

BILL COMMENTARY

Taxation Principles Reporting Bill

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Taxation Principles Reporting Bill
2023 – commentary on the Bill

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Overview of the Bill

The Government would like to increase the public's understanding of the tax system and promote informed debate and discussion about its future. The Taxation Principles Reporting Bill is a step towards that objective by proposing a set of generally accepted tax principles and requiring the Commissioner of Inland Revenue (Commissioner) to report on how the tax system is tracking against those principles.

Regular reporting will help the public to better understand how our tax system is performing over time, inform the public consultation process on tax policy proposals, and ensure that tax policy is developed in line with values which society considers desirable in a tax system.

The tax principles proposed in this Bill are intended to be universally accepted principles that have been used in numerous tax reviews in New Zealand and abroad. The principles include horizontal and vertical equity, efficiency, revenue integrity, certainty and predictability, flexibility and adaptability, and compliance and administration costs.

These principles are accompanied by a proposed reporting framework that would require the Commissioner to prepare and publish an annual report that considers the operation of the tax system measured against the tax principles. This report would supplement existing reporting on the administration of the tax system and the Government's revenue strategy.

The Bill also contains provisions covering Treaty and notification obligations and taxpayer privacy and confidentiality.

If passed, the resulting Taxation Principles Reporting Act would become primary legislation alongside the Tax Administration Act 1994.

This commentary provides detailed coverage of the Bill.

Unless otherwise stated, the effective date for all measures contained in this Bill is 1 July 2023.

Purpose, interpretation and Act binds the Crown

Clauses 2 – 6

Detailed analysis

Clauses 2 – 6 of the Bill provide:

- the commencement date
- the purpose of the Bill
- the interpretation of terms used
- that the Act binds the Crown, and
- that Te Tiriti o Waitangi obligations apply.

Commencement date

Clause 2 of the Bill provides that, if passed by Parliament, the Bill would come into force on 1 July 2023. This means the Commissioner would be required to provide the Minister of Revenue with a report under the framework by the end of the calendar year following commencement, which would mean by 31 December 2023.

Purpose

Clause 3 of the Bill proposes that the purpose of the Bill would be to require the Commissioner of Inland Revenue to report on New Zealand's tax settings measured against the principles listed in schedule 1 of the Bill.

The reporting process would be guided by the approved taxation principles measurements set out in clause 13 of the Bill. These measurements would assist the Commissioner in determining the types of information that would be relevant to reporting on the tax system.

Interpretation

The interpretation clause of the Bill provides definitions for key terms within the Bill. This includes definitions for "Minister" and "Commissioner".

Act binds the Crown

In New Zealand, legislation is generally drafted to bind the Crown unless there are good reasons for not doing so. Section 27(3) of the New Zealand Bill of Rights Act 1990 reflects the intention that laws should apply to government as much as to individuals.

The Crown is usually taken to include Ministers and public service agencies. This includes the Commissioner of Inland Revenue, who leads a department defined under the Public Service Act 2020, and the Minister of Revenue.

The Bill proposes to impose an obligation on the Commissioner to report to the Minister of Revenue and an obligation on the Minister of Revenue to table a copy of the full Commissioner's report in Parliament. Clause 5 of the Bill proposes to bind the Crown, which would align with these obligations on the Commissioner and the Minister.

Te Tiriti o Waitangi obligations apply

Clause 6 of the Bill proposes that it must be applied consistent with the public service's obligations in relation to Te Tiriti o Waitangi.

Most of the Bill proposes to impose obligations on the Commissioner of Inland Revenue. The Commissioner, as a public service chief executive, is part of the public service. Under the Public Service Act 2020, the role of the public service includes supporting the Crown in its relationship with Māori under Te Tiriti o Waitangi. This includes developing capability to engage with Māori and to understand Māori perspectives. In the context of the Taxation Principles Reporting Bill, this could include engagement on the information to be reported over time.

Revenue acts not binding: no rights and obligations other than secrecy and privacy, non-justiciability

Clauses 7 and 8

Detailed analysis

The Bill contains tax principles and measurements designed to direct the operation of the reporting framework and inform the content of reports. If passed, this Bill would also become an Inland Revenue Act under the Tax Administration Act 1994 (TAA). Clauses 7 and 8 make clear that the application of the reporting framework's principles, measurements and reports is not intended to extend beyond the reporting framework itself. That is, the proposed principles and reports are to meet the objective of this Bill to inform the public and are not intended to influence the interpretation of, or obligations under, other Inland Revenue Acts.

Revenue Acts not binding: no rights and obligations other than secrecy and privacy

There are two parts to clause 7. The first outlines the application of the Commissioner's duties under the TAA, while the second relates to the rights and obligations of taxpayers.

Exclusion of the Commissioner's duties

The Commissioner's duties are contained in sections 6 and 6A of the TAA. For example, section 6 requires the Minister and officials, including the Commissioner, to protect the integrity of the tax system. Under section 6A, the Commissioner has a duty of care and management and an obligation to collect the highest net revenue practicable. There are other obligations throughout the TAA, including those relating to the holding of taxpayer information.

The first part of clause 7 of the Bill would exclude the Commissioner's duties from applying to the proposed reporting framework (with an exception insofar as it relates to taxpayer information). This exclusion of the Commissioner's duties is unique and reflects the proposed framework's focus on the independent collection and publication of information related to the tax system. It is intended to be separate from the general administration of the tax system and the collection of tax revenue.

As stated above, an exception is proposed for the TAA provisions that relate to taxpayers' information. This would ensure that the duties to keep information confidential continue to apply. This is reinforced by clause 9 in the Bill, which relates to privacy (see discussion below).

Taxpayer rights and obligations

Clause 7 also proposes to clarify the relationship of the Bill to the wider tax system. The second part of clause 7 would ensure the content of the Bill would not affect the amount of tax a taxpayer is required to pay ("quantification of a taxpayer's liability under a revenue Act") or any other taxpayer right or obligation (except in relation to taxpayers' information – see clause 9 below).

Non-justiciability

Clause 8 of the Bill provides that neither a report produced under the reporting framework nor the Act itself, including the taxation principles, may be used as evidence in any matter of law or fact (or in the interpretation of any matter of law or fact).

This further emphasises both the framework's information focus and that the principles and measurements within the Bill are intended to apply to the operation of the reporting framework only. The framework's principles and measurements are not intended to apply more widely and, for example, would not assume constitutional status or influence the interpretation of other legislation.

Information and privacy

Clause 9

Detailed analysis

The Commissioner's powers to collect information are contained within section 17 of the Tax Administration Act 1994. Section 17 provides the grounds on which the Commissioner may collect information, including for the purpose of tax policy development.

Clause 9(a) of the Bill would allow the Commissioner to use existing information that had been gathered for any purpose to prepare the reports required under the statutory framework. This would assist with minimising the impact of the reporting framework on taxpayers by reducing the need to collect information the Commissioner already holds for tax administration purposes.

Clause 9(b) of the Bill would require all information in reports produced under the framework to be anonymised to ensure that individual taxpayers cannot be identified. This would ensure that the privacy and integrity of individual taxpayers' data is preserved.

The Bill does not propose providing the Commissioner with new information-gathering abilities beyond those already contained within the Inland Revenue Acts. Those existing provisions allow for the collection of information necessary to carry out any function lawfully conferred on the Commissioner and for the purposes of the Inland Revenue Acts. This Bill would confer a reporting function on the Commissioner, and schedule 2 would add this Bill to the list of Inland Revenue Acts. Clause 9 specifies that the information that may be used by the Commissioner includes information gathered specifically to help the Commissioner perform the reporting obligations contained in this Bill. The existing information-gathering provisions will therefore be sufficient for the purposes of this Bill.

Reporting obligations

Clauses 11 and 12

Detailed analysis

Reporting model

The Bill would require a report to be produced annually, and the report produced in any given year would take one of two forms, an interim report or a full report. This “hybrid” reporting model has been proposed on efficiency grounds. This would balance the value of maintaining a continuous annual data series on key measures with the likelihood that the findings of any given year will be broadly similar to those of the year immediately before.

This approach also reflects that there can be a timing lag with some data due to extensions of time provided to some taxpayers to file information, meaning some information may not be available in the latest tax year for the relevant annual report. The three-yearly, more comprehensive, reporting can provide more complete information by picking up delayed information from previous tax years.

Report timing

Full report

The effect of clause 11(2) of the Bill is that the Commissioner would be required to provide the Minister of Revenue with the full report by the end of the second calendar year of each Parliamentary term. This would start in the 2025 calendar year, being the second year of a Parliamentary term after the commencement date of the Bill. This more comprehensive full report would cover information from the previous 3 tax years.

This timing has been selected to avoid publishing the report in the months leading up to a general election and to ensure the data produced within the report represents the tax system at the commencement of the Parliamentary term.

Interim report

Clause 11(1) of the Bill would require the Commissioner to provide the Minister of Revenue with a short-form interim report at the end of each calendar year. In years in which a full report was provided, the full report would cover the requirement to provide an interim

report. Therefore, the annual interim reports are intended to cover each of the two years following the publication of a full report.

If the Bill is enacted in 2023, an annual interim report would have to be produced by the end of the 2023 calendar year and again for the 2024 year. These would then be followed by a full report in 2025. The interim reports would only include information for the most recent tax year.

Presentation and publication

The presentation and publication requirements of the interim and full reports would be each governed by the separate subclauses of clause 12.

Clause 12(1) of the Bill proposes that the Commissioner must publish the interim report at the Commissioner's expense as soon as reasonably practicable after it has been provided to the Minister.

Clause 12(2) of the Bill governs the publication of the full report. Although the proposed publication requirements of the full report are similar to the interim report, they contain an important difference in requiring the Minister of Revenue to provide a copy of the full report to the House of Representatives (that is, Parliament). The Commissioner would be required to publish the full report as soon as reasonably practicable following the Minister's presentation of the report to Parliament.

The form of publication the report must take has not been specified within the proposed legislation. The Commissioner could publish in whatever format is considered appropriate, including in hard copy or on Inland Revenue's website.

Approved taxation principles measurements

Clauses 13 and 14

Detailed analysis

Rather than prescribing methods and definitive measures for reporting on each principle, the proposed reporting framework focuses on specific categories of *information* (or “approved taxation principles measurements”) that are relevant to the principles. These information measurements would allow governments and the public to draw inferences about the presence of the framework’s principles in New Zealand’s tax system. The reports produced would be required to include these approved taxation principles measurements (but may also include additional measurements as set out in clause 14).

Clause 13 of the Bill contains the proposed “approved taxation principles measurements” relevant to the evaluation of current tax settings. These have been selected to align with the taxation principles set out in schedule 1 of the Bill and reflect information the Commissioner has available. The proposed approved taxation principles measurements are:

- income distribution and income tax paid
- distribution of exemptions from tax and lower rates of taxation
- perceptions of the integrity of the tax system, and
- compliance with the law by taxpayers.

As noted above, clause 13 is focused on categories of information. This is intended to avoid limiting the Commissioner’s reporting to specific methods of analysis, allowing the Commissioner to use judgement in selecting the most appropriate analytical techniques. This would also help future-proof the framework by allowing officials to take advantage of new developments and best practice in economic research and data analysis as they become available.

The data relevant to each indicator could be qualitative or quantitative. For example, “compliance with the law by taxpayers” could include quantitative analysis of trends in the number of taxpayer disputes with Inland Revenue, or the confidence with which taxpayers are able to determine their obligations. By contrast, assessing taxpayer perceptions of the integrity of the tax system would be likely to involve a qualitative analysis and could include the results of taxpayer surveys or focus groups.

Additional approved taxation principles measurements could be added to the list in clause 13 over time as data and analysis become available and if they are considered necessary as part of a minimum set of information to be regularly reported.

Approval procedure for inclusion and exclusion

Clause 14 of the Bill would allow the Commissioner to employ additional measurements beyond those listed in clause 13(a) to (d) in producing reports under the reporting framework. The objective in allowing the Commissioner to include additional measurements is to allow the framework to grow over time and maintain pace with future developments. Additional measurements could reflect the availability of new data or when data becomes available with sufficient quality to be suitable for publication. These additional measurements could be included on either a “one off” or a regular basis.

However, the Commissioner’s ability to use additional measurements would be subject to the criteria contained within proposed clause 14(1)(a) to (c). In summary, it is proposed that the Commissioner may use additional measurements provided:

- the Commissioner decides they are appropriate for inclusion
- they are within the direct responsibility of the Commissioner in relation to the tax system, and
- the Commissioner publishes a description of the measurements 2 months or more before the Commissioner uses them in a Commissioner’s report.

Clause 14(2) of the Bill would also allow the Commissioner to exclude measurements considered inappropriate for use in reports, provided the decision to exclude the measurements is also published.

The notification requirements assist with transparency of the reporting framework and provide an opportunity for public feedback to the Commissioner.

Application of the Legislation Act 2019

Clause 15

Detailed analysis

Clause 15 of the Bill provides that approval procedure for the inclusion and exclusion of approved taxation principles measurements under proposed clause 14 would not be secondary legislation for the purposes of the Legislation Act 2019. Therefore, the requirements relating to secondary legislation would not apply.

Taxation principles

Schedule 1

Detailed analysis

Schedule 1 of the Bill contains the proposed tax principles about which the tax system is to be reported on. A description is provided for each of the tax principles listed to help explain how each principle is considered within a tax policy context and specifically for New Zealand's tax system. The descriptions are intended as guides rather than definitions.

The proposed tax principles are:

- Horizontal equity.
- Efficiency.
- Vertical equity.
- Revenue integrity.
- Compliance and administrative costs.
- Certainty and predictability.
- Flexibility and adaptability.

These, or similar, principles have been articulated in several tax working group reviews both in New Zealand and overseas. They help to explain and frame tax policy discussions, and they could also contribute to the legislation's wider objective of informing the public debate on the tax system.

Precedent exists for referring to such principles within legislation. For example:

- Section 6 of the Tax Administration Act 1994 requires Ministers and officials to use their best endeavours to protect the integrity of the tax system.
- Part 2 of the Public Finance Act 1989 requires the Government to pursue its policy objectives in accordance with the principles of "responsible fiscal management". These principles include "reducing debt to prudent levels", "managing prudently the fiscal risks facing the Government", and "ensuring the Crown's resources are managed effectively and efficiently".
- The Public Finance Act 1989 also requires the Government to consider its revenue strategy having regard to efficiency and fairness, including the predictability and stability of tax rates.

Consequential amendments

Clause 10 and schedule 2

Detailed analysis

Schedule 1 of the Tax Administration Act 1994 (TAA) lists the legislation that Inland Revenue is responsible for administering. These statutes are known as “Inland Revenue Acts” and include the Income Tax Act 2007, the KiwiSaver Act 2006 and the TAA itself.

Clause 10 and schedule 2 of the Bill would list the Taxation Principles Reporting Act 2023 within schedule 1 of the TAA. If enacted, this would place the Bill within the category of the Acts administered by Inland Revenue and listed as an Inland Revenue Act.