agreed on the nature and timing of the Supplementary Analysis Report (SAR) ^{s 9(2)(f)(iv)}

Climate Implications of Policy Assessment

42. The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment was consulted at the time Cabinet approval was sought for the new top personal income tax rate of 39% and confirmed that the CIPA requirements do not apply to these proposals as the threshold for significance was not met.

Population Implications

43. The adjustment to the MFTC threshold for 2020-21 is expected to benefit approximately 3,200 current recipients and approximately 400 families will become newly eligible. The average gain per family is estimated to be \$1,626 on an annual basis. The vast majority of these families are sole parents.

Compliance

44. The Bill complies with:
 - 44.1 the principles of the Treaty of Waitangi;
 - 44.2 the disclosure statement requirements (the draft disclosure statement is not attached as it is currently being finalised by Inland Revenue but will be published when the Bill is introduced);
 - 44.3 the rights and freedoms contained in the Human Rights Act 1993;
 - 44.4 relevant international standards and obligations; and
 - 44.5 the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
45. The Bill's compliance with the principles and guidelines set out in the Privacy Act 1993 is discussed in further detail in paragraphs 12 and 13.
46. The Bill's compliance with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 is currently being considered by the Ministry of Justice and they will prepare advice for the Attorney-General before the Bill's introduction.

Consultation

Relevant Government Departments or Other Public Bodies

47. The Treasury was consulted on the development of the proposals in the Bill. The Ministry of Social Development was also involved in the development of the proposal relating to the MFTC threshold.
48. The Privacy Commissioner and Ministry of Justice were consulted on the proposal to collect more information from trustees in relation to the introduction of the new 39% tax rate.

Relevant Private Sector Organisations and Public Consultation Processes

49. Given tax rate changes are often in response to election commitments and passed under urgency, no general public consultation has been conducted regarding the new tax rate proposal. However, views were sought from key stakeholders to determine a feasible application date. It is for this reason the application date of the new rate of resident withholding tax on interest will be 1 October 2021, rather than 1 April 2021. The private sector has not been consulted on the information-collection measures.
50. The proposal relating to MFTC is not a policy initiative as such and has arisen as a consequential amendment from increases to main benefit rates. Therefore, consultation was not considered appropriate.

Binding on the Crown

51. The Inland Revenue Acts (including the Income Tax Act 2007 and Tax Administration Act 1994) are binding on the Crown. This amending Bill does not alter the status quo in this respect. The amendments follow the position of the principal Acts.

Creating New Agencies or Amending Law Relating to Existing Agencies

52. The Bill will not create a new agency.
53. The Bill 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

54. The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated Regulations

55. No regulations are required to bring the proposed Bill into operation.

Other Instruments

56. The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/Department

57. The Bill does not contain a definition of Minister, department, or chief executive.

Commencement of Legislation

58. Each provision of the Bill comes into force on the date specified in the Bill for that provision.

Parliamentary Stages

59. The Bill should be introduced on 1 December 2020.
60. As the Bill contains income tax rate changes applying for the 2021-22 and later income years, the Bill should be enacted by the end of December 2020 to ensure that the relevant changes can be implemented before 1 April 2021.

Communications

61. I will make an announcement about the proposals in the Bill when it is introduced. A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

62. I propose that this paper, alongside associated policy and Cabinet papers be proactively released when the Bill is introduced, subject to redactions considered under the provisions of the Official Information Act 1982.

Recommendations

The Minister of Revenue recommends that Cabinet:

1. **note** that Cabinet has agreed to introduce a new top personal income tax rate of 39% on income exceeding \$180,000 and consequential changes, for the 2021-22 and later income years [CAB-20-MIN-0484 refers];
2. **note** that Cabinet has agreed to amend the Commissioner of Inland Revenue’s information-gathering powers to collect more information from trustees and to ensure that information can be collected for tax policy purposes [CAB-20-MIN-0484 refers];
3. **note** that the Privacy Commissioner has assessed the collection of personal information from trustees as posing a low privacy risk;
4. **note** that the Privacy Commissioner has been unable to assess the privacy risks associated with the proposal to collect information for tax policy purposes;
5. **note** that as part of the introduction of Working for Families, on 26 April 2004 Cabinet agreed to increase the minimum family tax credit on 1 April each year by an amount sufficient to ensure that couples do not suffer a reduction in income when moving off benefit into 30 hours of paid work a week, from 1 April 2006 onwards [CAB Min (04) 13/4 refers];
6. **note** that the minimum family tax credit was not adjusted for 2020-21 to reflect the increases to main benefits made in response to COVID-19;
7. **agree** to retrospectively increase the minimum family tax credit threshold for 2020-21 from \$27,768 to \$29,432;
8. **note** the following changes to appropriation in accordance with subpart ME of the Income Tax Act 2007, reflecting the changed expenses described in recommendation 7, with a corresponding impact on the operating balance:

Vote Revenue Minister of Revenue	\$ million – increase / (decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Non-departmental benefits or related expenses - PLA:					
Minimum family tax credit	5.700	4.600	4.600	4.600	4.600
Total forecast change – inc/(dec)	5.700	4.600	4.600	4.600	4.600

9. **note** that the above changes to appropriations for 2020/21 will be reported and disclosed in the 2020/21 Supplementary Estimates;
10. **agree** that the expenses incurred under recommendation 7 be charged against the between-Budget contingency established as part of Budget 2020;
11. **invite** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to the Income Tax Act 2007 to give effect to recommendation 7;
12. **agree** that the legislative amendments implementing recommendation 7 be included in a tax bill scheduled for introduction in December 2020;
13. **note** that in order to give effect to the proposals outlined in recommendations 1, 2, and 7, the Bill proposed for introduction includes substantive and technical amendments to the:
 - 13.1 Income Tax Act 2007; and
 - 13.2 Tax Administration Act 1994.
14. **Agree** to delegate authority to the Minister of Revenue, in consultation with the Minister of Finance and Leader of the House, to introduce the Bill referred to in recommendation 13 as soon as practicable.

Authorised for lodgement

Hon David Parker
Minister of Revenue



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Legislative Approval for the Introduction of a New Top Personal Tax Rate

Portfolio **Revenue**

On 30 November 2020, Cabinet:

- 1 **noted** that on 23 November 2020, Cabinet agreed:
 - 1.1 to implement a new personal income tax rate of 39 per cent for income over \$180,000;
 - 1.2 that the new rate will apply for the 2021-22 and later income years (beginning 1 April 2021 for most taxpayers);
 - 1.3 that the Commissioner of Inland Revenue have the power to collect information for tax policy purposes;
 - 1.4 to collect information from trustees relating to any income year (including prior years) to test compliance and effective operation of the 39 percent top personal income tax rate, and provide better information to understand and monitor the use of structures and entities by trustees;

[CAB-20-MIN-0484]
- 2 **noted** that the Privacy Commissioner has:
 - 2.1 assessed the collection of personal information from trustees as posing a low privacy risk;
 - 2.2 been unable to assess the privacy risks associated with the proposal to collect information for tax policy purposes;
- 3 **invited** the Minister of Revenue to report back to Cabinet by 28 February 2022 on the operation of the information gathering powers referred to in paragraphs 1.3 and 1.4 above;
- 4 **noted** that in 2004, as part of the introduction of Working for Families, the government agreed to increase the minimum family tax credit on 1 April each year by an amount sufficient to ensure that couples do not suffer a reduction in income when moving off benefit into 30 hours of paid work a week, from 1 April 2006 onwards
[CAB Min (04) 13/4];

- 5 **noted** that the minimum family tax credit was not adjusted for 2020-21 to reflect the increases to main benefits made in response to COVID-19;
- 6 **agreed** to retrospectively increase the minimum family tax credit threshold for 2020-21 from \$27,768 to \$29,432;
- 7 **noted** the following changes to appropriations in accordance with subpart ME of the Income Tax Act 2007, reflecting the changed expenses described in paragraph 6, with a corresponding impact on the operating balance:

Vote Revenue Minister of Revenue	\$ million – increase / (decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Non-departmental benefits or related expenses - PLA:					
Minimum family tax credit	5.700	4.600	4.600	4.600	4.600
Total forecast change – inc/(dec)	5.700	4.600	4.600	4.600	4.600

- 8 **noted** that the above changes to appropriations for 2020/21 will be reported and disclosed in the 2020/21 Supplementary Estimates;
- 9 **agreed** that the expenses incurred under paragraph 6 be charged against the between-Budget contingency established as part of Budget 2020;
- 10 **invited** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to the Income Tax Act 2007 to give effect to paragraph 6;
- 11 **agreed** that the legislative amendments implementing paragraph 6 be included in a tax bill scheduled for introduction in December 2020;
- 12 **noted** that in order to give effect to the decisions set out above, the Bill proposed for introduction includes substantive and technical amendments to the:
- 12.1 Income Tax Act 2007;
- 12.2 Tax Administration Act 1994;
- 13 **authorised** the Minister of Revenue, in consultation with the Minister of Finance and Leader of the House, to introduce the Bill as soon as practicable.

Michael Webster
Secretary of the Cabinet