

# Hon Stuart Nash, Minister of Revenue

## Information Release

### Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction

**August 2020**

#### **Availability**

This information release is available on Inland Revenue's Tax Policy website at <https://taxpolicy.ird.govt.nz/publications/2020-ir-cab-leg-20-sub-0058/overview>

#### **Documents in this information release**

#	Reference	Type	Title	Date
1	IR2020/109	Tax policy report	Cabinet paper – Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction	6 March 2020
2	IR2020/240	Tax policy report	Revised Cabinet paper – Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction	6 May 2020
3	LEG-20-SUB-0058	Cabinet paper	Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction	26 May 2020
4	LEG-20-MIN-0058	Minute	Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction	26 May 2020

#### **Additional information**

The Cabinet paper was considered by the Cabinet Legislation Committee on 26 May 2020 and confirmed by Cabinet on 2 June 2020.

Two attachments to the Cabinet paper are not included in this information release as they are publicly available:

- Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill
- Departmental disclosure statement

#### **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.

9(2)(a) to protect the privacy of natural persons, including deceased people

## **Copyright and licensing**

Cabinet material and advice to Ministers from the Inland Revenue Department and other agencies are © Crown copyright but are licensed for re-use under the Creative Commons Attribution 4.0 International (CC BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>).





## POLICY AND STRATEGY

**Tax policy report:** **Cabinet paper – Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction**

---

<b>Date:</b>	6 March 2020	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2020/109

### 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 2 April 2020

### Contact for telephone discussion (if required)

---

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Gary White	Senior Policy Advisor	s 9(2)(a)
s 9(2)(a)	Policy Advisor	

6 March 2020

Minister of Revenue

## **Cabinet paper – Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction**

---

### **Executive summary**

---

1. This report asks you to approve and lodge the attached Cabinet Legislation Committee paper for consideration at the Cabinet Legislation Committee meeting on Tuesday 7 April 2020.
2. The Cabinet paper seeks approval to introduce the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill on or soon after 20 April 2020.
3. The Bill is currently with the Ministry of Justice for its Bill of Rights Act vet. This process is on-going, and we will advise if any issues arise from this process.
4. This report also seeks your agreement to include two additional items in the Cabinet paper for Cabinet's approval. First, to include a policy proposal to allow temporary visa holders who are receiving emergency benefits, to also qualify for Working for Families. This proposal has already received Ministerial approval by Minister Sepuloni and yourself (IR2019/433 refers).
5. Second, to agree for Cabinet to approve the setting of the annual tax rates for the 2020-21 tax year; it is proposed that these tax rates are the same as currently specified in Part A of the Schedule 1 of the Income Tax Act 2007. The attached draft Cabinet paper includes these items for Cabinet's consideration.
6. We have drafted the Cabinet paper and the Bill 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 would like to make.

### **Recommended action**

---

We recommend that you:

1. **Note** the contents of this report, the attached Cabinet Legislation Committee paper, draft Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill, and associated draft disclosure statement.

Noted

2. **Agree** that the income tax rates for the 2020-21 tax year be set at the rates currently specified in Part A of Schedule 1 of the Income Tax Act 2007.

Agreed / Not agreed

3. **Agree** to include the proposal in recommendation (2) and the proposal to amend the rules to allow for temporary visa recipients to access Working for Families entitlements in the Cabinet Legislation Committee paper and the proposed Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill.

Agreed / Not agreed

4. **Agree** that a number of minor maintenance items that have arisen during the Bill's compilation (for example correcting minor faults of expression, reader's aids, and incorrect cross-references) be included in the Bill.

Agreed / Not agreed

5. **Agree** to the proactive release of the Cabinet paper, Cabinet minutes and key advice papers when the Bill is introduced.

Agreed / Not agreed

6. **Sign and lodge** the attached Cabinet Legislation Committee paper with the Cabinet Office by 10 am Thursday 2 April 2020.

Signed and referred / Not signed and referred

**Peter Frawley**

Policy Lead  
Policy and Strategy

**Hon Stuart Nash**

Minister of Revenue  
/ /2020

## **Items for inclusion in the Bill**

---

7. The items proposed for inclusion in the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill, scheduled for introduction on or soon after 20 April 2020, are as follows.

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

8. The Bill contains amendments on the following matters, as previously agreed by Cabinet:
  - Feasibility expenditure (DEV-19-MIN-0255 and CAB-19-MIN-0491);
  - Land changes (DEV-19-MIN-0352 and CAB-19-MIN-0675);
  - Income tax treatment of leases subject to New Zealand International Financial Reporting Standard 16 (DEV-19-MIN-0299 and CAB-19-MIN-0593);
  - GST on outbound roaming charges (DEV-19-MIN-0315 and CAB-19-MIN-0620);
  - GST credit notes (DEV-19-MIN-0315 and CAB-19-MIN-0620); and
  - Schedule 32 (DEV-19-MIN-0300 and CAB-19-MIN-0593).

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

9. The Bill contains several remedial amendments to the Inland Revenue Acts (4 December 2019, IR2019/633, refers). These relate to:
  - Housing New Zealand Build Limited subject to income tax;
  - Changing the filing date for locked-in PIEs;
  - Minors' income tax exemption;
  - Exemption for energy consumer trusts to own more than 20% of a PIE;
  - Nominee treatment for trustee of exempt employee share schemes;
  - Disposal of a company's own shares by an employee share scheme trustee;
  - Use of pre-consolidation imputation credits;
  - GST zero-rated transfers of commercial land leases;
  - Definition of deferrable tax;
  - Ability for a taxpayer to dispute a tax position outside the permitted time limit;
  - New Zealand Superannuitants and the end-of-year auto calculation process;
  - Clarify that dividends are derived on a cash basis;
  - Notice to spread fertiliser costs;
  - Non-resident contractors' exemption;
  - Non-resident withholding tax deferral calculation formula amendment;
  - Thin capitalisation thresholds for interest denial when acting as a group;
  - Thin capitalisation for trusts settled by a New Zealand resident;

- Updating references to main benefit payments; and
  - Removing a redundant reference to the parental tax credit.
10. As well, the Bill also includes remedial amendments, in relation to:
- The direct transfer of New Zealanders' lost Australian retirement savings held by the Australian Tax Office to New Zealand KiwiSaver accounts (6 December 2019, IR2019/623 refers);
  - Voluntary KiwiSaver employer contributions rules (2 December 2019, IR2019/672, refers); and
  - Research and development tax credit's capital expenditure eligibility criteria (11 December 2019, IR2019/684, refers).
11. 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.

### **Items that require Cabinet approval**

---

12. Agreement is sought from you on recommending to Cabinet to include the following policy proposals in the draft Bill. These items have been included in the attached draft Cabinet paper and Bill.

#### ***Setting the annual rates for income tax for the 2020-21 tax year***

- 13. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.
- 14. We recommend that Cabinet approval is sought to set the annual rates in this Bill. It is proposed that the annual rates of income tax for the 2020-21 tax year are the rates currently specified in Part A of Schedule 1 of the Income Tax Act 2007 for the 2019-20 tax year (i.e. confirm current rates remain unchanged).

#### ***Working for Families and Emergency Benefits***

15. In November 2019, Minister Sepuloni and yourself agreed that emergency benefit recipients who hold a temporary visa should qualify for the same Working for Families tax credit entitlements as other beneficiaries with dependent children. This issue was highlighted during the Christchurch Mosques Attack Ministerial Welfare programme. To give effect to the above decision, we recommend you seek Cabinet agreement to include this amendment in the Bill. Minister Sepuloni and yourself agreed that you would take this proposal to Cabinet for approval (IR2019/433 refers).

### **Disclosure statement**

---

- 16. A draft copy of the Bill and disclosure statement are attached to this report. When finalised, these items will accompany the Cabinet paper, in accordance with Cabinet guidelines, to the Cabinet Legislation Committee.
- 17. The disclosure statement must be finalised by Inland Revenue and sent to the Parliamentary Counsel Office at least two working days before the introduction of the Bill. The disclosure statement will be publicly available when the Bill is introduced.

## New Zealand Bill of Rights Act 1990

---

18. 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 (BORA). The Ministry of Justice is currently undertaking the required BORA vetting. Although not expected, we will advise if any issues arise from this process.

### Proactive release

---

19. We propose to proactively release the Cabinet paper, Cabinet minutes and key advice when the Bill is introduced into the House of Representatives.

### Cabinet Legislation Committee paper and Bill

---

20. We have drafted the attached Cabinet Legislation Committee paper, Bill and associated documents on the basis that you agree to the recommendations in this report. Please advise if there are any changes to the Cabinet paper or Bill that you wish to make.
21. The Cabinet paper is required to be lodged with the Cabinet Office by 10am on Thursday 2 April 2020.

### Support Party and Caucus consultation

---

22. The protocol is for coalition and support party consultation to occur before Cabinet can consider the content of the proposed Bill. Caucus consultation is required before the Bill is introduced into the House of Representatives.
23. Officials can provide additional information on the content of the Bill to support your office's coalition, support party and caucus consultation in relation to the introduction of the Bill.



## POLICY AND STRATEGY

**Tax policy report:** Revised Cabinet paper – Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction

---

<b>Date:</b>	6 May 2020	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2020/240

### Action sought

---

	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Authorise</b> the lodgement of the attached Cabinet paper	10am, Thursday 21 May 2020

### Contact for telephone discussion (if required)

---

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Gary White	Senior Policy Advisor	s 9(2)(a)
s 9(2)(a)	Policy Advisor	

6 May 2020

Minister of Revenue

**Revised Cabinet paper – Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for introduction**

---

**Executive summary**

1. This report asks you to sign and lodge the attached Cabinet Legislation Committee paper by 10am Thursday 21 May 2020, for consideration at the Cabinet Legislation Committee meeting on Tuesday 26 May 2020.
2. We previously provided a draft Cabinet paper for this Bill (IR2020/109 (6 March 2020) refers), which did not proceed during the COVID-19 lockdown period. This report and revised Cabinet paper contain additional Cabinet-approved policy proposals and additional remedials approved by you in your capacity as the Minister of Revenue.
3. The Cabinet paper seeks approval to introduce the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill on or soon after 3 June 2020.
4. The Bill will soon be submitted to the Ministry of Justice for its Bill of Rights Act vet. We will advise you if any issues arise from this process.
5. If the timeline proposed in this report is creating undue pressure, please advise us and we will provide advice on an alternative timeline.
6. We have drafted the Cabinet paper and the Bill on the basis that you agree to the recommendations in this report. Please advise us if there are any changes to the Cabinet paper or Bill that you wish to make.

## Recommended action

---

We recommend that you:

7. **note** the contents of this report, the attached Cabinet Legislation Committee paper, draft Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill, and associated draft disclosure statement;

Noted

8. **note** that officials will finalise the regulatory impact assessment, disclosure statement and Bill, before the Cabinet Legislation Committee paper is lodged for Cabinet Legislation Committee's consideration;

Noted

9. **sign and lodge** the attached Cabinet Legislation Committee paper with the Cabinet Office by 10am Thursday 21 May 2020.

Agreed / Not agreed

### **Peter Frawley**

Policy Lead  
Policy and Strategy

### **Hon Stuart Nash**

Minister of Revenue  
/ /2020

## **Background**

10. Since a draft Cabinet paper was provided to you on 6 March 2020, several items have been added to the Bill, some minor amendments have been made to items in Bill and one item has been removed from the Bill as it was progressed separately in a recent tax Bill.
11. The 'Working for Families tax credit entitlement for emergency benefit recipients' item been removed from the Bill, as this matter was instead included in the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 that received Royal assent on 25 March 2020.
12. The items proposed for inclusion in the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill, scheduled for introduction on or soon after 3 June 2020, are as follows.

## **Items that require Cabinet approval**

### ***Setting the annual rates***

13. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.
14. We recommend that Cabinet approval is sought to set the annual rates in this Bill. It is proposed the annual rates of income tax for the 2020-21 tax year are the rates currently specified in Part A of Schedule 1 of the Income Tax Act 2007 for the 2019-20 tax year (i.e. confirm current rates remain unchanged).

## **Additional policy items previously approved by Cabinet**

15. The Bill now contains two additional items, that have Cabinet approval:
  - Purchase Price Allocation (DEV-19-MIN-0336 and CAB-19-MIN-0652) and (DEV-20-MIN-0042 and CAB-20-MIN-0120); and
  - Mycoplasma Bovis: Tax Issue (DEV-20-MIN-0045 and CAB-MIN-0120).

## **Policy and remedial items recently approved by the Minister of Revenue**

16. The Bill now contains several additional remedial amendments to the Inland Revenue Acts (IR2020/217 (24 April 2020) refers), in relation to:
  - Commissioner's powers to uplift extracts or copies of taxpayer documents;
  - Definition of activities for non-resident custodial institutions;
  - Withholding non-resident withholding tax from certain payments;
  - Amendments to the transfer pricing rules;
  - Definition of a settlor of a trust; and
  - Settlor of a trust migrating to New Zealand.
17. As well, the Bill contains additional remedies to the Research and Development tax credit regime (IR2020/199 and MBIE: 2997 19-20 (16 April 2020) refers), in relation to:
  - R&D expenditure rules;

- Lists of ineligible R&D expenditure and activities;
  - Labour costs on creating tangible depreciable property;
  - Time bar for amending claims;
  - Special R&D definition of depreciable property; and
  - Due date for criteria and methodologies approval applications.
18. Following your agreement in the recent policy report (IR2020/220 (21 April 2020) refers), the Bill now contains a revised application date for the 'GST on outbound roaming charges' item. The application date has been delayed by 12 months to 1 April 2022.

### **Disclosure Statement**

19. A draft copy of the Bill and disclosure statement are attached to this report. Once finalised, the disclosure statement and the Bill will accompany the Cabinet paper (in accordance with Cabinet guidelines) to the Cabinet Legislation Committee for the Committee's consideration.
20. The disclosure statement must be finalised by Inland Revenue and sent to the Parliamentary Counsel Office at least two working days before the introduction of the Bill. The disclosure statement will be publicly available when the Bill is introduced.

### **New Zealand Bill of Rights**

21. The Ministry of Justice will soon undertake the required BORA vetting of the Bill. We will advise you if any issues arise from this process.

### **Proactive release**

22. As agreed to in the earlier report, the Cabinet paper, Cabinet minutes and key advice will be proactively released when the Bill is introduced into the House of Representatives.

### **Cabinet legislation Committee paper**

23. We have drafted the attached Cabinet Legislation Committee paper on the basis that you agree with the contents of the Cabinet paper. Please advise us if there are any changes to the Cabinet paper that you wish to make.
24. If you approve the content in the Cabinet paper, please sign and lodge the attached Cabinet Legislation Committee paper by 10am Thursday 21 May 2020, for consideration at the Cabinet Legislation Committee meeting on 26 May 2020.

### **Support Party and Caucus consultation**

25. The protocol is for coalition and support party consultation to occur before Cabinet considers the content of the proposed Bill. Caucus consultation is required before the bill is introduced.
26. We can provide additional information on the content of the Cabinet paper and Bill to support your office's coalition, support party and caucus consultation in relation to the introduction of the Bill.



In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

## **TAXATION (ANNUAL RATES FOR 2020–21, FEASIBILITY EXPENDITURE, AND REMEDIAL MATTERS) BILL: APPROVAL FOR INTRODUCTION**

### **Proposal**

1. This paper seeks the Cabinet Legislation Committee's agreement to introduce the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill on or soon after 3 June 2020.
2. This paper also seeks Cabinet's agreement to set the annual tax rates for the 2020–21 tax year.
3. The Bill introduces amendments to the:
  - 3.1 Income Tax Act 2007;
  - 3.2 Tax Administration Act 1994;
  - 3.3 Goods and Services Tax Act 1985;
  - 3.4 Student Loan Scheme Act 2011;
  - 3.5 KiwiSaver Act 2006;
  - 3.6 Companies Act 1993;
  - 3.7 Land Transfer Act 2017;
  - 3.8 Social Security Act 2018;
  - 3.9 Accident Compensation Act 2001;
  - 3.10 Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017; and
  - 3.11 Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018.
4. The Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill holds a category 3 priority on the 2020 Legislative Programme (to be passed if possible in the year).

## **Policy**

5. The Bill will implement the policy items listed below. These are made up of policy items that require Cabinet approval, policy items that already have Cabinet approval, and items that have been approved by me in my capacity as the Minister of Revenue (in the appendix of this paper). A Bill is necessary as amendments to existing legislation are required to implement the proposals.

### **Policy Proposals Requiring Cabinet Approval**

#### ***Setting the Annual Rates for Income Tax for the 2020–21 Tax Year***

6. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.
7. It is proposed that this Bill set the annual rates of income tax for the 2020–21 tax year at the same rates currently specified in part A of schedule 1 of the Income Tax Act 2007 for the 2019–20 tax year (that is, confirm that the current rates remain unchanged).

### **Policy Items with Cabinet Approval**

#### ***Measures to Reform the Tax Deductibility of Feasibility and Innovation Expenditure [DEV-19-MIN-0255 (18 September 2019) and CAB-19-MIN-0491 (23 September 2019)]***

8. The Bill proposes to provide greater deductibility of feasibility and other currently non-deductible expenditure to encourage business innovation and investment. This measure has been developed with a view to supporting business growth and innovation, while also maintaining the integrity of the tax system. This proposal is one of a number of tax measures the Government is implementing to support its Economic Strategy.
9. The proposals would:
  - 9.1 Allow taxpayers to deduct (spread over five years) expenditure incurred to investigate whether to invest in a new asset, process or business model (commonly known as feasibility expenditure) that is subsequently abandoned, in circumstances where the expenditure is otherwise not deductible.
  - 9.2 Reduce complexity and compliance costs by allowing taxpayers an immediate deduction of feasibility expenditure, if in a year that expenditure, in total, amounted to \$10,000 or less.
  - 9.3 Ensure integrity of the new rules, by requiring deductions previously claimed for abandoned or impaired assets that are subsequently reinstated to be reversed in the year of reinstatement, with that asset now being depreciable.
  - 9.4 Remove tax barriers for businesses to invest in innovation, new assets and business expansion.
  - 9.5 Respond to recommendations of the Tax Working Group and have long-standing support within the business community.

***Purchase Price Allocation Issues Paper [DEV-19-MIN-0336 (4 December 2019) and CAB-19-MIN-0652 (9 December 2019); DEV-20-MIN-0042 (18 March 2020) and CAB-20-MIN-0120 (23 March 2020)]***

10. The Minister of Finance and I were delegated authority to make final policy decisions following consultation on the measures in this issues paper. We informed Cabinet of our decisions in March this year. The Bill proposes amendments to the rules governing how parties to the sale of two or more assets with different tax treatments (a ‘mixed supply’) allocate the total sale/purchase price between the various assets, for tax purposes. The objective of the amendments is to prevent an overall revenue loss when sellers and buyers adopt different price allocations that minimise their own tax liabilities.
11. The Bill includes the following requirements:
  - 11.1 If the parties agree an allocation, they must follow it in their tax returns.
  - 11.2 If the parties cannot agree an allocation, the seller determines the allocation, and notifies both the buyer and Inland Revenue within two months of the change in ownership of the assets. However, the seller must allocate amounts to taxable property (depreciable property, revenue account property, financial arrangements) such that there is no further loss on the sale of that property.
  - 11.3 If the seller does not make an allocation within the two-month timeframe, the buyer must determine the allocation, and notify both the seller and Inland Revenue of it.
  - 11.4 Inland Revenue may challenge an allocation if it believes the allocation does not reflect market values.
  - 11.5 The purchase price allocation rules will not apply to a transaction if the total purchase price is less than \$1 million, or the buyer’s total allocation to taxable property is less than \$100,000.

12. The amendments will apply to sales agreements entered into on or after 1 April 2021.

***Amendments to the Tax Rules for Land [DEV-19-MIN-0352 (11 December 2019) and CAB-19-MIN-0675 (16 December 2019)]***

13. The Bill proposes a number of amendments to the tax rules for land.
14. The amendments are a result of the on-going review of the taxation of land, particularly in relation to investment property and speculators, land banking, and vacant land. The objective of this review is to improve the efficient use of land, and ensure that the current tax settings are fair, balanced, and support productive investment.
15. The proposals relate to:
  - 15.1 Clarifying that the cost of purchasing and improving taxable land are deductible, even if it was not clear when the costs were incurred that the sale of the land would be taxable. The policy is that these costs should be deductible in full when taxable land is sold. This includes land sales that are subject to the bright-line test.

15.2 Responding to concerns that the rules that apply to habitual buyers and sellers of land are not working as intended. Currently, there are tax exemptions for taxpayers who sell their home or business premises. However, these exemptions are subject to restrictions on taxpayers that have a regular pattern of buying and selling their home or business premises (known as the regular pattern restrictions). The current regular pattern restrictions are too narrow resulting in some habitual buyers and sellers structuring their way around these restrictions to avoid tax. To address these issues, it is proposed to extend the regular pattern restriction rules:

15.2.1 To apply to a group of persons that undertake buying and selling activities together, rather than allowing associated persons and entities to undertake different transactions in a way that currently does not constitute a regular pattern.

15.2.2 To apply to a group of transactions that have a similarity or likeness between them (that is, a pattern of buying land, building a home and then selling the completed property). This will involve shifting the focus away from similarities in what is done with the land and instead having a stronger focus on the regularity of particular transactions.

15.3 Confirming the amendments to the regular pattern restrictions will be limited to land that is acquired with the intention of disposal. This will prevent any unintended overreach by ensuring the amendments do not apply to land that genuinely was a person's home or business premises.

15.4 Making it easier to update the content of the Land Transfer Tax Statement by moving the Land Transfer Tax Statement from the Land Transfer Act 2017 to regulations. This amendment will make it easier to amend the Land Transfer Tax Statements in the future. This could include situations where potential changes are required to incorporate new technology and consequently reduce compliance costs for property transfers.

***Income Tax Treatment of Leases Subject to New Zealand International Financial Reporting Standard 16 [DEV-19-MIN-0299 (13 November 2019) and CAB-19-MIN-0593 (18 November 2019)]***

16. The Bill proposes to allow taxpayers who apply New Zealand International Financial Reporting Standard 16 Leases (NZ IFRS 16) to more closely align their tax treatment with their accounting treatment for certain operating leases.

17. The introduction of NZ IFRS 16 (from 1 January 2019) provides an opportunity to more closely align the tax and accounting treatment of operating leases. The changes will reduce compliance costs, and the likelihood of potential inadvertent errors as taxpayers would not be required, to the same extent, to reverse certain accounting expenditure and complete a separate tax deduction.

18. The Bill proposes to:

18.1 Allow taxpayers to elect to follow their NZ IFRS 16 accounting treatment when calculating income tax deductions on operating leases other than real (for example, land and buildings) property.

- 18.2 Require certain exclusions and adjustments (rather than complete alignment) to ensure taxpayers that choose this proposed method do not obtain a significant tax timing advantage, compared to taxpayer to continue to use the existing rules.

***Mycoplasma Bovis Tax Issue [DEV-20-MIN-0045 (18 March 2020) and CAB-20-MIN-0120 (23 March 2020)]***

19. The Bill proposes to allow dairy and beef cattle farmers that have derived unexpected taxable income as a result of their herd being culled (in pursuit of eradicating mycoplasma bovis from New Zealand), to evenly spread that income forward over six years. This will allow the taxable income to better match the replacement cost of the farmer's cattle herd.
20. This amendment supports a core principle of the Biosecurity Act 1993, that no person should be any better or worse off because of the Crown's use of its powers under that Act to eradicate an organism.
21. The Bill proposes the amendment will apply retrospectively from the 2017–18 income year as the first culls began in late 2017. Standard tax rules would continue to apply to the farmers' other income. It is anticipated that up to 50 farmers could be impacted by this proposal.

***Goods and Services Tax on Outbound Roaming Charges [DEV-19-MIN-0315 (20 November 2019) and CAB-19-MIN-620 (25 November 2019)]***

22. The Bill proposes to apply GST to outbound roaming services, at the standard rate of 15%. Outbound roaming services are the telecommunications services provided to New Zealand registered mobile phones, when the mobile phone is in use overseas.
23. Applying GST to outbound mobile roaming services is consistent with New Zealand's broad-based GST framework and the Organisation for Economic Co-operation and Development's (OECD) international VAT/GST guidelines.
24. The Bill proposes to:
  - 24.1 Apply GST to outbound roaming services received by a person with a New Zealand registered mobile device while they are travelling overseas. Conversely, inbound roaming services received by a non-resident while in New Zealand will not be subject to GST.
  - 24.2 Apply from 1 April 2022 to give sufficient time for telecommunications suppliers to amend their customer billing systems.

***Goods and Services Tax on Credit Notes [DEV-19-MIN-0315 (20 November 2019) and CAB-19-MIN-620 (25 November 2019)]***

25. The Bill proposes to amend the GST credit note rules to ensure the rules remain flexible and fair.
26. Credit notes are issued when the price of a good or service is reduced after a tax invoice has been issued, for example if a refund is provided when faulty goods are returned to the supplier. The benefit of the credit note rules is that taxpayers can

correct the GST component of a change in price in a future return, instead of applying to Inland Revenue to seek an amendment to their original return.

27. The Bill proposes to:

- 27.1 Clarify the credit note rules to ensure the correct GST adjustment is made in a future GST return (so the amount of GST adjustment is the same as if the taxpayer had amended their original GST return).
- 27.2 Introduce a time limit for credit note adjustments being included in past GST returns. This time limit is consistent with the existing “time bar” rules for amending past GST returns.

**Schedule 32 Donee Status [DEV-19-MIN-0300 (13 November 2019) and CAB-19-MIN-0593 (18 November 2019)]**

28. The Bill proposes to amend the Income Tax Act 2007 by adding three charities to the donee organisations listed 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 donation tax credit). The proposed new additions to schedule 32 are Active Hearts Foundation, Kiwilink, and Shimshal Trust.

#### **Items Not Requiring Cabinet Approval**

29. The Bill also includes a range of remedial amendments that I recommend be included in the Bill. The amendments described in the appendix cover a range of tax issues and typically ensure that the relevant tax laws are consistent with their policy intent. The amendments do not involve any significant policy change and do not require Cabinet approval. The amendments do not have any material revenue or other fiscal effects.

#### **Minor Remedial and Maintenance Items**

30. The Bill also contains a number of minor remedial and maintenance items. These correct minor faults of expression, reader’s aids, and incorrect cross-references.

#### **Impact Analysis**

##### **Regulatory Impact Assessments**

31. Regulatory impact assessments were prepared, where required, for several policy items in the Bill. These were submitted at the time that Cabinet Committee approval for the policy items was sought. These assessments are:

- 31.1 Impact Summary: *Feasibility and other non-deductible expenditure for incomplete assets*, Inland Revenue, 13 September 2019;
- 31.2 Impact Summary: *Land tax rules review 2019 – habitual buyers and sellers*, Inland Revenue, 19 November 2019;
- 31.3 Impact Summary: *Income tax treatment of leases subject to NZ IFRS 16*, Inland Revenue, 17 October 2019;
- 31.4 Impact Summary: *Mycoplasma bovis tax issue*, Inland Revenue, 26 February 2020;

- 31.5 Impact Summary: *GST on telecommunications services*, Inland Revenue, 23 October 2019; and
- 31.6 Impact Summary: *GST refunds using credit notes*, Inland Revenue, 23 October 2019.

#### **Remaining Policy Proposals in the Bill**

32. A regulatory impact assessment was not required for the purchase price allocation proposal because decisions on this were delegated to Ministers. However, an assessment will be prepared for the introduction of the Bill.
33. The regulatory impact analysis requirements do not apply to the remaining items in the Bill as the proposed changes result in little or no change to the status quo position.
34. 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.

#### **Climate Implications of Policy Assessment**

35. The CIPA requirements do not apply to the policy proposal of confirming annual rates for income tax for the 2020–21 tax year; as the proposed changes result in little or no change to the status quo.
36. The CIPA requirements do not apply to the mycoplasma bovis tax issue policy proposal; as it was confirmed the threshold for significance is not met.
37. The remaining policy proposals previously approved by Cabinet were considered by Cabinet before the CIPA requirements came into effect.

#### **Compliance**

38. The Bill complies with:
  - 38.1 the principles of the Treaty of Waitangi;
  - 38.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 38.3 the disclosure statement requirements (the draft disclosure statement is attached);
  - 38.4 the principles and guidelines set out in the Privacy Act 1993;
  - 38.5 relevant international standards and obligations; and
  - 38.6 the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Consultation**

39. The substantive policy initiatives to which this Bill is intended to give effect were subject to public and other consultation in accordance with the Generic Tax Policy Process.

### **Relevant Government Departments or Other Public Bodies**

40. The Treasury was consulted on the development of many of the proposals in the Bill. Other government departments and public bodies were also consulted on relevant aspects of the proposals where appropriate, including the Department of Internal Affairs – Charities Services, Kāinga Ora – Homes and Communities, Land Information New Zealand, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade (Pacific and Development Group), Ministry of Housing and Urban Development, Ministry of Social Development, Ministry for Primary Industries and Statistics New Zealand. Feedback from government departments and public bodies was used to develop and refine these proposals.

### **Relevant Private Sector Organisations and Public Consultation Processes**

41. A number of the proposals in the Bill were subject to public consultation, which was undertaken in various forms. In addition, private sector organisations were consulted on specific matters of relevance to them. The feedback provided by these stakeholders was taken into account when finalising policy proposals. The attached draft disclosure statement provides further information on the various parties consulted and the form in which consultation was undertaken for the policy items in the Bill.

### **The Government Caucus and Other Parties Represented in Parliament**

42. Both Government caucus and coalition and support parties will be consulted on this Bill prior to its proposed introduction.

### **Binding on the Crown**

43. A number of Inland Revenue Acts currently bind the Crown (including the Income Tax Act 2007). This amending Bill does not alter the status quo in this respect – the amendments follow the position of the principal Acts.
44. The Bill will not create a new agency.
45. 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**

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

### **Associated Regulations**

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

## **Other Instruments**

48. The proposed amendment to section 227 of the Land Transfer Act 2017 empowers the making of regulations by Order in Council prescribing the content of the Land Transfer Tax Statement administered by Land Information New Zealand. Currently, the content is largely prescribed by the Land Transfer Act. The amendment will bring the requirements for the Land Transfer Tax Statement into alignment with other information requirements in the Land Transfer Act.
49. The proposed provision has a number of safeguards built in. Any regulations drafted will need to be consistent with the existing framework set out in the Land Transfer Act 2017, including only disclosing information in aggregate form. Any regulations will be drafted by the Parliamentary Counsel Office, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. In accordance with the Legislation Act 2012, the regulations will be presented to Parliament and be disallowable following review by the Regulations Review Committee.

## **Definition of Minister/Department**

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

## **Commencement of Legislation**

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

## **Parliamentary Stages**

52. The Bill should be introduced on or soon after 3 June 2020, referred to the Finance and Expenditure Select Committee and reported back to the House by the end of 2020. This will allow a second reading early next year, providing some certainty as to what the law is likely to be for taxpayers.
53. As the Bill includes setting the annual income tax rates for the 2020–21 tax year, and because a number of the proposals in the Bill have an application date of 1 April 2021, the Bill should be enacted by the end of March 2021 at the latest.

## **Publicity**

54. 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**

55. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers, with appropriate redactions, when the Bill is introduced.

## **Recommendations**

The Minister of Revenue recommends that the Committee:

1. **note** that the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill holds a category 3 priority on the 2020 Legislative Programme (to be passed if possible in the year);
2. **note** that the Bill makes substantive, remedial, and technical amendments to the:
  - 2.1 Income Tax Act 2007;
  - 2.2 Tax Administration Act 1994;
  - 2.3 Goods and Services Tax Act 1985;
  - 2.4 Student Loan Scheme Act 2011;
  - 2.5 KiwiSaver Act 2006;
  - 2.6 Companies Act 1993;
  - 2.7 Land Transfer Act 2017;
  - 2.8 Social Security Act 2018;
  - 2.9 Accident Compensation Act 2001;
  - 2.10 Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017; and
  - 2.11 Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018.
3. **agree** that the income tax rates for the 2020–21 tax year be the same as the rates currently specified in part A of schedule 1 of the Income Tax Act 2007;
4. **agree** to the content of the Bill as contained in this paper;
5. **approve** the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **agree** that the Bill be introduced on or soon after 3 June 2020;
7. **agree** that the government propose that the Bill be:
  - 7.1 referred to the Finance and Expenditure Committee for consideration;
  - 7.2 reported back to the House by the end of 2020; and
  - 7.3 enacted by 31 March 2021.

Authorised for lodgement

Hon Stuart Nash  
Minister of Revenue

## **Appendix – Items Not Requiring Cabinet Approval**

1. The following items cover a range of tax issues and typically ensure that the relevant tax laws are consistent with their policy intent, and do not require Cabinet approval. The amendments do not have any material revenue or other fiscal effects.

### **Reuniting New Zealanders with lost Australian retirement savings**

2. The *Trans-Tasman Retirement Savings Portability Arrangement* allows for the transfer of retirement savings between complying Australian superannuation schemes and New Zealand KiwiSaver schemes. However, this arrangement does not allow for New Zealanders' lost Australian retirement savings held by the Australian Tax Office (ATO) to be transferred to a KiwiSaver account. Existing legislation in Australia and New Zealand also does not allow for this transfer.
3. The Bill proposes to amend the KiwiSaver rules to allow for lost Australian retirement savings to be directly transferred from the ATO to a nominated KiwiSaver account.
4. Consistent with other retirement savings transferred from Australia to New Zealand KiwiSaver accounts, the same rules that currently apply to these funds will be extended to lost Australian retirement savings transferred from the ATO to a KiwiSaver account.

### **Research and development tax credit: changes to the capital expenditure eligibility rules**

5. Currently, expenditure that contributes to the cost of tangible depreciable assets (such as a plant or machinery) is ineligible for the research and development tax credit, unless the asset is solely used in research and development.
6. There are concerns that expenditure on certain tangible depreciable assets may be eligible for the tax credit – contrary to the policy intent. For example, where an asset may be used for non-research and development purposes in subsequent years.
7. The Bill proposes to introduce an intention test, so that such expenditure is only eligible if the tangible depreciable asset is intended to only be used in research and development in the future (not just in the tax year to which the tax credit relates to).
8. The Bill also proposes an additional requirement that the expenditure will be eligible only if the asset is created as a result of a core research and development activity. This amendment will be retrospective for the 2019–20 income year (the first year of the research and development tax credit regime) because it is not a change in policy and is intended to clarify the legislation.

### **Research and development tax credit: employee costs on creating tangible depreciable property**

9. Expenditure that contributes to the cost of tangible depreciable property (such as the construction of a building) is ineligible for the tax credit, unless the property is used only for research and development activities. The intent of this exclusion is to minimise the fiscal risk associated with the construction of large capital assets. However, it is acknowledged that some genuine research and development related to creating tangible depreciable property may be excluded from the tax credit.
10. The Bill proposes an amendment to allow employee costs that support the creation of tangible depreciable property, where they relate to core research and development

activities. This amendment will allow some businesses to claim more research and development tax credits, and will be retrospective from the 2019–20 income year (the first year of the research and development tax credit regime). Officials acknowledge that further refinement in this area may be required.

**Research and development tax credit: clarifying definition of eligible expenditure**

11. The policy intent is that expenditure must have a close connection to an eligible research and development activity to be eligible for the credit. Recently, officials have discovered that some taxpayers are interpreting the existing definition of research and development expenditure in ways that are wider than the policy intent, and are seeking to claim expenditure with only a tenuous connection to research and development activities.
12. The Bill proposes to amend the research and development expenditure rules, to clarify that costs only directly connected to eligible research and development activities are eligible. This amendment will be retrospective from the first year of the research and development tax credit regime.

**Research and development tax credit: list of ineligible research and development expenditure and activities**

13. The Bill proposes to amend schedules 21 and 21B of the Income Tax Act 2007, to clarify that certain activities and expenditure are ineligible for the credit. These are:
  - 13.1 corporate governance costs;
  - 13.2 in-house research and development claim preparation costs;
  - 13.3 costs of acquiring land;
  - 13.4 decommissioning costs;
  - 13.5 land remediation costs;
  - 13.6 mining development activities; and
  - 13.7 the up-front costs of acquiring property that would have been depreciable in the absence of an election under section EE 8 of the Income Tax Act 2007.
14. The Bill proposes the amendments above will be retrospective from the first year of the research and development tax credit regime.

**Research and development tax credit: time limit for amending tax credit claims**

15. A time limit prevents the Commissioner of Inland Revenue from amending a tax credit claim in response to a request by the claimant (in the claimant's favour), if the request is made more than 12 months after the claimant's income tax return for the relevant year was due.
16. The Bill proposes a clarifying amendment to ensure the Commissioner is able to consider and complete a request for amendment to a tax credit claim, even if more than a year has passed since the claimant's income tax return due date (provided the

request is initiated within the prescribed timeframe). This amendment will apply from the first year of the research and development tax credit regime.

#### **Research and development tax credit: due date for criteria and methodologies approval applications**

17. In year two of the research and development tax credit regime, all businesses that want to claim the research and development tax credit will be required to obtain either *general approval* or *criteria and methodologies approval* (known as CAM). CAM is intended as an alternative approval regime for businesses undertaking significant research and development activity.
18. Currently, the CAM applications are due after the end of the income year. Having the same due date for both the general or CAM approvals may potentially adversely impact both applicants and officials in fulfilling their requirements under either approval regime.
19. The Bill proposes to amend the due date for businesses to file a CAM application to six months before the end of the claimant's income year. For multi-year CAM applications, applications will be due six months before the end of the first income year to which the approval relates. This amendment will apply from the 2021–22 income year (the third year of the research and development tax credit regime).

#### **Unpaid voluntary KiwiSaver employer contributions**

20. The Bill proposes to subject unpaid voluntary KiwiSaver employer contributions to the penalties, recoveries and use of money interest regimes. This will be achieved by amending the definition of "tax" to include a reference to voluntary KiwiSaver employer contributions. These amendments apply from 1 April 2021.

#### **Definition of activities for non-resident custodial institutions**

21. *Custodial institutions* are able to use specific reporting and withholding tax rules, on behalf of investors. However, the current rules mean certain non-resident custodians that operate in New Zealand through a fixed establishment (rather than a local subsidiary) are excluded from these rules. This places them at a commercial disadvantage to resident custodial institutions.
22. The Bill proposes to amend the definition of activities for non-resident custodial institutions to remedy this situation. The amendment will be retrospective from 1 April 2020 to align with the introduction of the custodial institutions' withholding and reporting rules.

#### **Withhold non-resident withholding tax from certain payments**

23. Custodial institutions should be required to withhold resident withholding tax (RWT) and non-resident withholding tax (NRWT) when they pay or transfer investment income to the investor. However, the current law only creates an obligation to withhold RWT.
24. The Bill proposes to clarify that custodial institutions should withhold RWT or NRWT as applicable. The amendment will apply retrospectively to align with the introduction of the custodial institutions' withholding and reporting rules.

### **Housing New Zealand Build Limited subject to income tax**

25. To ensure they pay income tax, Kāinga Ora – Homes and Communities (formerly known as Housing New Zealand Corporation) and Kāinga Ora’s main subsidiary Housing New Zealand Limited are listed in schedule 36 of the Income Tax Act 2007. There is a view that other Kāinga Ora subsidiaries need to be explicitly listed in schedule 36.
26. The Bill proposes to add Housing New Zealand Build Limited to schedule 36, to ensure it is subject to income tax. This amendment will apply from 23 May 2018 – the date on which Housing New Zealand Build Limited was incorporated.

### **Changing the filing due date for locked-in portfolio investment entities**

27. Most portfolio investment entities (PIEs) are required to file income information relating to member accounts on 15 May each year. This is to provide sufficient time for Inland Revenue to complete its tax year-end processes.
28. However, locked-in PIEs (that is, superannuation funds and retirement savings schemes) currently have a filing date of 30 June. This filing date means the year-end process runs much later, impacting taxpayers (such as KiwiSaver).
29. The Bill proposes to change the due date for locked-in PIEs to 15 May, for the 2020–21 income year onwards. Officials are communicating with affected PIE managers to ensure they can make the necessary adjustments to their systems and processes.

### **Minors' income tax exemption**

30. Currently, the Income Tax Act 2007 provides school children with an income tax exemption on income up to \$2,340 (per annum) which has not already had tax withheld (known as the minors' income tax exemption). This compliance cost saving measure ensures that in certain circumstances, children are not required to file an income tax return with Inland Revenue.
31. This exemption was not intended to be used in situations where a trustee pays tax on behalf of a beneficiary that is a minor. The Bill proposes to amend the minors' income tax exemption to ensure it does not apply to beneficiary income paid by a trustee to a minor.
32. This amendment will apply from the 2012–13 income year, so to align with the original commencement date of the minors' income tax exemption, with a savings provision for taxpayers that have already filed a return before the date of introduction of the Bill.

### **Definition of a settlor of a trust**

33. A settlor of a trust is typically someone that transfers value to a trust. As such, a beneficiary of a trust may also become a settlor when they know that their current account balance of \$25,000 or more is being used by the trustee, and the beneficiary is not paid interest on these funds at or above the market rate of interest. Being a settlor can have wide-ranging consequences, including for social assistance and student loan purposes.

34. It is difficult for Inland Revenue to determine if a beneficiary is fully aware of the use of the funds by the trust (to the extent that it results in the beneficiary becoming a settlor).
35. The Bill proposes to amend the definition of the settlor so that a beneficiary with more than \$25,000 in their current account on which interest has been underpaid, is deemed to be a settlor of a trust, regardless of their level of knowledge. This amendment will apply from 1 April 2020, to align with recent related amendments.

#### **Settlor of a trust migrating to New Zealand**

36. A settlor of a foreign trust that migrates to New Zealand may elect to pay New Zealand tax on worldwide trustee income from a specified date. If they do, then there is no additional tax to pay when a beneficiary receives a distribution out of tax-paid income. If this election is not made, distributions from the trust may be taxed at 45%.
37. It is possible for a settlor of a foreign trust to make a retrospective election to pay New Zealand tax on up to four years of worldwide trustee income. The Bill proposes amendments to ensure that distributions out of tax-paid income are tax free. This amendment will apply from 23 March 2020 to align with the application date of a related amendment.
38. As well, it is possible for settlers who have migrated to New Zealand, and not made an election to pay New Zealand tax on worldwide trustee income, to voluntarily disclose this information to Inland Revenue. In these situations, New Zealand tax (including penalties and interest) would be assessed but can result in some future distributions still being taxed at 45%.
39. The Bill proposes a clarifying amendment to ensure future distributions out of tax-paid income covered by a voluntary disclosure are tax free. This amendment will be retrospective from 1 April 2008 to ensure the policy intent for tax positions under existing voluntary disclosures is achieved.

#### **Exemption for energy consumer trusts to own more than 20% of a portfolio investment entity**

40. Currently, the portfolio investment entities (PIEs) rules restrict taxpayers from owning more than 20% of a PIE and requires a PIE to have at least 20 investors – this is to prevent a single investor from controlling a PIE. However, there are entities that can be a PIE without meeting these requirements if they are effectively holding assets for a sufficiently wide group of persons. The Bill proposes including energy consumer trusts (known as “lines trusts”) to this group because they hold their investments for the benefit of electricity customers and communities within their local areas.

#### **Changes to the employee share scheme and exempt ESS rules**

41. A company that offers an employee share scheme (ESS) may nominate a trustee to carry out scheme-related activities (such as holding shares on trust for employees). As a nominee, the trustee is treated like the company, meaning that transfers of shares between the company and the trustee have no tax implications.
42. The Bill proposes to allow a trustee of an exempt ESS scheme to be a nominee of the company providing the scheme, as there is no policy reason to treat exempt ESS

trustees differently from ESS trustees in this context. It also proposes to allow the disposal of shares held by the company (known as “treasury stock”) by an ESS or exempt ESS trustee nominee to be exempt from income tax. This change aligns with existing tax rules involving the sale of treasury stock.

#### **Use of pre-consolidation imputation credits**

43. The imputation credit regime aims to prevent double taxation of company income distributed to shareholders (that is, dividends). Where two companies have consolidated, the consolidated group can hold imputation credits generated before consolidation. The Bill proposes to allow group member taxpayers to use their pre-consolidation credits before using their group credits. This approach is more consistent with how taxpayers have historically used their imputation credits. This amendment will be retrospective to 1 April 2008 (the commencement date of the Income Tax Act 2007) to ensure tax positions that follow this approach are valid.

#### **GST and zero-rated transfers of commercial land leases**

44. The Goods and Services Tax Act 1985 requires business-to-business land sales to be zero-rated (GST applied at 0%). Because certain leases and lease transfers are close substitutes for land ownership, they are also zero-rated.
45. The amendments clarify that when a business is sold and the sale involves transferring or cancelling an existing lease and then arranging a new lease, these will be treated as being a zero-rated supply. As well, the Bill proposes remedial amendments to how the assignment or surrender of leases are treated under the zero-rated rules. The proposed amendments will apply retrospectively from 30 June 2014, the commencement date of the original amendment.

#### **Definition of deferrable tax**

46. When a taxpayer has a tax dispute with Inland Revenue, the amount being disputed can be deferred until the dispute is settled. However, the current rules do not consider the situation where a disputed amount in one taxpayer’s return affects an associated taxpayer.
47. The Bill proposes to amend the definition of “deferrable tax” to include consequential adjustments to associated taxpayer assessments. This adjustment will reduce compliance cost for taxpayers and shorten the dispute process.

#### **Ability for a taxpayer to dispute a tax position outside the permitted time limit**

48. Currently, taxpayers can circumvent the time limit for disputing a tax assessment by making a voluntary disclosure for a particular item and consequently, reopen the entire tax assessment for dispute.
49. The Bill proposes to amend the tax dispute rules by limiting taxpayers’ dispute rights to the subject raised in the voluntary disclosure. A similar rule already exists that prevents Inland Revenue from disputing unrelated items to any amended assessment made for a taxpayer.

### **New Zealand superannuitants and the end-of-year auto calculation process**

50. The end-of-year income tax square-up rules allow taxpayers that only receive New Zealand Superannuation or Veteran Pension income, and consequently incur a tax liability (that is, under-deduction of PAYE from these gross amounts), to have this tax liability written off. This includes situations where a taxpayer has used a tailored tax code.
51. The underlying policy intent of these write off rules (when combined with a tailored tax code), is that the write off is limited to \$50.
52. The Bill proposes to clarify that taxpayers that receive New Zealand Superannuation and the Veteran's Pension payments, and have used a tailored tax code, are entitled to a write off concession of up to \$50.

### **Clarify that dividends are derived on a cash basis**

53. Currently, dividends that are paid in money, are assessable on a cash or accrual basis. Stakeholders have suggested that dividends should only be assessable on a cash basis, as this will reduce compliance costs and aligns with other legal requirements.
54. The Bill proposes to clarify that dividends must be assessed on a cash basis.

### **Notice to spread fertiliser costs**

55. The Income Tax Act 2007 allows taxpayers to spread the cost of fertiliser over one to four years, to match these costs with the benefits generated by the fertiliser. Taxpayers are required to provide a "notice" to Inland Revenue advising they are electing to use this spreading method.
56. The Bill proposes to deem the notice to be provided to Inland Revenue when the taxpayer files their tax return on that basis. This will reduce compliance costs of taxpayers having to otherwise provide a separate written notice to Inland Revenue.

### **Non-resident contractors' exemption**

57. Currently, non-resident contractors who earn income in New Zealand are subject to withholding tax; this is to minimise the risk that taxpayers will leave New Zealand without fulfilling their New Zealand tax obligations. However, a non-resident contractor may apply to Inland Revenue for an exemption where there is no New Zealand tax ultimately due.
58. One way to be granted an exemption is to demonstrate that payments received are not "income". This is too broad, and the Bill proposes to narrow this requirement to "assessable income".

### **Amendment to the transfer pricing rules**

59. For particular forms of related party lending between a non-resident and a New Zealand resident borrower, the transfer pricing rules use a third-party test to determine if the particular features of a related party loan (such as subordination or terms beyond five years) would also feature in an arm's length (unrelated party) loan, and if they

would, then the resulting interest deductions the borrower incurs are allowed for tax purposes.

60. The Bill proposes an amendment to the third-party test to exclude loans where the lender has any ownership interest in the borrower. This amendment will be retrospective from 1 July 2018, when the rules were introduced, with a savings provision to protect the position of taxpayers that have already filed tax returns following the current transfer pricing rules.

#### **Non-resident deferral calculation formula amendment**

61. The Bill proposes an amendment to the non-resident financial arrangement income calculation formula to ensure that in certain situations, the formula cannot produce an undefined outcome. This issue arose from an earlier amendment to the formula that sought to include a hybrid deductions element into the existing formula.

#### **Technical changes to the thin capitalisation rules**

62. The thin capitalisation rules are part of New Zealand's international tax rules and place limits on the interest deduction that foreign companies can claim on their New Zealand operations.
63. The Bill proposes two technical amendments to the thin capitalisation rules:
  - 63.1 denying interest deductions when a New Zealand group is controlled by a group of non-residents, in line with existing policy intent; and
  - 63.2 to not apply the thin capitalisation rules to a trust solely due to a New Zealand resident settlor making an investment in, or settlement on, a non-resident.

#### **Commissioner's powers to uplift extracts or copies of taxpayer documents**

64. The Bill proposes to clarify a cross-reference error that resulted in the Commissioner of Inland Revenue being potentially unable to obtain extracts or copies of documents or other material that is created when the Commissioner is in the course of exercising her authority to undertake formal inquiries about a taxpayer. The amendment will apply from the date of enactment.

#### **Removing the requirement to review parental tax credit every three years**

65. As part of the Families Package, the parental tax credit ceased to be paid to children born after 1 July 2018; instead they will qualify for the Best Start tax credit. Therefore, the requirement to undertake a review of the parental tax credit every three years is now redundant and should be removed.
66. The Bill proposes to remove the requirement in the Income Tax Act 2007 to undertake a review of the parental tax credit every three years.

#### **Updating references to main benefit payments**

67. The Bill proposes to align the terminology of the definitions of the various monetary payments, or groups of payments, between the Revenue Acts and the Social Security Act 2018. These include references to "benefits" and "income-tested benefits" in the

Revenue Acts, being amended to refer to “main benefits” currently used in the Social Security Act 2018.



# Cabinet Legislation Committee

## 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.*

### Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill: Approval for Introduction

**Portfolio**                    **Revenue**

On 26 May 2020, the Cabinet Legislation Committee:

- 1        **noted** that the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill holds a category 3 priority on the 2020 Legislative Programme (to be passed if possible in the year);
- 2        **noted** that the Bill makes substantive, remedial, and technical amendments to the:
  - 2.1      Income Tax Act 2007;
  - 2.2      Tax Administration Act 1994;
  - 2.3      Goods and Services Tax Act 1985;
  - 2.4      Student Loan Scheme Act 2011;
  - 2.5      KiwiSaver Act 2006;
  - 2.6      Companies Act 1993;
  - 2.7      Land Transfer Act 2017;
  - 2.8      Social Security Act 2018;
  - 2.9      Accident Compensation Act 2001;
  - 2.10     Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017; and
  - 2.11     Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018;
- 3        **agreed** that the income tax rates for the 2020–21 tax year be the same as the rates currently specified in part A of schedule 1 of the Income Tax Act 2007;
- 4        **approved** for introduction the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill [IRD 22553/1.110], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;

- 5      agreed that the Bill be introduced on or soon after 3 June 2020;
- 6      agreed that the government propose that the Bill be:
- 6.1     referred to the Finance and Expenditure Committee for consideration;
- 6.2     reported back to the House by the end of 2020; and
- 6.3     enacted by 31 March 2021.

Gerrard Carter  
Committee Secretary

---

**Present:**

Rt Hon Winston Peters  
Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon Dr David Clark  
Hon David Parker  
Hon Stuart Nash  
Hon Damien O'Connor  
Hon Kris Faafoi  
Hon Tracey Martin  
Hon Aupito William Sio  
Hon James Shaw  
Hon Julie Ann Genter  
Hon Eugenie Sage  
Michael Wood, MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG