Hon Simon Watts, Minister of Revenue

Information Release

Taxation (Annual Rates for 2024-24, Emergency Response, and Remedial Measures) Bill

September 2024

Availability

This information release is available on Inland Revenue's tax policy website at https://www.taxpolicy.ird.govt.nz/publications/2024/ir-emergency-response-tax-bill

Documents in this information release

#	Reference	Type	Title	Date
1	IR2024/128	Inland Revenue Report	Further information on threshold increases for exempt employee share schemes	26/03/2024
2	IR2024/094	Inland Revenue Report	Overseas donee status: New additions to the Income Tax Act for inclusion in the next available taxation bill for 2024	09/04/2024
3	IR2024/144	Inland Revenue Report	Policy approval for changes to the KiwiSaver enrolment settings for children under 16	30/04/2024
4	IR2024/092	Inland Revenue Report	Non-fiscal remedial items for the August 2024 omnibus taxation Bill	09/05/2024
5	IR2024/206	Inland Revenue Report	Recent August Bill Consultation	17/05/2024
6	IR2024/189	Inland Revenue Report	Portfolio Investment Entity eligibility	21/05/2024
7	IR2024/200	Inland Revenue Report	Generic tax response for emergency events	22/05/2024
8	BN2024/223	Inland Revenue Briefing Note	Cover note – Omnibus Cabinet Paper	04/06/2024
9	IR2024/177	Inland Revenue Report	Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill (revoked)	04/06/2024
10	IR2024/176	Inland Revenue Report	Remedials with fiscals for inclusion in the August 2024 omnibus taxation Bill	10/06/2024

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11	IR2024/203	Inland Revenue Report	Additional non-fiscal remedial items for the August 2024 omnibus taxation Bill	10/06/2024
12	IR2024/250	Inland Revenue Report	Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill	14/06/2024
13	IR2024/261	Inland Revenue Report	Research and Development Tax Incentive: General approval application due date	19/06/2024
14	CBC-24-SUB-0065	Cabinet Paper	Measures for Inclusion in the 2024 Omnibus Taxation Bill	01/07/2024
15	CBC-24-MIN-0065	Cabinet Minute	Measures for Inclusion in the 2024 Omnibus Taxation Bill	01/07/2024
16	BN2024/288	Inland Revenue Briefing Note	PIE eligibility proposals	08/07/2024
17	BN2024/285	Inland Revenue Briefing Note	Fiscal implications of further increases to exempt employee share schemes	11/07/2024
18	IR2024/301	Inland Revenue Report	PIE eligibility remedials	26/07/2024
19	IR2024/306	Inland Revenue Report	Revised cover report - Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction	26/07/2024
20	IR2024/335	Inland Revenue Report	Revised cover report - Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction	16/08/2024
21	LEG-24-SUB-0166	Cabinet Paper	Taxation (Annual Rates for 2024-2025, Emergency Response, and Remedial Measures) Bill: Approval for Introduction	22/08/2024
22	LEG-24-MIN-0166	Cabinet Minute	Taxation (Annual Rates for 2024-2025, Emergency Response, and Remedial Measures) Bill: Approval for Introduction	22/08/2024

Additional information

The Cabinet paper *Measures for Inclusion in the 2024 Omnibus Taxation Bill* was considered by the Cabinet Business Committee on 1 July 2024 and confirmed by Cabinet on 8 July 2024.

The regulatory impact statements attached to the above Cabinet paper are published online: Regulatory Impact Statements for the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill (ird.govt.nz).

The Cabinet paper *Taxation (Annual Rates for 2024-2025, Emergency Response, and Remedial Measures) Bill: Approval for Introduction* was considered by the Cabinet Legislation Committee on 22 August 2024 and confirmed by Cabinet on 26 August 2024.

The departmental disclosure statement attached to the above Cabinet paper is published online: NZ Legislation Disclosures.

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:

6(c)	making available of that information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons, including deceased people
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions
9(2)(f)(iv)	to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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Item 01

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Further information on threshold increases for exempt employee share schemes

Date:	26 March 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/128

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister of Science, Innovation and Technology	5 April 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Casey Plunket	Special Policy Advisor	s 9(2)(a)
Richard McLaughlan	Senior Policy Advisor	s 9(2)(a)

26 March 2024

Minister of Revenue

Further information on threshold increases for exempt employee share schemes

Purpose

1. This report provides you with further information about a potential increase to the thresholds used for exempt Employee Share Schemes (ESS). This information includes the:

    1.1 number of start-up and tech sector companies likely to be impacted;

    1.2 fiscal cost associated with lifting the thresholds in line with inflation; and

    1.3 viability of including the threshold increase in the 2024-25 Annual Rates Bill ("the Bill").

2. This report also seeks your agreement to continue progressing a threshold increase for potential inclusion in the Bill following consultation. This will be subject to out-of-cycle budget funding decisions.

Background

3. On 15 March we reported to you on possible tax initiatives to support the start-up and tech sector [IR2024/064 refers]. The report focused on two tax initiatives, which you asked officials to investigate, namely:

    3.1 s 9(2)(f)(iv) and

    3.2 changing the limits on the value of shares and related benefits that can be provided to employees on a tax-free basis.

4. You have asked for further information on the second initiative to increase the current thresholds used for exempt schemes.

Threshold increase for exempt schemes

5. Employers can provide exempt benefits to employees under an exempt ESS. An exempt ESS is a widely offered scheme that meets certain criteria. No deductions are available for an employer in relation to an exempt scheme other than for establishing or managing the scheme.

6. A tax exemption for employment income does not fit generally within New Zealand's broad-base, low-rate framework. However, given there is a limit on the amount of benefit that can be provided under the scheme and the scheme must be offered to almost all employees, it is appropriate to retain the tax exemption to minimise compliance costs. The original policy intent behind the concession is that the schemes are designed to increase employee engagement at all levels of the company and align employee and shareholder incentives, with very low compliance costs.

7. The eligibility criteria include, among other things, the following conditions:

   7.1 the maximum value of shares provided to an employee is $5,000 a year;

   7.2 the maximum discount an employer can provide on the market value of the shares to an employee is $2,000 a year; and

   7.3 90% or more of full-time permanent employees who are not subject to securities law of other jurisdictions must be eligible to take part in the scheme.[1]

8. The thresholds relate to the value of the shares offered, and the value of the benefit offered. The thresholds mean the most an employee will be able to spend buying shares is $3,000 per year ($3,000 plus the $2,000 discount means a maximum value of $5,000 worth of shares).

9. The draft consultation letter proposes that these thresholds could be increased in line with inflation from when they first applied (first quarter of 2018).[2] This would involve increasing the maximum value of the shares to $6,250, and the maximum discount an employer can provide to $2,500. This would apply to all companies that use ESS not just those in the start-up and tech sector.

Number of start-up and tech sector companies impacted

10. The requirement that an exempt ESS must be offered to almost all employees, and that there is a limit on the benefit that can be provided, are the main restrictions to their use. For example, the scheme cannot just be targeted towards executives. Companies that use exempt ESS tend to be large firms which have operated for longer than ten years.[3] These companies have a greater ability to offer ESS on equal terms to all employees.

11. Adjusting these thresholds is therefore unlikely to be well targeted to start-up and tech sector companies. Start-up and tech sector companies may tailor their ESS benefits to a particular project, or a particular set of employees. They may also provide ESS benefits that significantly exceed the current thresholds. Inland Revenue has received 31 notifications of exempt schemes since 2018, and only four may meet the "start-up company" definition.[4] s 6(c) . With further investigation these may not meet the start-up definition and are not what would traditionally be considered start-ups.

12. Officials expect that changing the thresholds in line with inflation would be unlikely to materially increase the use of exempt schemes by start-up and other tech sector companies, but this would only be known for certain through consultation. It might increase use of exempt schemes more generally.

Financial implications

13. Increasing the thresholds used for exempt ESS will reduce the tax that is currently collected on the general scheme. Officials assume that a threshold increase will induce those who are currently unable to access the scheme, due to exceeding the employer discount threshold or market value threshold, to enter the scheme. That

[1] If the scheme applies to part-time employees or to seasonal employees, the same threshold applies.
[2] Between the first quarter of 2018 until the final quarter of 2023 the Consumers Price Index has increased by 24.5% (which officials have rounded to 25%).
[3] The average age of a company using an exempt employee share scheme is 25 years. Their average annual turnover is $730,972,296.
[4] s 9(2)(f)(iv) officials propose that a "start-up company" must be an unlisted company, be less than ten years old and have an annual turnover of less than $15 million.

is provided they meet other eligibility criteria including that their respective ESS is widely offered.[5]

14. No deductions are available for an exempt ESS, other than in respect of establishing or managing the scheme. Employers who switch from the general scheme to the exempt scheme will no longer be able to claim any deductible expenditure from providing employment income in an ESS. This will result in increased company tax collected for Inland Revenue and will offset a significant portion of the cost of this proposal.

15. Increasing the thresholds in line with inflation (maximum value of the shares to $6,250, and the maximum discount an employer can provide to $2,500) is forecast to cost $0.16 million over the forecast period. This assumes that the thresholds would increase from 1 April 2025.

	$ million increase / (decrease)				
Vote Revenue Minister of Revenue	**2023-24**	**2024-25**	**2025-26**	**2026-27**	**2027-28 & Outyears**
Tax Revenue:					
-Other persons	0	(0.105)	(0.420)	(0.420)	(0.420)
-Company tax	0	0.095	0.370	0.370	0.370
Total tax revenue		**(0.010)**	**(0.050)**	**(0.050)**	**(0.050)**
Total operating	**0**	**0.010**	**0.050**	**0.050**	**0.050**

16. This change could be scaled by increasing the maximum discount an employer can provide through an exempt scheme. For instance, increasing the discount threshold to $4,000 or $5,000 would increase the cost to $0.13 and $0.2 million per annum respectively. This is not a linear increase, as it is based on the distribution of employees receiving amounts of ESS benefits in the general scheme.

Deliverability for the 2024-24 annual rates bill

17. The threshold increase could be included in the Bill subject to out-of-cycle budget funding decisions. The threshold increase for exempt schemes has not been invited into the Budget 2024 process. Out-of-cycle funding would be needed to progress these into the Bill likely through the Tax Policy Scorecard.

18. Inland Revenue could deliver this increase by 1 April 2025 as no system changes would be required. Exempt ESS are self-assessed and require companies to inform Inland Revenue that they are operating an exempt scheme, as well as the value of the shares that have been granted each year. An increase in the thresholds would only require an update to publications, website content and guidance which would come at a minimal administrative cost and be met from existing baselines.

Consultation

19. The Treasury has been consulted in the preparation of this report.

20. The Ministry for Business, Innovation and Employment has been consulted in the preparation of this report.

[5] Officials cannot fully identify whether most employees are granted eligibility to participate in any particular ESS scheme. It is assumed that if over half of employees are participating in the ESS scheme, in any one year, then it qualifies for an exemption.

Next steps

21. You have a meeting with the Minister of Science, Innovation and Technology at 1 PM on Thursday 28 March 2024. Officials recommend you discuss the threshold increase, s 9(2)(f)(iv) during that meeting.

22. Subject to your approval, we could include the threshold increase in the consultation material with select stakeholders (including Inland Revenue's regular tax stakeholders and the Ministry of Business Innovation and Employment's stakeholders in the start-up and tech sector). The threshold increase could also be consulted on independently of other possible tax initiatives to support the start-up and tech sector. We would report back to you on feedback from stakeholders and the proposed final policy decision after refining the proposal.

23. The threshold increase could be included in the Bill. As it is a policy change, the proposal will require Cabinet approval, which we would seek in June. Assuming inclusion in the Bill, this change could apply to shares offered after 1 April 2025.

Recommended action

We recommend that you:

24. **agree** to propose an inflation increase in the thresholds used for exempt employee share schemes in the upcoming targeted consultation with the start-up and tech sector.

    Agreed/Not agreed

25. **note** that officials will report back following consultation with recommendations on whether to include any changes in the 2024-25 Annual Rates Bill.

    Noted

26. **refer** a copy of this report to the Minister of Science, Innovation and Technology for their information.

    Referred/Not referred

s 9(2)(a)

Casey Plunket
Special Policy Advisor
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Overseas donee status: New additions to the Income Tax Act for inclusion in the next available taxation bill for 2024**

Date:	09 April 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/094

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations	30 April 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Brandon Sloan	Principal Policy Advisor	s 9(2)(a)
Harper Burtenshaw	Policy Advisor	s 9(2)(a)

09 April 2024

Minister of Revenue

Overseas donee status: New additions to the Income Tax Act for inclusion in the next available taxation bill for 2024

Executive summary

Purpose

1. This report:

   1.1 Seeks your agreement to give overseas donee status to four charities, and include the necessary amendments to schedule 32 of the Income Tax Act 2007 in the next omnibus taxation bill for 2024;

   1.2 Seeks your agreement to remove one charity for the list of overseas donee organisations from schedule 32;

   1.3 Explains why legislation is used to implement decisions giving overseas donee status.

2. Related to this report, s 9(2)(f)(iv) .

Additions to schedule 32 of the Income Tax Act 2007

3. Overseas donee status is an exception to the policy framework that generally limits tax benefits to donations to charities with New Zealand purposes. Decisions to give overseas donee status are assessed against Cabinet criteria (paragraph 25), and is meant to complement the government's overseas development objectives.

4. We recommend four New Zealand charities to be granted overseas donee status by adding them to schedule 32 of the Income Tax Act 2007 in the next omnibus taxation bill scheduled for introduction in the second-half of 2024. "Overseas donee status" is used to describe certain New Zealand charities with overseas purposes to which donors are eligible for tax benefits, including:

   4.1 the donation tax credit, and

   4.2 tax deductions if the monetary donation is from a company or Māori authority.

5. The charities we recommend be granted overseas donee status are:

   5.1 Kapuna Education Charitable Trust,

   5.2 ReliefAid,

   5.3 Rescue and Prevent Trust, and

   5.4 Support Services for Humanity.

6. We recommend that these charities have overseas donee status from 1 April 2024.

7. A description of the charities, their purposes and activities are provided in paragraphs 33 to 41 of this report. The recommended charities are largely involved in providing relief from the effects of war, the relief of poverty, or improving education outcomes in developing countries. All are registered under the Charities Act 2005. They all have adequate procedures for the accountability of funds applied to projects outside New Zealand and can demonstrate a track record of activity.

8. We also recommend that Support Services for Humanity's donee status be time limited and end on 31 March 2029 (five years). s 9(2)(g)(i)

Removal from schedule 32

9. We also recommend the removal of Help a Child Foundation New Zealand. This charity was granted overseas donee status from the 2002 tax year. The charity has ceased operations and has been wound up. The charity's name should be removed with effect from the enactment of the proposed taxation bill. No further reference to Cabinet is required for this amendment.

Why use legislation to implement decisions

10. Legislation is used to implement decisions to grant overseas donee status because it is an exception to the policy that tax benefits for donations should be limited to charities with New Zealand purposes. In 2016, the Legislation Design and Advisory Committee provided advice to Inland Revenue confirming that the use of legislation to implement decisions to grant overseas donee status is appropriate.

Fiscal implications

11. The revenue effect of granting overseas donee status to the charities in paragraph 5 is outlined in Table 1 and is estimated to be $1.888 million over the forecast period. The revenue effect is recognised as a forecasting change because it reflects an increase in the cost of the decision to allow donations to New Zealand-based charities with overseas purposes to be eligible for tax benefits. The recommendations in this report have no impact on the Tax Policy Scorecard.[1] A copy of this report should be referred to the Minister of Finance for her information.

	$m – increase/(decrease)				
Vote Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	($0.000)	($0.221)	($0.376)	($0.616)	($0.675)
Total change in Revenue	**$0.000**	**$0.221**	**$0.376**	**$0.616**	**$0.675**

[1] The Tax Policy Scorecard is a memorandum account that records the fiscal effect of approved tax policy decisions that occur between Budgets (BN2023/290).

Consultation

12. The Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Group), and the Department of Internal Affairs – Charities Services were consulted as part of our analysis for the charities recommended in this report.

13. The NZ Police's vetting service was used for the trustees of the charities recommended in this report.

14. The Treasury has been consulted in preparing this report and concur with its recommendations.

Next steps

15. If you agree to grant overseas donee status to the charities recommended in paragraph 5, we will draft a paper to Cabinet Economic Policy Committee for its consideration in June 2024. The paper will seek the Committee's agreement to the changes and recommend that the necessary amendments be included in the next omnibus taxation bill scheduled for introduction in the second-half of 2024.

Recommendations

1. **Agree** that the following charities be added to the list of organisations with overseas donee status in the Income Tax Act 2007:

(i)	Kapuna Education Charitable Trust	Agreed/ Not agreed
(ii)	ReliefAid	Agreed/ Not agreed
(iii)	Rescue and Prevent Trust	Agreed/ Not agreed
(iv)	Support Services for Humanity, subject to technical changes its trust deed	Agreed/ Not agreed

2. **Agree** that the charities in recommendation 1 that you have approved are given overseas donee status from the following dates

(i)	Support Services for Humanity from 1 April 2024 until 31 March 2029	Agreed/ Not agreed
(ii)	The rest from 1 April 2024	Agreed/ Not agreed

3. **Note** that agreeing recommendation 1 and 2 will result in the following adjustments to revenue forecasts:

Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	($0.000)	($0.221)	($0.376)	($0.616)	($0.675)

4. **Agree** to remove Help a Child Foundation from the list of organisations with overseas donee status in the Income Tax Act, with effect from the date of enactment of the proposed taxation bill to be introduced in second half of 2024.

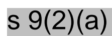
   Agreed/Not Agreed

5. **Agree** that amendments giving effect to recommendations 1, 2 and 4 be included in the omnibus taxation bill scheduled for introduction in the second half of 2024.

   Agreed/Not agreed

6. **Refer** a copy of this report to the Minister of Finance for her information.

   Referred/Not referred


s 9(2)(a)

Brandon Sloan
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Purpose

16. This report seeks your approval to give overseas donee status to four registered charities and include the required amendments in the omnibus taxation bill scheduled for introduction in the first quarter of 2024. We also recommend, for the same bill, the removal of one charity whose activities have ceased.

Tax benefits for monetary donations

17. Since 1962, the Income Tax Act has provided tax benefits for monetary donations to New Zealand charities (including benevolent, philanthropic, or cultural organisations) whose purposes are largely limited to New Zealand.

18. These benefits include:

    18.1 The donation tax credit of $33^1/_3$% of the value of any monetary donations made a New Zealand resident individual taxpayer, capped to the amount of their taxable income; and

    18.2 Tax deductions if the monetary donation is from a New Zealand resident company or Māori authority, capped to the amount of their net income..

19. The purpose of the tax benefits is to reduce the donor's marginal cost of donating. For example, across all income deciles, the cost to individuals of donating $100 is $66.67.[2] In principle, by lowering the cost of monetary donations this encourages more funds to the charitable sector. Empirical evidence to support this outcome is weak, but anecdotal evidence suggest that high-income donors are price sensitive when it comes to donating to certain charitable causes.

"Overseas donee status"

20. The Income Tax Act imposes certain statutory limitations on the entity's purposes and its application of funds, which must relate "wholly or mainly" to purposes in New Zealand. At the time, three charities with overseas purposes were made specific exceptions to the rule. The government also acknowledged that charities could be added to the list of names from time to time as comparable cases arise. In 1978, Cabinet developed criteria to support consideration about future additions of New Zealand-based overseas aid organisations to the legislative list (see paragraph 25).

21. Supporting New Zealand charities through granting overseas donee status is intended to assist the New Zealand Government's overseas development efforts, where aid objectives are better achieved by charitable non-government organisations (NGOs). The assistance is open-ended and less discretionary than other forms of government assistance[3] because it is delivered through the tax system using the benefits attached to monetary donations made to the listed charities.

22. Broadly, governments may seek to promote charitable giving:

    22.1 to further social objectives – in this particular case, overseas development aid,

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[2] This assumes the donor has claimed the donation tax credit for the donation, and that the value of the credit is not subject to the limitations set out in paragraph 18.

[3] For example, the Ministry of Foreign Affairs and Trade's New Zealand aid programmes: the New Zealand Partnerships for International Development Fund (Partnerships Fund), the Sustainable Development Fund, the New Zealand Disaster Response Partnership (NZDRP), and the Pacific Island Countries Participation Fund (PIC Fund).

22.2 for the wider benefits to society (externalities), which may be over and above the value of the benefit provided via the tax system, and

22.3 because donations can be effective indicators of when extra goods and services should be provided in market conditions that might otherwise not exist – this is particularly the case in developing countries, or when assisting individuals suffering from the effects of poverty or sickness, or a natural disaster.

23. The trade-off for these benefits is the open-ended revenue cost that applies for as long as the charity is on the list of approved donee organisations.

24. At this time there are currently 169 charities with overseas donee status listed on schedule 32 of the Income Tax Act. The list is regularly reviewed by Inland Revenue and charities are removed when entities have been de-registered, or funding activity has lapsed for extended periods of time and the charity is otherwise inactive.

Cabinet's consideration of requests for overseas donee status

25. Since 1978, Cabinet has applied the following criteria to assess applications for overseas donee status.

The basic criteria for adding an organisation to the list of approved "overseas" charities:

(i) the funds of the charity should be principally applied towards:

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;

[CM 78/14/7 refers]

26. The eligible purposes set out in the criteria are aligned with the Government's overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of "charitable purpose" and the legislative framework in the Charities Act. Determination of donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits that attach to monetary donations. The process does not overlap with the work of the Department of Internal Affairs – Charities Services.

27. Irrespective of whether a charity's founding documents and activities are charitable, approval for inclusion on schedule 32 of the Income Tax Act (conferring overseas donee status) is not automatic, and requests are considered on a case-by-case basis.

28. An overarching consideration is that any charity approved for overseas donee status is credible, transparent, and accountable.[4] Fiscal impacts and the integrity of the tax system are also relevant considerations. Annex A sets out the factors that we consider and analyse in respect of each charity that seeks overseas donee status.

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[4] *Guidelines for using the Cabinet criteria for overseas donee status*, endorsed by Cabinet in 2009 – CBC Min (09) 12/2 refers.

Using legislation to add organisations to the Income Tax Act

29. Overseas donee status is an exception to the policy that tax benefits for donations should be limited to charities with New Zealand purposes and requires amending the Income Tax Act. In 2016, the Legislation Design and Advisory Committee provided advice to Inland Revenue confirming that the use of legislation to grant overseas donee status is appropriate, given that such approvals were a special case, because:

    29.1 overseas donee status has (or might have) a political and moral dimension, and

    29.2 it ensures transparency in the making of such decisions and promotes a bipartisan approach.

30. We have in the past considered whether other methods of approving organisations would be appropriate – for example, Parliament delegating the authority to:

    30.1 Cabinet, via an Order in Council process,

    30.2 The Minister of Revenue,

    30.3 The Commissioner of Inland Revenue.

31. For a range of reasons, we consider that none of the possible alternatives provide a complete solution in terms of satisfying constitutional conventions about Parliament's taxing privileges, or providing suitable transparency about who is approved to be added to the list. Delegating any decision making regarding overseas donee status would also require Cabinet's approval criteria to be inserted into the Income Tax Act. There is a high risk that doing so could expand that the scope of approved purposes (and associated fiscal impact) in response to public interest to include such activities as:

    31.1 The advancement of religion,[5]

    31.2 The advancement of human rights,[6]

    31.3 Animal welfare and environmental conservation.[7]

32. Non-standard organisations (that is, organisations with purposes outside those specified in Cabinet's approval criteria, s 9(2)(f)(iv) would still require legislation under a delegated model, and this arguably defeats the purpose of delegating the power in the first place. We also note that any delegation of Parliament's power would ultimately lead to refused applicants being open to appeal directly to Parliament.

[5] Despite Cabinet's approval criteria excluding the advancement of religion as an "approved purpose", we regularly get requests from charities whose rules contain religious purposes.

[6] For example, the United Nation's 2015 Sustainable Development Goals have a strong focus on social development and reducing inequity. In contrast, Cabinet's current approval criteria is more grounded in economic development and arguably refers to an earlier conceptualisation of the purpose of overseas development aid.

s 6(c)

Charities recommended for overseas donee status

33. The four charities discussed below have purposes that come within the criteria provided in paragraph 25, and we recommend that they be granted overseas donee status. They all have adequate procedures for the accountability of funds applied to projects.

Kapuna Education Charitable Trust

34. Kapuna Educational Charitable Trust (KECT) operates in the Kikori District in the Gulf Province in Papua New Guinea. The trust operates as a separate legal and charitable entity of Gulf Christian Services, a Christian health and education agency running, two hospitals, a nursing training school and supporting local communities in the area. s 6(c)

35. The trust provides financial support to students of a primary and a secondary school in the area, which supports local children through grades 1 through 10. The trust aims to empower and support the local community through education, infrastructure, and financial aid. As well as running and upkeep of the schools, Kapuna Education Charitable Trust currently supports 10 disadvantaged children through school, all the way up to attending university in Port Moresby. The school also aims to assist with capacity building of local teachers, enabling them to train and work at the school.

ReliefAid

36. ReliefAid is a New Zealand charity which has been operating internationally since 2015, focusing on proving aid for people affected by armed conflict and natural disasters. Their largest aid networks are situated in Türkiye, and ReliefAid has been active in providing humanitarian aid and support in Syria, Ukraine, Afghanistan, and the Gaza Strip, providing shelter materials, food, water, and medical supplies to families in need. ReliefAid works with existing non-government networks.

Rescue and Prevent Trust

37. Rescue and Prevent Trust (Rescue and Prevent) is a New Zealand charity operating in Thailand with a goal to rescue and educate victims of sex trafficking. Rescue and Prevent implements a five-step solution to help rescue victims of sex trafficking and prevent it from happening again in the future. Rescue and Prevent's goals are to educate, find, rescue, prosecute and restore. Rescue and Prevent assists Thai police efforts at preventing trafficking of at-risk women and children through by providing capability and capacity building at a local law enforcement level and assisting with the prosecution of perpetrators under Thai law.

38. There is specific focus on assisting to educate and rehabilitate victims of sex trafficking so that the cycle is broken. Victims are also provided with support and resources after they have been rescued. It is the education and rehabilitation work which contributes to the relief of poverty and hardship.

Support Services for Humanity

39. Support Services for Humanity is a Hamilton based charity which operates in Uganda. The charity raises funds in New Zealand towards pop-up medical camps in Uganda. Partnering with local Ugandan health services and hospitals to provide medical services such as vaccines, treatment, and testing to local communities. Support Services for Humanity places particular emphasis on treatment of malaria,

which disproportionately affect African regions, with Uganda accounting for 5.1 percent of malaria deaths worldwide.

40. Support Services for Humanity have held two medical camps since 2022, with the last medical camp taking place in December 2023, using two main venues across the Buzaaya county. Over 6,320 patients attended the camp and were treated there. By setting up these camps and providing medical treatment support services for humanity are contributing to the relief of sickness in local communities.

Specific comments about the recommended charities

41. As part of our analysis of the charities discussed above, we have not identified any significant risks or concerns with their activities. The charities recommended in this report have donor support to carry out their purposes. However, we note:

Sensitive subject matter / Justification under Cabinet's approval criteria	**Rescue and Prevent Trust:** Anti-trafficking-related activities and purposes fall within a wider spectrum and include: (a) Preventing at-risk individuals from becoming victims, and aiding victims of trafficking with rehabilitation after they have been rescued and providing them with restorative resources. (b) Active enforcement and rescues, including undercover work, surveillance and working with local and international law enforcement agencies. Activities under (a) can be viewed as relating to the relief of poverty, while those under (b) have strong ties the maintenance of human rights which are outside the scope of Cabinet's approval criteria given their generally political nature. s 9(2)(g)(i)
Charity has a limited track record of activity.	s 9(2)(g)(i)
Motivated by religious purposes	s 9(2)(g)(i)

42. s 6(c)

[8] s 6(c)
[9]
[10]

Removal from schedule 32: Help a Child Foundation

43. Help a Child Foundation was given overseas donee status with effect 1 April 2002. The charity has ceased operation and wound up. The charity has been deregistered under the Charities Act. As the charity has wound up, removing the name from the schedule is a remedial change, and no further reference to Cabinet is required.

Legislative vehicle and application date

44. Amendments adding the four organisations, and the one removal, recommended in this report should be included in the next omnibus taxation bill, which is scheduled for introduction in the second half of 2024.

45. The additions should apply from 1 April 2024. Monetary donations received from that date will be eligible for tax benefits. The recommended application date gives the charities certainty for marketing and fund-raising purposes.

46. Inland Revenue's systems can work with an application date of 1 April 2024, as individuals will be able to claim the donations tax credit for receipted monetary donations as part of Inland Revenue's 2024–25 return cycle, starting on 1 April 2025. Companies and Māori authorities will be allowed deductions for monetary donations made during the 2024–25 income year.

47. Help a Child Foundation should be removed from the list from the date the relevant amendment bill is enacted.

Financial implications

48. The estimated financial implications of adding the three charities recommended in this report over the forecast period 2023-24 to 2027-28 is $1.888 million decrease.[11] The financial implications will be treated as a forecasting change and reflect the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations. The revenue estimates are based on projections made by the charities about the monetary donations they expect to receive for the forecast period.[12]

	Effect on tax revenue ($millions)				
	2023–24	**2024–25**	**2025–26**	**2026–27**	**2027–28 & outyears**
s 6(c)					
Total change in Revenue	**$0.000**	**$0.221**	**$0.376**	**$0.616**	**$0.675**

[11] The financial implications from approving charities for overseas donee status is "uncounted" for the purposes of calculating New Zealand's overall contribution to overseas development aid.
[12] There is no impact on the Tax Policy Scorecard.

Compliance and administration cost implications

49. No compliance or administrative cost implications arise from the recommendations in this report.

Consultation

50. The Treasury, the Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Division) and the Department of Internal Affairs – Charities Services have been consulted in the preparation of this report. The New Zealand Police's vetting service was also used in connection with the trustees/officers of the charities recommended in this report.

s 9(2)(f)(iv)

52. We also have five other requests on hand. We expect to be able to report to you on two of these requests in late May, subject to the charities supplying us with additional information.

Next steps

53. If you agree to the recommendations in this report, we will prepare a paper for the Cabinet Economic Policy Committee seeking its approval to the additions to the list of overseas donee organisations in the Income Tax Act 2007 for inclusion in the omnibus taxation bill scheduled for introduction in second-half of 2024. This paper will be prepared for the Committee's meeting in June.

54. A copy of this report should be referred to the Minister of Finance for her information.

Annex A: Analysis of requests for overseas donee status

55. Officials look at a range of factors when considering a charity's request to be added to the list of donee organisations in the Income Tax Act. We look to establish whether the charity can meet its purposes and is accountable for the funds it collects by:

    55.1 reviewing the charity's governing document (constitution and trust deed) to ensure the activities and purposes are consistent with Cabinet's criteria;

    55.2 requiring the purposes stated in the charity's governing document to be entirely within the scope of paragraph (i) of the Cabinet criteria and that no personal pecuniary profit can be derived;

    55.3 looking at the clauses governing the nature and extent of the trustees' discretionary powers, the winding-up clause, and the trustees' ability to amend the governing document;

    55.4 looking at the charity's past, current, and proposed activities;

    55.5 requesting that the trustees provide us with the charity's financial statements;

    55.6 considering the trustees' degree of control over the application of the charity's funds overseas, and procedures in place to ensure accountability for funds;

    55.7 considering the planning, monitoring, and evaluation processes used by the trustees regarding the application of the charity's funds, including how recipients use the funds, as well as the processes used to select beneficiaries and/or projects to support;

    55.8 asking whether the charity has a legal presence in New Zealand and if it has registered under the Charities Act;

    55.9 considering each request on the basis of other generic tax policy objectives, such as fiscal implications (including risk to the New Zealand tax base), consistency with other current government policy objectives, and the precedent effect; and

    55.10 consulting with other government agencies such as the Ministry of Foreign Affairs and Trade, and the Department of Internal Affairs – Charities Services, to identify any concerns with the organisation or sensitivities with the countries in which the organisation operates. We also use the New Zealand Police's vetting service in connection with the charity's trustees or directors.

POLICY AND STRATEGY

Tax policy report: Policy approval for changes to the KiwiSaver enrolment settings for children under 16

Date:	30 April 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/144

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to the recommendations **Refer** a copy of this report to the Minister of Finance, and the Minister of Commerce and Consumer Affairs	14 May 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Carolyn Elliott	Policy Lead	s 9(2)(a)
Josh Fowler	Senior Policy Advisor	s 9(2)(a)
Ella Patterson	Policy Advisor	s 9(2)(a)

30 April 2024

Minister of Revenue

Policy approval for changes to the KiwiSaver enrolment settings for children under 16

Purpose

1. On the 20th of March, you agreed to progress work to amend the existing enrolment settings to allow people under 16 to enrol in KiwiSaver "as of right" with the signature of one guardian. This report:

   a. Informs you of the outcomes of consultation with KiwiSaver scheme providers regarding the impacts of this proposed change.

   b. Seeks your approval to include the policy change in the 2024-25 Omnibus Taxation Bill Cabinet paper.

Background

2. In a previous report (IR2024/089), we discussed the introduction of the KiwiSaver scheme, the joint ministerial responsibility for the scheme and the background of the current enrolment settings for KiwiSaver.

3. As noted, a person aged 18 or over who meets the eligibility criteria can join KiwiSaver "as of right" by either contracting directly with a KiwiSaver provider or enrolling through their employer.

4. When a person is under 16, is not in Oranga Tamariki Care, and wishes to enrol in KiwiSaver, all guardians are required to provide consent. Individuals aged 16-17 may enrol with the consent of only one guardian. These settings were developed as a response to disputes that emerged not long after KiwiSaver was first implemented.

	Age of the prospective KiwiSaver member	
Status of care	**Under 16**	**16 or 17**
One or more guardian	All Guardians	One Guardian

5. The current settings for the enrolment of people under 18 seek to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the welfare of the young persons for whom they are responsible.

6. However, the settings for children under 16 can pose a challenge for solo parents in instances where it is hard to secure the agreement of a former partner. This issue was raised by a petition from a solo parent, which received media attention in 2021.[1]

[1] https://www.stuff.co.nz/business/money/124711473/call-to-change-archaic-kiwisaver-rule-stopping-solo-parents-signing-up-kids

7. If the enrolment signature requirements for those under 16 were eased from the signature of all guardians to one guardian only, KiwiSaver accounts could be set up for children with greater ease. Financial contributions could also be made by family members without the administrative efforts associated with setting up a savings vehicle.

8. This reform may not lead to a significant uptake in membership due to the limited contributions incentives available for those under 16. However, easing the enrolment requirements would increase the simplicity of enrolment settings and reflect the large and growing proportion of families headed by one adult.

Discussion

Because of these considerations, you agreed to progress with work to amend the existing enrolment settings to allow people under 16 to enrol in KiwiSaver "as of right" with the signature of one guardian.

Consultation with providers

9. From the 21st of March to the 5th of April, Inland Revenue undertook consultation with KiwiSaver providers regarding the potential policy change.

10. The specific questions asked of providers were (in summary):

- Would you support this proposal?
- What amount of time would you require to implement this policy?
- What practical challenges (if any) do you anticipate in operationalising this proposal?
- Are there any other issues that you anticipate arising from this proposal?

Themes emerging from consultation

11. The key themes emerging from providers' responses are as follows:

Would you support this proposal?

a. All the providers who responded expressed support for the proposal.[2] While some simply stated their support, others went further and suggested the proposal could or would:

   - Reduce compliance costs for one parent families and increase access for minors who were currently prevented from participating in KiwiSaver.
   - Make it easier to enrol children where one parent was absent or unwilling to consent.
   - Be consistent with the approach taken to onboarding minors in Investment Funds, reflecting that many modern families may have only one parent actively involved in a child's upbringing.

What amount of time would you require to implement this policy?

b. Providers' estimates of required lead times varied, likely due to the differing levels of complexity associated with their systems. Overall, the estimated time

[2] Of the 29 KiwiSaver Providers surveyed, 15 did not respond, with one noting it required a minimum balance and did not anticipate children joining.

required for implementation ranged between four weeks and six months, with most indicating they would require three months or less to amend their documents and make changes to their operating systems.

c. One provider indicated it was difficult to answer this question as changing its documentation may require review from its legal and compliance advisors.

What practical challenges (if any) do you anticipate in operationalising this proposal

d. Providers responses to this question also varied. One provider felt that the proposal would allow it to simplify its processes.

Are there any other issues that you anticipate arising from this proposal?

e. Some providers queried whether conflicts could arise between parents (for example, where one parent signed a child up to KiwiSaver, or changed providers without the consent of the other parent). However, one provider felt this risk already existed in the Investment Fund area and could be managed satisfactorily.

Recommendations following consultation

Proposal

12. We recommend proceeding with the proposal to allow under 16s to enrol in KiwiSaver with the signature of one parent. We note that providers responded positively and considered the proposal an improvement over the status quo.

Timeframes

13. We recommend an effective date of the 1st of July 2025. This would allow providers 3 months following the enactment of the Bill to implement any changes needed to their systems and processes. These 3 months would be in addition to the estimated 7 months from the introduction of the Bill to its enactment (meaning providers will have 10 months' notice of the proposal). This effective date could be adjusted at the Bill's Select Committee stage if issues around timeframes emerge.

Consultation with agencies

14. We have consulted with our colleagues at the Ministry for Business, Innovation and Employment (MBIE) and the Treasury. Both agencies are broadly supportive of the policy change to the enrolment settings.

Next Steps

15. The changes required in the KiwiSaver Act 2006 would involve amending the reference to "all their guardians" needing to contract with a provider in the name of the person, to "one of the person's guardians".

16. As this is a substantive change in policy, it will require Cabinet approval. Given that the drafting required to make the legislative change is relatively simple, we believe there will be sufficient time to include the policy change in the 2024-25 Omnibus Taxation Bill.

17. If Cabinet approves the proposed policy change, the amendment to the KiwiSaver Act could be included in the 2024-25 Omnibus Taxation Bill introduction. The bill is scheduled for introduction in August 2024.

Recommended actions

We recommend that you:

1. **Note** that KiwiSaver providers are broadly supportive of the proposed changes

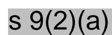
   Noted

2. **Agree** to include the proposal in the 2024-25 Omnibus Taxation Bill Cabinet paper for consideration by Cabinet as part of the policy approval process.

   Agreed/Not Agreed

3. **Refer** a copy of this report to your colleagues, the Minister of Finance, and the Minister of Commerce and Consumer Affairs for their information.

   Referred/Not referred


s 9(2)(a)

Carolyn Elliott
Policy Lead
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Non-fiscal remedial items for the August 2024 omnibus taxation Bill

Date:	9 May 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/092

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister of Finance for her information	24 May 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

9 May 2024

Minister of Revenue

Non-fiscal remedial items for the August 2024 omnibus taxation Bill

Executive summary

1. This report seeks your agreement to make amendments to several Inland Revenue Acts[1] for inclusion in the tax Bill scheduled for introduction in August 2024 (the Bill). The Inland Revenue Acts the Bill would amend are the:

    1.1 Income Tax Act 2007 (ITA)

    1.2 Tax Administration Act 1994 (TAA), and

    1.3 Goods and Services Tax Act 1985 (GST Act).

2. The recommended changes in this report are remedial in nature and are intended to ensure the relevant tax law is consistent with the policy intent. The remedials seek to maintain the coherence and integrity of the tax system. The recommended changes do not give rise to any material:

    2.1 revenue or other fiscal costs

    2.2 compliance or administrative costs, or

    2.3 systems or technology implications.

3. While none of these amendments are material enough to require Cabinet approval, they require approval from the Minister of Revenue.

4. The Treasury has been consulted on this report and agrees with the recommendations.

5. The Tax System Forum (Forum) was recently consulted on a list of items under consideration for inclusion in the Bill. Members' comments on the items provided were generally positive, and we will provide you with a short report which summarises their responses next week. In the meantime, we note that the Forum did not disagree with any of the items in this report.

Next steps

6. In preparation for the introduction of the Bill, officials will be reporting to the Minister of Finance and the Minister of Revenue on policy issues in late May and remedial items with fiscal implications in early June. Officials will also report to you on additional non-fiscal remedial items in early June.

[1] The Inland Revenue Acts are described in schedule 1 of the Tax Administration Act 1994.

Recommendations

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

   Indicated

2. **Agree** that, except where specified, the approved amendments outlined in this report will apply from the date of enactment.

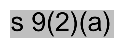
   Agree/Not agreed

3. **Agree** that the approved amendments will be included in the upcoming omnibus taxation Bill scheduled for introduction in August 2024.

   Agree/Not agreed

4. **Refer** a copy of this report to the Minister of Finance for her information.

   Referred/Not referred



Joshua Fowler
Bill Manager
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Background

7. This report seeks your agreement to remedial amendments to various Inland Revenue Acts. These will be included in the next omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

8. The recommended changes in this report are remedial in nature and are intended to ensure the relevant tax law is consistent with the policy intent. The remedials seek to maintain the coherence and integrity of the tax system. The recommended changes do not give rise to any material:

   8.1 revenue or other fiscal costs

   8.2 compliance or administrative costs, or

   8.3 systems or technology implications.

9. We do not consider that the recommended changes in this report require Cabinet approval.

10. Unless otherwise stated, all recommendations should apply from the date of enactment of the Bill.

Clarify certain limitations do not apply to agreed GST apportionment methods

11. Under the GST apportionment and adjustment rules, a GST-registered person can apply to the Commissioner of Inland Revenue (the Commissioner) to use an alternative apportionment method. An alternative apportionment method produces similar GST outcomes to the default apportionment rules but with lower compliance costs. An alternative method could apply to one or all of the registered person's purchased inputs.

12. The adjustment rules currently prevent an adjustment on inputs purchased for $10,000 or less. This general limitation was originally inserted to promote simplicity in the adjustment regime. However, it is unclear if this limitation applies where taxpayers have agreed an alternative apportionment method which covers all their inputs (including those under $10,000).

13. We recommend that a remedial amendment clarifies that specific agreed apportionment method overrides the general limitations. This would align with taxpayers' current practices, their agreements with Inland Revenue and the policy intent. The amendment should apply retrospectively from 18 March 2019 because this corresponds to the date that the general limitations were previously amended to make certain types of adjustments not permitted.

Recommendations

Agree to clarify that if a GST-registered person has agreed a GST alternative apportionment method with the Commissioner of Inland Revenue, then the specific agreement overrides the general limitations to making adjustments.

Agree/Not agreed

Agree that this amendment should apply retrospectively from 18 March 2019.

Agreed/Not agreed

Electing to zero-rate GST on business-to-business financial services

14. Business-to-business supplies of goods and services are typically neutral for GST purposes due to the ability of businesses to claim input credits on supplies from other businesses.

15. However, financial services are exempt supplies for GST purposes so no input credit would ordinarily be claimable on financial services supplied from one business to another. A special rule in the GST Act allows registered suppliers of financial services to elect to zero-rate their business supplies rather than classify them as exempt supplies. This allows the financial service providers to claim input tax deductions for the other goods and services they purchase to make their supplies of financial services to businesses.

16. However, the GST Act requires GST-registered financial service providers to notify the Commissioner of their election to zero-rate their business supplies before doing so.

17. We consider that this is an unnecessary compliance cost and recommend that GST-registered financial service providers be able to make an election by simply taking a position in a GST return without first notifying the Commissioner. This would be consistent with our general approach to self-assessment, other elections in the GST Act, and other types of zero-rated supplies.

18. The proposed remedial amendment would reduce compliance costs (and the risk of errors) for GST-registered financial service providers, and administration costs for Inland Revenue.

Recommendation
Agree that financial services providers should elect to zero-rate the financial services they supply to businesses by taking a position in a GST return without first requiring them to notify the Commissioner.
Agreed/Not agreed

Non-residents and definition of "actual use" in adjustment rules

19. Non-resident businesses are businesses located outside New Zealand that supply goods or services to individuals or businesses in New Zealand. In some cases, these non-resident businesses may be required to register with Inland Revenue for GST (for example, where a business supplies remote services to New Zealand).

20. Generally, non-resident businesses will not have any New Zealand expenses on which they are charged GST. However, where non-resident businesses do have New Zealand based expenses, they can claim input tax deductions for their New Zealand expenses based on their worldwide supplies. For example, a non-resident company who purchases intellectual property from a New Zealand business could claim back the GST on the purchase price. The company will need to consider if it is still using the IP to make taxable supplies at its next balance date.

21. However, due to a drafting oversight the definition of "actual use" in the adjustment rules was not updated to correctly take into account the non-resident's worldwide supplies. Rather, the definition of "actual use" only accounts for the company's sales to New Zealand customers. This drafting oversight provides an incorrect adjustment outcome and conflicts with the GST treatment on acquisition.

22. We are not aware that this has yet posed challenges for a non-resident business. However, we recommend a remedial amendment to prevent the potential problem from arising.

Recommendations

Agree to amend the definition of "percentage actual use" in the GST adjustment rules so it correctly takes into account a non-resident's worldwide supplies.

Agreed/Not agreed

Agree that this amendment should apply retrospectively from 1 April 2020 to align with GST positions previously taken by the affected non-resident businesses.

Agreed/Not agreed

GST permanent change of use rule and assets acquired prior to 1 April 2023

23. As part of recent reforms to simplify the GST adjustment rules, an amendment was made to enable a one-off GST adjustment to be made where there was a permanent change of use, rather than requiring two or more adjustments over consecutive adjustment periods. This was intended to reduce compliance costs, particularly for taxpayers who acquired business assets prior to registering for GST.

24. The application date of the reform was to adjustment periods beginning on or after 1 April 2023. However, the interaction of this application date and the definition of "first adjustment period" creates an unintended consequence. If a person purchased a business asset prior to 1 April 2023 and subsequently registered for GST in the current year, they are still required to make two adjustments (because in this case, the relevant adjustment period starts from the date of acquisition rather than from the beginning of the tax year in which the adjustment occurs).

25. A remedial amendment is required to clarify that the new rule should apply to assets acquired prior to 1 April 2023, so long as the relevant permanent change of use adjustment occurs after 1 April 2023. This would align with the original policy intent and taxpayer's practices.

Recommendation

Agree that the GST permanent change of use adjustment rule should apply to assets acquired prior to 1 April 2023, so long as the relevant adjustment occurs after 1 April 2023.

Agreed/Not agreed

Temporary GST registration for a supply of land

26. The Commissioner can currently temporarily register a person for GST for the purposes of returning GST on land that was incorrectly zero-rated. However, we recommend the scope of this temporary registration power be expanded.

27. The Commissioner should be able to temporarily register a person who sells goods (including land) in cases where the goods sold are a taxable supply. This would be the case if the person who acquired the goods previously claimed input tax deductions but failed to account for output tax when they deregistered or started using the goods for non-taxable purposes.

28. The proposed change would reduce administration costs by making it easier for the Commissioner to assess and collect the GST owed in these cases and then deregister the person so they no longer have to file GST returns. It does not change a taxpayer's tax liability because taxpayers in these circumstances are already required to pay GST.

Recommendation

Agree to expand the scope of the temporary GST registration rules so they can also be applied to register an unregistered person who sells land (or other goods) in cases where the sale is a taxable supply because the seller previously claimed input tax deductions, but failed to return output tax prior to the sale.

Agreed/Not agreed

Distributions by GST-registered unit title body corporates

29. Unit titles are a common ownership model for apartment complexes. While a unit title body corporate will typically have a taxable activity for GST purposes, it will generally not become liable to register for GST. This is because the value of supplies it makes to its members is not counted towards the $60,000 GST registration threshold. For this reason, only a small number of unit title body corporates are registered for GST.

30. Inland Revenue has identified an issue that may arise when a unit title body corporate charges levies (plus GST) to pay for major repairs and then subsequently refunds their members once they receive an insurance payout (the insurance payout is also subject to GST).

31. We recommend a remedial amendment to clarify that the distributions to refund members are deductible for GST purposes. This provides the correct GST outcome and is consistent with current practice. If we did not proceed with this amendment, but instead provided guidance on the current law, we expect the affected unit title body corporates would wait until they received the insurance payout to fund the repairs (so no additional GST would be collected but it could delay the repairs).

Recommendation

Agree to clarify that distributions from unit title body corporates to refund members are deductible for GST purposes.

Agreed/Not agreed

GST treatment of board members appointed by the Governor-General

32. Professional directors and board members typically operate through a corporate vehicle that receives fees for the services provided by the professional director or board member to the company that appoints them.

33. This arrangement would ordinarily prevent the company that is receiving the director or board member's services from claiming input tax on fees paid to the director or board member.[2] Therefore, a special rule in the GST Act allows GST-registered organisations to deduct input tax on fees paid to a director or board member who accounts to their employer-company for those fees.

34. However, this rule does not currently apply to a board member appointed by the Governor-General. For example, board members of independent Crown Entities and the Reserve Bank are appointed by the Governor-General.

35. As this inconsistency appears to be an oversight, we recommend a remedial change that would extend the special rule to board members appointed by the Governor-

[2] This is because the services are rendered by the board member in a personal capacity despite the use of the corporate vehicle.

General. This would ensure consistent GST treatment for board members operating through personal services companies and reduce compliance costs for taxpayers.

Recommendation

Agree to amend the special GST rule for fees paid to board members so it also applies to board members who have been appointed by the Governor-General.

Agreed/Not agreed

Alternative taxable period end dates

36. By default, taxable period end dates for GST must all fall on the last day of a calendar month. However, rules in the GST Act allow GST-registered persons to obtain approval from the Commissioner for different taxable period end dates, provided those end dates (or the length of the relevant taxable periods) fall within certain parameters prescribed in the GST Act.

37. Several New Zealand businesses have an accounting cycle based on 13-week quarters (with the quarters split into two four-week "months" and one five-week "month"). Inland Revenue has permitted these businesses to use taxable period end dates that align with their accounting cycle.[3]

38. An issue has been identified with recent amendments intended to improve the Commissioner's ability to approve alternative taxable period end dates, which in some cases have proved more restrictive than the original wording. We recommend a further amendment that will ensure businesses with accounting cycles based on 13-week quarters can have approved taxable period end dates that are aligned with their accounting cut-offs.

Recommendations

Agree to an amendment to ensure GST-registered persons that have accounting cycles based on 13-week quarters can have approved taxable period end dates that are aligned with their accounting cut-offs.

Agreed/Not agreed

Agree that the amendment should have retrospective application on and after 30 March 2022 (being the effective date of the recent amendments referred to above).

Agreed/Not agreed

Adjustments when GST is paid twice on imported goods

39. GST applies to the supply of low-value imported goods by non-residents to consumers in New Zealand. Special GST rules provide consumers with relief from double taxation on these goods when:

    39.1 a supplier of imported goods charges GST on the supply, and

    39.2 GST is collected again by the New Zealand Customs Service when the goods are imported into New Zealand.

40. Where double taxation occurs, the consumer's only recourse is to obtain a refund from the supplier of the GST charged at the point of sale. If the consumer requests a refund from the supplier, the supplier is required to provide one. However, a

[3] These businesses include large companies that have been using these approved taxable period end dates for decades.

drafting error arising from the 2022 reforms to the tax invoice rules means the supplier is often technically not entitled to an adjustment of its output tax for the amount refunded to the consumer. We recommend reinstating the adjustment rule that previously applied.

Recommendations

Agree to an amendment reinstating the former adjustment rule so that a non-resident supplier of imported goods, who is required to refund the customer for GST charged on the supply of the goods, can adjust its output tax for the amount refunded.

Agreed/Not agreed

Agree that the amendment should have retrospective application on and after 30 March 2022 (being the date the former adjustment rule was inadvertently removed).

Agreed/Not agreed

Quarterly GST filing for certain non-resident suppliers

41. Non-resident suppliers are generally required to have quarterly taxable periods where they supply the following:

    41.1 remote services

    41.2 low-value imported goods, and

    41.3 listed services.

42. The current wording of the relevant provision in the GST Act requires that the three specific types of supplies (above) are the "only" supplies the non-resident makes. Otherwise, the non-resident must have a one-month, two-month or six-month taxable period like most other GST-registered businesses.

43. Virtually all non-resident suppliers make some supplies that do not fall within the three categories above, such as supplies to other non-residents for example. Therefore, on a literal reading, it is likely that no non-resident supplier would meet the requirement for a quarterly taxable period.

44. We recommend clarifying the wording of the provision so that non-resident suppliers must file their GST returns quarterly if their only supplies *in New Zealand* are of remote services, low-value imported goods and/or listed services, consistent with the policy intention.

Recommendation

Agree to an amendment clarifying that non-resident suppliers must have quarterly taxable periods if their only supplies in New Zealand are of remote services, low-value imported goods and/or listed services.

Agreed/Not agreed

Platform economy remedials

45. As of 1 April 2024, online marketplaces (and in some cases, listing intermediaries) must collect GST on listed services performed, provided or received in New Zealand. However, we have identified some minor technical and remedial issues with these rules.

46. We recommend the following amendments to resolve these issues:

46.1 Allowing a listing intermediary and a marketplace operator to agree that the listing intermediary is responsible for issuing a tax invoice to the recipient of the listed services. This agreement could be made when the listing intermediary, not the marketplace operator, is responsible for returning output tax on the supply.

46.2 Fixing a number of minor drafting errors that have been identified.

Recommendations

Agree to the minor technical amendments above which clarify the operation of the new GST on listed services rules.

Agreed/Not agreed

Agree that the amendments should have retrospective application on and after 1 April 2024.

Agreed/Not agreed

Shifting the schedule of non-taxable grants and subsidies from regulations into the Goods and Services Tax Act 1985

47. The Goods and Services Tax (Grants and Subsidies) Order 1992 contains a schedule that lists grants and subsidies not subject to GST. Several stakeholders have commented that this Order is often difficult to find and have questioned why the schedule is not included in the GST Act itself.

48. We recommend revoking the Order and shifting its contents into a schedule to the GST Act. This will improve the accessibility of the law by making the information easier to find.

Recommendation

Agree to move the schedule of non-taxable grants and subsidies from the Goods and Services Tax (Grants and Subsidies) Order 1992 to the GST Act and revoke the Order to improve accessibility of the law.

Agreed/Not agreed

Minor remedial amendments to the GST grouping rules

49. The GST grouping rules allow multiple GST-registered entities to group together for GST purposes as a compliance cost-saving measure. Under the grouping rules, the group is treated as a single entity for GST purposes, and a representative member files one GST return on behalf of the group.

50. We recommend two minor amendments to rectify drafting errors and ensure the rules clearly reflect the policy intent. The specific amendments:

50.1 Clarify that a non-taxable supply by a non-registered GST group member is treated as a supply by the representative member as a registered person and is therefore a taxable supply, and

50.2 Repeal a redundant provision in the grouping rules.

Recommendation

Agree to the minor technical amendments above which clarify the operation of the GST grouping rules.

Agreed/Not agreed

GST and Pharmac rebates

51. Prior to 1 April 2023, an agreed amount of consideration for the supply of a pharmaceutical was not altered if part of that consideration was rebated to Pharmac. This ensured that when Pharmac refunded part of the price of drugs purchased by medical institutions, which occurs in a business-to-business context, neither party had to make a GST adjustment to account for the rebated amount. This helped to minimise compliance costs for these entities.

52. The law was inadvertently changed as part of the reforms to modernise the rules for tax invoices. This occurred because the previous provision was replaced with a provision stating that supply correction information did not need to be issued for a supply where part of the consideration has been rebated by Pharmac. This provided for a narrower outcome because it no longer specifically provided that the consideration amount was not altered. A remedial amendment is required to clarify that a Pharmac rebate does not alter the consideration amount, so as not to trigger the need for an adjustment. The amendment should be retrospective to 1 April 2023 (being the date that this provision was inadvertently changed).

Recommendations

Agree to an amendment to the GST Act to clarify that an agreed amount of consideration for the supply of a pharmaceutical is not altered if part of that consideration was rebated to Pharmac.

Agreed/Not agreed

Agree that this amendment should be retrospective to 1 April 2023 (being the date that this provision was inadvertently changed).

Agreed/Not agreed

Share-lending

53. A share-lending arrangement allows a share user to borrow a share for up to one year before returning the original share or an identical share to the share supplier. The share user will often sell the original share then later repurchase an identical share with the intention of profiting if the price has gone down between the two transactions. The share user is taxed on the sale of the original share and entitled to a deduction for the cost of the identical share resulting in tax on the net profit or loss from the two transactions.

54. However, if the identical share is returned the year after it was borrowed the deduction will also be in the second year, so the share user will be initially taxed on the gross sale proceeds, which causes a high cashflow cost. Practically, share users avoid this tax impost by never borrowing a share across a balance date.

55. We recommend taxable income from selling a share as part of a share-lending arrangement should be deferred until the identical share is purchased. This will allow the share user to calculate the net profit on the two transactions. In most instances, this will defer the taxable income to later in the same income year. Although in most cases this will have no practical effect, it will prevent tax being an

impediment to lending arrangements that continue past a balance date to the following income year.

Recommendation

Agree to defer taxable income for a share user in a share lending transaction until the transaction is completed.

Agreed/Not agreed

Partitioning of land – acquisition date for bright-line test

56. A partitioning transaction involves a group of people purchasing land together as co-owners. This allows the purchasers to pool resources, subdivide the land and allocate the subdivided parcels to each of the co-owners based on their ownership interests in the original parcel. In 2023, a provision was introduced (with effect from 27 March 2021) to ensure that partitioning transactions would not give rise to a tax liability.

57. While the current law is effective in ensuring that a partitioning transaction will give rise to exempt income, the law does not correctly state when each of the co-owners will be treated as having acquired the subdivided parcels for the purposes of the bright-line test.

58. Under the bright-line test, the relevant date is the "bright-line start date", which is generally the date on which the instrument to transfer the land to the person is registered on the title. In a partitioning scenario, each co-owner will have a new registration date for their subdivided parcel of land, which technically restarts the bright-line period for them.

59. It was not intended that the bright-line period restart when land is partitioned so we recommend that the rules be amended to ensure that this is does not occur.

Recommendations

Agree to amend the partitioning rules to clarify that the bright-line start date for each of the subdivided parcels is the date the undivided land was acquired by the co-owners.

Agreed/Not agreed

Agree that this amendment should apply retrospectively from 27 March 2021, when the original partitioning provision was enacted.

Agreed/Not agreed

Bright-line start date for a partitioning transaction

60. It was intended that disposals of residential land acquired on the death of a person should be specifically excluded from the bright-line test. This has been the case since the bright-line test was originally introduced.

61. When the bright-line test was reduced to two years in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024, this provision was inadvertently removed. The new 2-year bright-line test contains an exemption from the bright-line test for disposals by an executor or administrator. However, the exemption does not cover disposals of residential land by a beneficiary of an estate. Therefore, an amendment needs to be made to ensure that this circumstance is also excluded from the application of the bright-line test as has always been intended.

62. We recommend that this amendment apply retrospectively from 1 July 2024, being the application date for the new 2-year bright-line test.

Recommendations

Agree to amend the new bright-line test to ensure that it does not apply to transfers of inherited land by a beneficiary of an estate.

Agreed/Not agreed

Agree to this amendment applying with retrospective effect from 1 July 2024.

Agreed/Not agreed

Consequential issues following increase in the trustee tax rate

63. The trustee tax rate was recently aligned with the top personal tax rate of 39% for the 2024–25 and later income years. There are specific rules that tax beneficiary income earned by minors or certain companies from trusts at 39%. The relevant rules are:

    63.1 *The minor beneficiary rule:* To ensure that a family with a trust cannot gain a tax advantage over a family without one.

    63.2 *The corporate beneficiary rule:* To ensure that trustees cannot shelter income from the 39% trustee tax rate in a company as a beneficiary (which otherwise would be taxed at 28%).

Tax rate for minor and corporate beneficiary rules

64. Following the introduction of exclusions to the 39% trustee tax rate, uncertainty has arisen over the applicable tax rate for beneficiary income that is subject to the minor and corporate beneficiary rules. We recommend clarifying that income subject to these rules is taxed at the 39% rate, regardless of whether an exclusion from the trustee tax rate applies. This would be consistent with the original policy intent. Allowing these amounts to be taxed at a lower rate would risk significantly undermining the 39% trustee tax rate.

Corporate beneficiary income and ACDA

65. Generally, a transfer of value from a company to its shareholders is taxable as a dividend. However, certain amounts can be distributed to shareholders tax-free when a company is liquidated. This is the company's "available capital distribution amount" (ACDA). Beneficiary income subject to the corporate beneficiary rule is treated as a "capital gain amount" in a company's ACDA. This recognises that it has already been subject to tax at 39% and should be able to be distributed tax-free on liquidation.

66. We recommend clarifying that the capital gain amount included in the company's ACDA is the after-tax amount, rather than the pre-tax amount of beneficiary income. This would ensure that the rules do not provide an unintentional uplift, and that a company can distribute the correct amount tax-free.

Disabled beneficiaries and the minor beneficiary rule

67. Disabled beneficiary trusts are excluded from the 39% trustee tax rate and taxed at 33% on their trustee income. To qualify, all the beneficiaries must derive an eligible government support payment for the relevant income year. A minor can satisfy the disabled beneficiary definition if they derive the child disability allowance or the disability allowance.

68. The minor beneficiary rule contains an existing exclusion for children that derive the child disability allowance, but not the disability allowance. To improve the coherence of the rules, we recommend clarifying that beneficiary income derived from a disabled beneficiary trust is not subject to the minor beneficiary rule.

Application date

69. We recommend making these amendments from the 2024–25 income year (from 1 April 2024 for most trusts, when the 39% trustee tax rate took effect).

Recommendations

Agree that beneficiary income subject to the minor and corporate beneficiary rules should be taxed at 39%, regardless of whether an exclusion from the 39% trustee tax rate applies.

Agreed/Not agreed

Agree that for beneficiary income subject to the corporate beneficiary rule, only the after-tax amount is included in the company's ACDA.

Agreed/Not agreed

Agree that beneficiary income derived from a disabled beneficiary trust should not be subject to the minor beneficiary rule.

Agreed/Not agreed

Agree that these amendments should apply for the 2024–25 and later income years (from 1 April 2024 for most trusts).

Agreed/Not agreed

Record-keeping requirements for gift-exempt bodies

70. Record-keeping provisions apply to certain charitable and tax-exempt bodies (gift-exempt bodies). This allows the Commissioner to determine the source of donations received by gift-exempt bodies and how they apply those donations.

71. No minimum length of time is currently specified for the retention of these records. These records must be kept in English unless authorised by the Commissioner. We recommend amending the requirements so that the relevant records must be held for at least seven years after the income year to which they relate and that they can be kept in te reo Māori, consistent with the general record-keeping rules in the TAA.

Recommendations

Agree that the gift-exempt body record-keeping provisions should require relevant records to be held for at least seven years after the relevant income year to which they relate.

Agreed/Not agreed

Agree that the gift-exempt body record-keeping provisions allow records to be kept in te reo Māori.

Agreed/Not agreed

Clarifying the date a company becomes nominated as an agent for an imputation group

72. Groups of companies can choose to form an imputation group if they meet certain criteria. However, the group will need to select a nominated company that will have responsibility for group return filing and act as the point of contact for Inland Revenue. The nominated company may notify the Commissioner at a "particular date" when the company will no longer be acting as the agent for the group, and another company will take its place.

73. A change in nominated company applies from 30 days after the Commissioner receives notice. When the "particular date" given is less than 30 days from the date of notice, the notice will not have effect until the 30 days' notice period has passed.

74. However, the definition of "particular date" is ambiguous and could allow the relevant section to be interpreted as allowing for a retrospective date of nomination. For example, it is possible that a company could argue it ceased to be the "nominated company" on a particular date six months prior. Once a month has passed from that particular date, the company could give notice to the Commissioner with the effect that the change would take effect six months in the past. This does not appear to be the original intention of the notice period. Prior to the 2007 ITA rewrite, the section read as prospective only.

75. We recommend amending the phrasing of the date another company becomes an agent for an imputation group to clarify the date is prospective.

Recommendation

Agree that the phrasing of a "particular date", referring to the date another company becomes the nominated agent for an imputation group, be amended so that it is clear the date is prospective.

Agreed/Not agreed

Clarifying the application of the associated persons definitions to certain structures involving limited partnerships

76. This item is a preventative base maintenance measure to address a gap in the associated persons rules which could result in land developers circumventing the land sale taxing rules.

77. An unintended gap in the associated persons definitions means that certain structures involving limited partnerships, such as a chain of limited partnerships where a limited partnership is a limited partner in a second limited partnership, can result in a break in association between closely connected entities. This could result in land dealers, developers or builders not having to pay tax on land sales by operating through a closely connected entity that they are not treated as being associated with due to the gap in the rules.

78. The outcome under the current law is inconsistent with the intent of the associated persons rules. It also results in inconsistent treatment of structures involving chains of limited partnerships and those involving chains of companies. If the structures involved chains of companies, rather than limited partnerships, the relevant entities would be associated under the current law, which is the intended policy outcome.

79. We recommend amendments to the associated persons definitions to ensure the use of structures involving limited partnerships do not result in a break in association between closely connected entities.

80. The amendments should apply from the date of introduction of the Bill. This would ensure taxpayers are not able to take advantage of the unintended gap in the period between the Bill being introduced and enacted.

Recommendations

Agree to amendments that would ensure the use of structures involving limited partnerships cannot be used to circumvent the associated persons definitions.

Agreed/Not agreed

Agree to the amendments applying from the date of introduction of the Bill.

Agreed/Not agreed

Application of the limited partnership and look-through company associated persons aggregation rules

81. The associated persons rules include aggregation provisions that enable interests in limited partnerships to be combined for the purpose of determining whether a person is associated with a limited partnership.

82. One of the intended purposes of these aggregation rules is to enable associations between a non-partner that is associated with a limited partner, and a limited partnership. This would ensure the intended tax treatment of a transaction cannot be circumvented by parties operating through an associate of a limited partner. For example, if Spouse A is a limited partner with a 25% interest in a limited partnership, Spouse B should also be treated as holding this interest and associated with the limited partnership.

83. We recommend the drafting of the legislation is clarified to ensure it is certain the legislation achieves the outcome described above. Such an amendment would also ensure the limited partnership aggregation rules are consistent with the company aggregation rules, which also enable a person that is associated with a shareholder (but is not a shareholder themselves) to be associated with a company.

84. The amendments should apply from 1 April 2010 (the date the limited partnership aggregation provisions apply from). However, there should be a savings provision, so any taxpayers that have taken an inconsistent position in a tax return filed before the introduction of the Bill would not be affected by the amendments.

85. Similar drafting clarifications are also required to ensure the application of the look-through company associated persons aggregation rules enable associations between a person that is associated with an owner of a look-through company interest and a look-through company. These should apply from 1 April 2011 (the date the look-through company associated persons rules apply from), with a savings provision for any taxpayers that have taken an inconsistent position in a tax return filed before the introduction of the Bill.

Recommendations

Agree to amendments clarifying that a non-partner can be associated with a limited partnership and a person that does not directly hold an interest in a look-through company can be associated with a look-through company as a result of applying the aggregation rules.

Agreed/Not agreed

Agree to the limited partnership aggregation rule amendments applying from 1 April 2010, with a savings provision for taxpayers that have filed a tax return that is inconsistent with the amendments before the introduction of the Bill.

Agreed/Not agreed

Agree to the look-through company aggregation rule amendments applying from 1 April 2011, with a savings provision for taxpayers that have filed a tax return that is inconsistent with the amendments before the introduction of the Bill.

Agreed/Not agreed

Revised introductory wording for livestock valuation

86. Taxpayers are required to value livestock on hand at the end of the income year. Livestock valuation methods are contained in the ITA. The introductory provision describes the livestock (including bloodstock) that must be valued.

87. However, the current wording of the introductory provision is too narrow and excludes livestock held for income-producing purposes other than for sale or exchange. This excludes, for example, livestock held for milk or wool production, or to breed replacement livestock.

88. This unintended exclusion is due to inaccurate wording rather than a deliberate choice on the part of the legislature. As this is a longstanding issue, taxpayers and their tax advisers generally understand this. Nevertheless, this inaccurate wording creates confusion and could encourage businesses to value their stock incorrectly, leading to an inaccurate assessment of income.

89. We recommend an amendment to clarify the livestock that is subject to the valuation provisions. Stakeholders CA ANZ and Federated Farmers have expressed support for this clarification.

90. For greater certainty we plan to backdate the provision to 1 April 2008, the date the relevant provision was introduced. However, we will discuss the proposed wording and application date with key stakeholders prior to the Bill being introduced.

Recommendations

Agree that the introductory wording of the livestock valuation provisions describing what livestock is covered by subpart EC of the ITA be revised to better reflect the actual intended coverage of those valuation provisions.

Agreed/Not agreed

Agree to this amendment applying with retrospective effect from 1 April 2008.

Agreed/Not agreed

Agree that this application date could be subject to change (reducing the extent of retrospectivity) prior to introduction following discussions with our key stakeholders.

Agreed/Not agreed

Process for challenging civil penalties unrelated to tax

91. The Commissioner has discretion to impose a range of different civil penalties that are unrelated to tax. For example, the Commissioner can impose penalties on financial institutions that do not report information to Inland Revenue, which is required under the Common Reporting Standard. The Commissioner can also impose penalties on trustees of foreign exemption trusts when they fail to register with, or provide information to, Inland Revenue.

92. These penalties are subject to the disputes and challenge processes in the TAA. This means a person who is assessed with a penalty can dispute it with Inland Revenue and challenge it through the High Court or the Taxation Review Authority (TRA). To challenge an assessment, the person must initiate the challenge within prescribed timeframes in the TAA. However, for civil penalties unrelated to tax, this timeframe is not clear.

93. We recommend minor legislative amendments to clarify that a penalty can be challenged within two months of the Commissioner issuing a challenge notice. A challenge notice marks the end of the disputes process and informs the disputant that the next step in the process is to initiate challenge proceedings in the High Court or with the TRA. This would mean the same challenge process applies to these penalties as currently applies to tax.

Recommendation

Agree to amendments clarifying that a person can initiate challenge proceedings within two months of receiving a challenge notice for a civil penalty that is unrelated to tax.

Agreed/Not agreed

Filing obligations of exempt entities

94. Entities that only derive exempt income, such as a charity, are currently required to file an annual income tax return. This obligation is due to a drafting error and does not align with the policy intent.

95. Accordingly, we recommend a minor amendment to ensure that entities that only derive exempt income are not required to file an annual tax return.

Recommendation

Agree to clarify that entities that only derive exempt income are not required to file an annual tax return.

Agreed/Not agreed

Taxation of extra pay when employment ends

96. The Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 inserted a new mechanism for taxing extra pay arising from the ending of employment. This new mechanism will take effect from 1 April 2025 and is intended to improve accuracy in the taxation of extra pay. Essentially, this new mechanism will require providers to look back to the last two pay periods for which payment was received, rather than sum up PAYE payments received over the preceding four-week period.

97. However, payroll providers have asked that a further remedial amendment be made to ensure that any additional extra pay that is paid at the same time as an amount arising from the ending of employment can be taxed in the same way.

98. This will reduce compliance costs for payroll providers by ensuring that amounts of extra pay arising from different causes do not need to be taxed differently when they are paid concurrently as part of a final payment.

Recommendation

Agree that employers can apply the same tax treatment to amounts of extra pay that are paid together when one of the amounts of extra pay arises from the ending of an employee's employment.

Agreed/Not agreed

Failure by Commissioner of Inland Revenue to respond to taxpayer statement of position

99. The TAA contains dispute procedures and allows taxpayers to issue the following forms to Inland Revenue:

    99.1 *a Notice of Proposed Adjustment (NOPA):* This allows a taxpayer to formally dispute one or more tax assessments, and

    99.2 *a Statement of Position (SOP)*: This allows a taxpayer to finalise their argument in a dispute after they receive a disclosure notice from Inland Revenue.

100. There are specific timeframes that govern when a taxpayer is required to send the relevant form to the Commissioner, and when the Commissioner is required to respond to the taxpayer. When the Commissioner fails to respond to a NOPA initiated by a taxpayer within two months or fails to issue a challenge notice within four years, the Commissioner is deemed to have accepted the taxpayer's position.

101. However, the same time frame does not apply when a taxpayer issues an SOP. When the Commissioner fails to respond within the required two-month timeframe, there is no consequence in the form of deemed acceptance.

102. We recommend that the consequence of the Commissioner failing to respond to an SOP issued by a taxpayer within the required two-month response period also result

in "deemed acceptance". This will align the SOP process with other dispute processes and will reduce the number of unresolved cases.

Recommendations

Agree that the Commissioner be deemed to have accepted a taxpayer's position when the Commissioner fails to respond to the taxpayer's statement of position within two months.

Agreed/Not agreed

Agree that this amendment should apply from 1 April 2025.

Agreed/Not agreed

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Recent August Bill Consultation

Date:	17 May 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/206

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Note** the contents of this report	24 May 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Josh Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

17 May 2024

Minister of Revenue

Recent August Bill Consultation

Executive summary

Purpose

1. Inland Revenue recently consulted with members of the Tax System Forum (TSF) on a provisional list of content for the 2024–25 Annual Rates Bill (the Bill).[1] Specifically, we asked TSF members whether the proposed policy and remedial items are consistent with the Government's focus on reducing compliance costs and increasing productivity.

Results of consultation

2. TSF members were generally supportive of the proposals. Themes from consultation included:

Policy items

- Members supported the generic response to emergency events proposal on the basis that this will create efficiencies for Inland Revenue and taxpayers by reducing the need to create a bespoke response each time an event occurred.
- Members noted the Crypto-Asset Reporting Framework (CARF) is an OECD requirement, but felt this would create compliance costs that should be considered when setting the framework's implementation date.
- s 9(2)(f)(iv) .

Remedial items

- The number of remedial items was well received. Members suggested the remedial items struck a balance between assisting Inland Revenue and taxpayers, and would improve certainty within the tax system. None of the items appeared inconsistent with the Government's objectives.
- Members felt it was unlikely that the remedial items would (in themselves) substantially reduce compliance costs or increase productivity.
- Two members felt care should be taken to ensure that base maintenance measures are described as addressing integrity or base maintenance rather than compliance costs or productivity.

[1] Our communication to the TSF noted that the list of potential Bill content was not intended to be exhaustive and was subject to the caveats included in that document. In particular, we noted that additions or subtractions to the list of potential Bill content could be required as further resourcing information became available.

Next steps

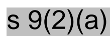
3. We will shortly be providing you with further reports seeking your agreement (and where applicable, that of the Minister of Finance) to the inclusion of policy and remedial items in the Bill. Where appropriate, these reports (seeking approval) will respond to the TSF members' comments where they relate to specific remedial or policy items. We do not propose to add or remove items based on feedback received to date.

Recommended action

We recommend that you:

1. **Note** the contents of this report.

Noted


s 9(2)(a)

Josh Fowler
Bill Manager
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Purpose

4. This report provides you with the results of consultation with the Tax System Forum (TSF).

Background

5. On 17 April 2024 (IR2024/168 refers) you directed Inland Revenue to consult with members of the TSF on the content of the Bill. You will recall the TSF members, and their affiliations, are as follows:

No.	Member	Organisation/Occupation
1	s 9(2)(a)	
2		
3		
4		
5		
6		

6. Accordingly, on 22 April, we provided the TSF with a list of policy and remedial items that are under consideration for inclusion in the Bill. Specifically, we asked for the members' views on whether the items are consistent with the Government's focus on reducing compliance costs and productivity. Responses were received from all members.

7. We have sought to summarise the key themes and comments of members below.[2] However, for completeness, we can provide you with a copy of the original emails if you wish.

8. We have provided the TSF members' comments to the advisors associated with the relevant projects for their review. Overall, we think allowing the TSF to review and comment on a provisional list of content in the Bill has been an efficient way of gauging likely stakeholder perspectives.

Themes from consultation

Comments on policy proposals

9. Specific comments on policy proposals included:

Generic emergency response

- The generic emergency response work will create efficiencies by avoiding extra work for Inland Revenue and taxpayers each time an emergency occurs. s 9(2)(a)
- This proposal will provide some certainty of support to taxpayers which should at least maintain, if not support, productivity. s 9(2)(a)

[2] Some paraphrasing and consolidation of members comments has occurred in the course of compilation.

s 9(2)(f)(iv)

- s 9(2)(f)(iv) s 9(2)(a)

- s 9(2)(f)(iv) s 9(2)(a)

- s 9(2)(f)(iv) s 9(2)(a)

Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard

- Although this is required for New Zealand's international obligations, this item would increase compliance costs for taxpayers particularly where it involves changes to systems and processes. s 9(2)(a)

- The lead time required for taxpayers to implement any systems/process changes should be taken into account in setting the application date. s 9(2)(a)

- This will provide good data to Inland Revenue, but may also increase compliance for reporting by crypto-asset service providers. We assume this also ensures alignment with other OECD countries who adopt the framework. s 9(2)(a)

Approved issuer levy (AIL) retrospective legislation

- Although this item will reduce compliance costs and increase productivity, it would be good to understand what circumstances are contemplated for the availability of retrospective legislation. s 9(2)(a)

- This will provide some flexibility to business that should increase productivity (or at least would not effectively be an 8% or 13% additional cost due to late registration). (s 9(2)(a)

Enrolling individuals under 16 into KiwiSaver with the signature of one guardian

- Although this may not be compliance or productivity related, it is a good idea to ensure all children can easily be enrolled in KiwiSaver. A related item that has been discussed lately is whether KiwiSaver enrolment should be automatic. s 9(2)(a)

Comments on remedial items

10. The TSF members observed the strong focus on remedial matters among the items under consideration. Members' comments included:

General remedial comments

- Remedial measures are necessary to keep tax laws working as intended. Arguably not enough attention has been given to remedial measures in the recent past. However, the remedial package seems balanced between

measures that will benefit Inland Revenue and those that will benefit business.[3] s 9(2)(a)

- While some proposals are likely to be welcomed by business and advisors (eg, allowing retrospective registration for AIL) it is unlikely that people will see the current set of measures as having a substantial impact on compliance costs or productivity. s 9(2)(a)
- None of the items look highly controversial or clearly inconsistent with the Government's simplification and productivity objectives. s 9(2)(a) s 9(2)(a)
- These appear sensible remedial measures that will, on the whole, reduce some compliance costs and may have some productivity benefit. s 9(2)(a)
- The proposals do not appear contentious, and taxpayers will welcome the remedial amendments. These will reduce uncertainty and compliance costs and are an essential part of the GTPP process. s 9(2)(a)
- It is important for credibility that base maintenance measures (such as proposals related to Foreign Tax Credits on trusts and limited partnership associations) should be described as base maintenance or integrity measures rather than compliance cost reduction or productivity measures. s 9(2)(a) s 9(2)(a)

Specific remedial proposals

Share lending

- In theory, aligning this would simplify compliance and costs. It is important to ensure this is not used to gain an unintended advantage. s 9(2)(a)

Platform economy – special time of supply rule for accommodation

- This will defer compliance rather than reduce it. This will likely be welcomed given the deferral should have a temporary positive cash impact. s 9(2)(a) s 9(2)(a)

Trusts and foreign tax credits (FTCs)

- There is a risk that this proposal may require complex rules to fix a relatively small and targeted problem. It is important to ensure that we keep our FTC rules simple and consistent with our double tax agreements. Consultation on the FTC rules more generally would be preferred. s 9(2)(a)

NRWT and transfer pricing

- If there is a transfer pricing adjustment, the affected taxpayer should be able to attach imputation credits and supplementary dividends that would reduce withholding tax if it had been paid as a normal dividend. s 9(2)(a)

Motor vehicles

- This appears to raise similar issues to when a car is used for business or private use s 9(2)(f)(iv) 9(2)(a)

[3] s 9(2)(a) also felt it would be useful to explain why the current set of remedial items were prioritised over others when the Bill is introduced.

- This makes sense, s 9(2)(f)(iv) s 9(2)(a)

Limited partnerships and RWT exempt status

- Does this item cover changes to clarify whether look-through treatment applies to payments to limited partnerships? This is an area on which clarification is needed and where policy should align with market practice. There should be appropriate grandfathering for prior positions, given uncertainty, as well as an adequate lead time for payers and limited partnerships to implement any required changes. s 9(2)(a)

Repeal of land spreading provision

- Further consultation may be required, but option (a) seems to be an evolution of the rule that allows for the intended application, whereas option (b) would be a step away from the rule altogether. Not sure how widely this will have an impact, but not being able to spread on a non-compulsory purchase would make sense (aligned with wider land rules). s 9(2)(a)

Next steps

11. We will shortly be providing you with further reports seeking your agreement (and where applicable, that of the Minister of Finance) to remedial and policy items. The approximate dates for these reports are:

23 May 2024

- *Draft omnibus Cabinet paper:* This report will seek approval to include policy items in the omnibus policy Cabinet paper.

6 June 2024

- *Remedials with fiscal implications:* This report will seek approval to include remedial items with fiscal implications in the Bill at introduction.

- *Additional non-fiscal remedials:* This report will seek approval to include further non-fiscal remedial items in the Bill at introduction. This supplements a report sent to you on 9 May 2024 (IR2024/092 refers).

12. Where appropriate, the above reports seeking approval will respond to the TSF members' comments where they relate to specific remedial or policy items. We do not propose to add or remove items based on feedback received to date.

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Portfolio Investment Entity eligibility

Date:	21 May 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/189

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	6 June 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Catherine Milner	Senior Policy Advisor	s 9(2)(a)

21 May 2024

Minister of Revenue

Portfolio Investment Entity eligibility

Executive summary

1. This report seeks your agreement to amendments to the eligibility rules for Portfolio Investment Entities (PIEs) to ensure they are consistent with the policy intent. These changes should be included in the next omnibus tax Bill, which is scheduled for introduction in August 2024.

2. A PIE is a collective investment vehicle that must have as its principal activity the provision of investment and savings services. The intention of the PIE regime is to encourage investors to invest through collective investment vehicles, by providing the same tax outcomes that would have occurred if they had invested directly. The PIE rules contain certain beneficial tax settings for savings and investment. Therefore, the PIE rules contain strict eligibility requirements designed to distinguish genuine savings and investment vehicles from other entities.

3. Inland Revenue has recently become aware of situations where there is uncertainty or where attempts are being made to use PIEs for activities that are not within the policy intent. Therefore, we are proposing amendments be made to ensure the PIE rules are consistent with the policy intent. Officials have undertaken targeted consultation on these proposed amendments. The recommendations in this report reflect the feedback from that consultation.

4. Three amendments are proposed:

   4.1 The first amendment proposes to amend the PIE eligibility criteria to exclude a "licenced deposit taker" (i.e. registered banks and finance companies). Banks and finance companies are not, themselves, vehicles for savings and investment. This amendment would apply from 1 April 2025.

   4.2 The second amendment would clarify that income derived from the activities of developing or dividing land, or erecting buildings on land for sale is not eligible PIE income. These are not activities that are generally expected to be undertaken by savings and investment vehicles. This amendment would apply from 1 April 2025, with a transitional provision that would allow existing PIEs to continue to apply the current law (which could be subject to dispute by Inland Revenue) until 31 March 2030 in relation to any land owned before 1 April 2025.

   4.3 The third amendment would clarify that active business income cannot be channelled into a PIE by way of an interest payment from an associated person. This prevents a single business splitting into a PIE and a non-PIE with common ownership that takes advantage of the PIE rules in a way the single business would be unable to. This aligns with earlier amendments that ensure that rental income derived from an associated person is not eligible PIE income. This would be subject to some exceptions, for example where the associated entity is also PIE. This amendment would apply from 1 April 2025, with a transitional provision that would allow existing PIEs to continue to apply the current law (which could be subject to dispute by Inland Revenue) until 31 March 2030 in relation to interest income from a loan that was entered into, renewed, extended or renegotiated before 1 April 2025.

5. These proposals are not expected to have any fiscal or administrative implications.

Recommended action

We recommend that you:

Licenced deposit takers

1. **agree** that a licenced deposit taker should not be eligible to be a PIE.

   Agreed/Not agreed

2. **agree** that recommendation 1 should apply from 1 April 2025.

   Agreed/Not agreed

Land developers

3. **agree** that income derived from developing or dividing land, or erecting buildings on land for sale should be excluded from being eligible PIE income.

   Agreed/Not agreed

4. **agree** that recommendation 3 should apply from 1 April 2025 except where recommendation 5 below applies.

   Agreed/Not agreed

5. **agree** that recommendation 3 should apply from 1 April 2030 for income derived from land acquired by an existing PIE before 1 April 2025.

   Agreed/Not agreed

Associated interest

6. **agree** that interest income received from an associated person should not be eligible PIE income, unless:

   6.1 the interest is received from an entity that is a PIE or eligible to be a PIE;

   6.2 the entity paying the interest is associated but does not have common voting interests and/or common market value interests; or

   6.3 the PIE has borrowed from a third party then on-lent the same or a lesser amount on the same terms to the associated party.

   Agreed/Not agreed

7. **agree** that recommendation 6 should apply from 1 April 2025 except where recommendation 8 below applies.

   Agreed/Not agreed

8. **agree** that recommendation 6 should apply from 1 April 2030 for interest income on a loan most recently entered into, renewed, extended or renegotiated before 1 April 2025.

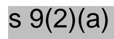
   Agreed/Not agreed

9. **agree** that the changes above be included in the omnibus tax Bill scheduled for introduction in August 2024.

   Agreed/Not agreed

10. **note** that these recommendations do not have a fiscal impact.

   Noted



Paul Fulton
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Purpose

6. This report seeks your agreement to amendments to the eligibility rules for Portfolio Investment Entities (PIEs) to ensure they are consistent with the policy intent. These changes should be included in the next omnibus taxation Bill, which is scheduled for introduction in August 2024.

Background

7. A PIE is a collective investment vehicle that must have as its principal activity the provision of investment and savings services[1]. The intention of the PIE regime is to encourage investors to invest through collective investment vehicles, by providing the same tax outcomes that would have occurred if they had invested directly. The PIE rules were introduced in conjunction with KiwiSaver, with the intention that, if employees are encouraged to save through work-based savings, the earnings from such investments should be taxed consistently and fairly.

8. The PIE rules contain certain beneficial tax settings for savings and investment. One of these is that investors are taxed at their marginal tax rates capped at 28%. Therefore, the PIE rules contain strict eligibility requirements.

9. The PIE eligibility criteria are designed to distinguish genuine savings and investment vehicles from other entities. Commentary on the introduction of the rules is clear that an important eligibility requirement is that a PIE must have the majority of its assets employed in deriving what is typically known as passive income (such as income from trading shares, dividends, land and rents).

10. Inland Revenue continues to monitor this boundary to ensure that the PIE rules cannot be accessed by entities that are active businesses in themselves and therefore outside the policy intent. We have recently become aware of situations where there is uncertainty or where attempts are being made use PIEs for activities that are not within the policy intent. Therefore, we are proposing that amendments be made to provide more certainty.

Consultation

11. Officials have undertaken targeted consultation on these proposed amendments between February and April 2024. Nine submissions were received. The recommendations in this report are made after consideration of the feedback from that consultation.

12. Many submitters suggest that a more comprehensive review of the PIE rules should be undertaken, or that the proposed amendments are not consistent with the original policy intent. Officials have reviewed the original policy documents in relation to these rules and are confident that a more comprehensive review is unnecessary and that the proposed amendments do align with the original policy intention for PIEs. Officials consider, especially given the long-term nature of many PIE investments, that the eligibility criteria remain as consistent as possible over time and that the proposed amendments support that.

Deposit takers

13. A person who has a business of borrowing and lending has recently received a binding ruling confirming that it is eligible to become a PIE. As stated above, the PIE rules were not designed for deriving active income, such as the income of banks, finance companies and other similar entities. However, under the current eligibility

[1] Defined by the proportion of its underlying assets that are used to derive specified investment income.

requirements this particular entity could qualify to become a PIE. This is because a its investments, being primarily debt instruments, and its income, being primarily interest, would satisfy the eligibility requirements.

14. We do not consider that this is consistent with the policy intent that only passive savings vehicles can be PIEs. A deposit taker carries on an active business through activities such as choosing whether to lend to another person based on their credit quality, managing repayments and undertaking recovery action where required. We consider this can, and should, be distinguished from activities such as a fund manager choosing where to allocate funds to pre-existing investment choices. While a bank or finance company's income is technically interest (which is passive income), the income is, in substance, profit derived from carrying on a business of borrowing and lending. On that basis, a deposit taker does not, in substance, derive the passive income that is intended for PIEs.

15. To address this issue, we propose to amend the PIE eligibility criteria to exclude a "licenced deposit taker", as defined in the Deposit Takers Act 2023, from the PIE rules. A "licenced deposit taker" is, essentially, a person carrying on a business in New Zealand of borrowing and lending money that is licenced under the Deposit Takers Act. This will exclude banks and other finance companies that borrow money to carry on similar activities. The Deposit Takers Act is not expected to come into effect until approximately 2028. Therefore, we recommend extending this definition to include a registered bank under the Banking (Prudential Supervision) Act 1989 and a licensed NBDT under the Non-bank Deposit Takers Act 2013 during the transitional period. This would be consistent with other legislation in this area.

16. Submissions on this proposal mostly agreed that it is not the intention of the PIE regime that a deposit taker could itself become a PIE. However, concerns were raised around the appropriateness of referring to a definition in the Deposit Takers Act 2023. In particular, there were questions around whether the definition could accidentally catch legitimate PIE activities, including the Cash PIEs offered by many major banks.

17. We have discussed these proposals with the Reserve Bank of New Zealand (RBNZ). It is not our intention to restrict availability of Cash PIEs and the RBNZ has confirmed that Cash PIEs would not be covered by the deposit takers definition. They have also confirmed that they are working on substantial guidance on the definition of deposit takers. To provide further clarity, we have followed their suggestion to refer to licenced deposit takers. Doing so allows the RBNZ to make the ultimate decision on whether an entity meets the definition of a deposit taker as part of the licencing process, which would remove any confusion. We note that it is an offence under the Deposit Takers Act to carry on business as a deposit taker without a licence, such that a PIE who was not aware they were a deposit taker would also be in breach of the Deposit Takers Act.

18. We note that there are already a number of PIEs, including KiwiSaver funds, that carry on mortgage lending activities. These PIEs would not be captured by this change because they are equity funded, rather than debt funded (ie, they only carry on a business of lending, not of borrowing and lending). Allowing these PIEs to continue could be seen as inconsistent with this proposed change. However, the reliance on equity funding means there are differences in how these activities operate and we consider that it would not be appropriate to prevent these entities from being PIEs at this stage.

Application date

19. We recommend that this proposed change should apply from 1 April 2025. We are not aware that our proposals will prevent any existing PIEs from being PIEs. A possible exception is if the business that holds the binding ruling applies to be a PIE prior to any law change; however, in this circumstance them being removed from

being a PIE from 1 April 2025 would continue to be appropriate. Therefore, no grandparenting provision is recommended.

Land development

20. Recent ruling applications have attempted to obtain confirmation that PIEs can carry out land development activities for sale. This is on the basis that eligible PIE income currently includes income from selling specified assets, which includes land.

21. It has always been intended that PIEs can hold land to derive passive rental income. As part of that activity, we consider that PIEs can develop land and erect buildings that will be used to derive rental income. It is also accepted that PIEs that carry on a rental activity can sell their land as part of rebalancing their portfolios even when that land sale is taxable (which is why the current rules allow income from selling land to be qualifying PIE income). However, income derived from developing land for sale is active, not passive, income. Therefore, we do not consider that it was intended that such income should be derived by PIEs.

22. The Commissioner's current view of the law applies this active/passive distinction and concludes that income derived from developing land for sale is not eligible PIE income. However, this view has been expressed in the context of private ruling applications and has not been stated publicly. Therefore, we recommend that the law be amended to clarify that income from developing land for sale is not eligible PIE income.

23. Most submissions on this issue accepted that income from developing land for sale should not be eligible PIE income. However, some submitters did disagree. The major concerns raised by submitters related to the scope and clarity of such an amendment. Submitters were concerned that sales of rental properties as part of rebalancing a portfolio could be caught. As stated above, this is not our intention. In addition, submitters raised concerns that there was a lack of clarity on the activities that were of concern. Our original proposal was to capture income derived by PIEs carrying on a business of dealing in land, developing land or dividing it into lots, or erecting buildings on land, which is currently taxed under section CB 7 of the Income Tax Act 2007. Some submitters were concerned that this was too narrow. Others wanted clarification that income taxed under other provisions would not be caught by the proposed amendment.

24. Having considered these submissions we consider that it would be more appropriate to exclude the specific activities of developing or dividing land, or erecting buildings on land for sale, rather than referring to any specific provision. This better targets the activities we are concerned with. Specific land taxing provisions determine whether land should be subject to tax upon sale which is a different consideration to whether it should be eligible PIE income and are also designed to operate collectively rather than as a single stand-alone provision.

Application date

25. We consider that this proposed amendment is merely a clarification of the existing position, rather than a change in the law. However, as stated above, the Commissioner's current view of the law is not publicly available and has not been tested by the courts. Therefore, we recommend that a transitional provision be included for this amendment, which would allow existing PIEs to continue to apply the current law (which could be subject to dispute by Inland Revenue) until 31 March 2030 in relation to any land owned before 1 April 2025. This will ensure that no PIEs are removed from the PIE rules as a result of these changes and, to the extent they are non-compliant with the amended law (and also the Commissioner's view of the current law), would have time to complete or restructure away from those activities.

26. For other PIEs, and land purchased after that date, we recommend the proposed amendment should apply from 1 April 2025.

Associated interest

27. In 2009 the eligibility requirements were amended to ensure that income received from leasing land to an associated person would not be eligible PIE income. The intention of this amendment was to ensure that active business income could not be channelled into a PIE by an associated person as this was seen to be inconsistent with the policy.

28. The same result can be achieved by a PIE lending to an associated person carrying on an active business and receiving interest income from that associated person that is essentially a transfer of active income into the PIE. Therefore, we propose to amend the rules to also exclude interest income from an associated person.

29. Submitters did not raise any concerns with the underlying premise of the proposal. However, some were concerned that entities that had arrangements with associated parties that were not for the purpose of transferring active income into a PIE could be inadvertently affected by this proposal. We note that due to the ownership requirements within a PIE it is very unlikely an entity will be associated with a PIE unless the PIE has taken active steps to achieve this such as stapling a PIE to a non-PIE so the ownership is identical.

30. We recommend the original proposal that interest income from an associated party is not eligible income is narrowed so that a PIE will continue to be able derive interest income from an associated party in the following circumstances:

    30.1 Where the interest is received from an entity that is eligible to be a PIE – in these circumstances no active income can been transferred into a PIE because neither entity is able to derive active income.

    30.2 Where the PIE and the entity paying the interest are associated but do not satisfy the associated person requirements of having common voting interests and/or common market value interests – this will reduce compliance costs of entities that do not have the same owners but may be controlled by the same people, eg potentially a Cash PIE operated by a bank.

    30.3 Where the PIE has borrowed from a third party then on-lent the same or a lesser amount on the same terms to the associated party – this will allow a PIE to continue to act as a financing intermediary rather than associated entities having to borrow separately.

Application date

31. As with the land development proposals we consider that this proposed amendment is merely a clarification of the existing position, rather than a change in the law. However, this has also not been tested by the courts and we are aware of legitimate structures near to this boundary which we do not intend to affect. Therefore, we recommend that a transitional provision be included for this amendment, which would allow existing PIEs to continue to apply the current law (which could be subject to dispute by Inland Revenue) until 31 March 2030 in relation to interest income from a loan that was entered into, renewed, extended or renegotiated before 1 April 2025. This will ensure that no PIEs are removed from the PIE rules as a result of these changes and to the extent they are non-compliant with the amended law (and also the Commissioner’s view of the current law) would have time for those arrangements to mature or to restructure away from those arrangements.

32. For other PIEs, and loans entered into, renewed, extended or renegotiated after that date, we recommend the proposed amendment should apply from 1 April 2025.

Other submissions which officials do not support

33. While not part of our targeted consultation proposals, several submitters made submissions on two proposals which officials do not support.

34. A land developer can have inconsistent income, with some periods having low income and others where land is sold having relatively high income. The PIE eligibility rules do not include a mechanism to spread this income, such as across the period the development took place. Officials do not support introducing a spreading provision. The 90% eligible income threshold is intended to prevent a PIE from breaching the eligibility criteria when they inadvertently or unavoidably derive ineligible income. Introducing a spreading provision would implicitly endorse a PIE deriving ineligible income provided it was only a relatively small part of their overall activities.

35. Some submitters asked for the eligibility criteria to only be considered annually rather than quarterly to reduce compliance costs. Officials do not recommend this as it would reduce the integrity of the eligibility requirements. Officials also considered moving to an annual test for PIEs with a history of compliance but determined that this would increase complexity and compliance costs when compared with the status quo.

Financial implications

36. These recommendations have no financial implications because they are simply maintaining the current policy boundary, by clarifying the types of activities that were intended should be carried on by PIEs.

Administrative implications

37. These recommendations are not expected to have any administrative implications.

Next steps

38. Should you wish to progress this, the proposals would be included in the August 2024 omnibus tax Bill. We do not consider that the recommended changes in this report require Cabinet approval as they are consistent with the existing policy intent. Subject to your approval, the amendments would be included in the draft August 2024 omnibus tax Bill and Cabinet paper that would be considered by the Cabinet Legislation Committee to introduce the Bill.

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: Generic tax response for emergency events

Date:	22 May 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/200

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations **Refer** a copy to the Minister of Finance	29 May 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Geoff Leggett	Principal Policy Advisor	s 9(2)(a)
Samantha Putt	Policy Advisor	s 9(2)(a)

22 May 2024

Minister of Revenue

Generic tax response for emergency events

Executive summary

1. The report seeks your agreement to include in the upcoming omnibus tax Bill a generic set of response measures that can be selected from and activated when there is an emergency event.

2. This approach would still enable the tax response to be tailored to each event, with Ministers retaining the discretion over which, if any, measures to apply. Activation would then be primarily by Order in Council. This would mean it would not be necessary to amend primary tax legislation following a major emergency, as was required for the North Island flooding events and the Christchurch and Kaikōura earthquakes.

3. The measures enacted for those events would be used as the basis for the generic measures. We are also suggesting an additional power for very constrained tax information sharing to help other agencies providing assistance to individuals and businesses impacted by a national emergency.

4. This suggested approach would not affect the Commissioner of Inland Revenue's existing discretionary powers, which are often also used in an emergency.

5. These proposals respond to feedback from the Finance and Expenditure Committee (FEC) and stakeholders that the current process left both taxpayers and Inland Revenue in an uncertain position over many months while awaiting legislation to be considered and enacted by Parliament.

6. We have undertaken targeted consultation on this suggested process and the measures that it would cover with the key stakeholder groups that were consulted last year following the North Island flooding events (CA ANZ and other accounting groups, Federated Farmers, Corporate Taxpayers Group (CTG), Bankers Association) and government agencies that are likely to have an interest in this work. There is general support for the suggested changes.

7. This recommended new process has no fiscal impact because it would not involve automatically activating the measures for any future event. Ministers and Cabinet would still make those decisions and the fiscal cost of implementation would be considered at that time.

Next steps

8. If you agree that the changes should be included in the next omnibus tax Bill, the next steps include:

   8.1 The proposal would be included in an omnibus Cabinet paper for the August 2024 Bill to be considered at ECO on 19 June 2024.

   8.2 Implementation of the policy would occur on 1 April 2025.

9. We recommend that a copy of this report is referred to the Minister of Finance for their information.

Recommended action

We recommend that you:

a) **agree** to a generic set of tax relief measures for future emergency events for inclusion in primary legislation and activation primarily by Order in Council as set out in Table 1.

Agreed/Not agreed

b) **agree** that the measures include a very constrained tax information sharing power to assist other agencies providing assistance to individuals and businesses impacted by a national emergency, consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020.

Agreed/Not agreed

c) **agree** that the changes recommended in (a) and (b) be included in the omnibus tax Bill scheduled for introduction in August 2024.

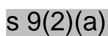
Agreed/Not agreed

d) **note** this recommended new process has no fiscal costs.

Noted

e) **refer** a copy of this report to the Minister of Finance for their information.

Referred/Not referred



Geoff Leggett
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Background

Context

10. Tax relief has been provided during emergency events and in the subsequent recovery phase depending on the nature of the event. Currently, these responses are initiated through a combination of Commissioner discretions, Orders in Council and primary legislative amendments.

11. There are timeliness and other efficiency issues with this process. In particular, amending primary legislation can be resource-intensive and creates uncertainty for taxpayers while the necessary Parliamentary approvals are obtained, which can take up to a year. Although each event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui-Kaikōura earthquakes, and the 2023 flooding events.

12. A more streamlined and timely process for initiating those measures that currently require primary legislation could be achieved by building the measures into the legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This would still leave Ministers with discretion over which measures to apply to a particular emergency.

13. Both the private sector and the FEC have recently suggested that consideration be given to this approach. The FEC specifically endorsed including the issue on Inland Revenue's work programme.

14. We propose including the new process and measures in the next omnibus tax Bill, with an effective date of 1 April 2025.

Current law

15. Current tax law enables responses through:

    Commissioner of Inland Revenue discretions for:

    - waiving late filing and payment penalties
    - early withdrawals from or late deposits into the income equalisation deposits scheme, and
    - the declaration of an event as an emergency event so support payments to relieve the adverse impacts of that event are not included as family scheme income for Working for Families purposes.

    Orders in Council for:

    - the remission of use of money interest (UOMI)
    - declaring certain support payments not to be taxable grants or subsidies for GST purposes
    - increasing tax write-off thresholds, and
    - extension of filing times for research and development tax credits.

16. Beyond this, further assistance requires amendments to primary legislation, usually the Income Tax Act 2007. This has been traditionally done when there is an unexpected tax liability that would not have arisen but for the event. Examples are the deferral of depreciation recovery income and turning off the application of the bright-line rules for local authority property buy-outs of residential properties.

Materiality

17. Major emergency events impact on thousands of individuals and business taxpayers. The 2023 North Island flooding events, for example, impacted a wide range of individuals and businesses across many regions of the North Island.

18. Leaving these taxpayers in a state of uncertainty over their tax positions while they await enactment of certain tax measures adds to their stress following the event and can lead to a less efficient recovery. It also ties up Inland Revenue resources that could be used on other government priorities.

19. This inefficient process could become increasingly problematic if there are an increasing number of emergency events arising from climate change.

Problem definition

20. A timelier and more efficient process for enacting certain tax measures is needed following an emergency event, to give affected taxpayers earlier certainty over their tax positions and the assistance they will receive. The current process of needing to amend primary legislation for certain measures also ties up Inland Revenue resources and adds to administrative costs.

Risks

21. Some of our recommended measures would result in the Commissioner of Inland Revenue having more discretionary powers. There is the risk of delegating too much executive power to Inland Revenue. This risk can be mitigated by retaining Ministerial discretion to activate the generic response by Order in Council and clearly prescribing the circumstances under which the discretions can be used.

22. There is the risk that having generic provisions in legislation would raise expectations that the measures would be applied after every emergency when that may not be necessary. Again, Ministerial discretion helps to manage this risk by signalling that activation is not automatic.

Consultation

23. Some submissions on the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill advocated a more generic approach for emergency events and the FEC recommended this as an area for Inland Revenue to consider in the future.

24. We have also undertaken targeted consultation on the recommended new process and the measures that it would cover with the key stakeholder groups that were consulted last year following the North Island flooding events (CA ANZ and other accounting groups, Federated Farmers, CTG, Bankers Association) and government agencies that are likely to have an interest in this work (Ministry for Primary Industries, Ministry of Social Development, Department of Internal Affairs, Parliamentary Council Office and the Office of the Privacy Commissioner). Feedback has generally been supportive.

Recommended solution

25. We recommend using tax measures used in past major emergency events as the basis for the generic measures. Those measures have proven to be useful to the affected taxpayers.

26. We are recommending a 'step-down' approach, where measures generally move down a stage in the authorisation process. A measure that is currently enacted through primary legislation would become activated by an Order in Council. It would also mean one current Order in Council mechanism – remission of UOMI – would become a Commissioner of Inland Revenue discretion. However, in that case the Commissioner would still be restrained by legislative criteria and would not be obligated to exercise those powers.

Emergency event definition

27. It would be appropriate to rely on the existing definitions of "emergency" and the declarations of an emergency under other legislation, rather than creating a new definition for income tax purposes. There are existing definitions for local and national emergencies under the Civil Defence Emergency Management Act 2002. Using the existing Government-wide definition would mean Inland Revenue's responses would be compatible with a cross-agency response to emergency events. This definition distinguishes national and local emergencies, while still accommodating both types of emergency events. Primary industry biological events (e.g. foot and mouth, Mycoplasma bovis) covered by the Biosecurity Act 1993 should also be included in the definition.

28. A national state of emergency has been declared three times in New Zealand, in response to:

- the February 2011 Christchurch earthquake
- the COVID-19 pandemic, and
- Cyclone Gabrielle flooding.

29. Setting the definition at the level of only a national state of emergency would be a too high threshold and would preclude many events for which emergency tax measures have previously been provided.

30. Some events, such as a drought or a very localised event, have required fewer measures and have been largely handled through Commissioner discretions. We envisage a continuation of that process. However, widespread and/or protracted events have needed a wider set of measures irrespective of whether they were declared a national or local emergency, which means the proposed generic measures need to cover both.

Recommended measures

31. The relevant responses can be decided at the time rather than being automatically activated or triggered by an emergency event. It is important to note this distinction because the definition of emergency would, therefore, simply set the boundary as to what events might ultimately lead to activation of tax measures but would not guarantee activation. Ministerial decisions would still be required, and Orders in Council made, for situations not covered by Commissioner discretions.

32. The measures recommended for inclusion in the generic response are set out in Table 1. Based on past experience they would have only a minimal fiscal impact if activated. The one Order in Council power that we are suggesting be delegated to the Commissioner of Inland Revenue (the discretion to waive UOMI) would not involve any fiscal implications when activated.

33. Other measures considered included the carry back of losses, an option available during COVID-19 and suggested by some submitters. However, based on its application during COVID-19, the carry back of losses proved to be complex and few taxpayers used it. It could also have a material fiscal cost depending on the

nature of the event. For these reasons it was not used as a North Island flood relief measure.

Table 1: Recommended generic measures

Measure	Current mechanism	Proposed mechanism
Taxation rollover relief for: • revenue account property • depreciable property • amortisable land improvements	Primary legislation	Order in Council
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council
Capped employer payments and fringe benefits, and extended tax-free accommodation period	Primary legislation	Order in Council
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council
Turning off the bright-line test and other time-based land sale rules	Primary legislation	Order in Council
Information sharing for a specific event	N/A (primary legislation during COVID-19 pandemic response)	Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards
Remission of UOMI	Order in Council	Commissioner discretion

Sharing of information in an emergency

34. The information that Inland Revenue collects as part of its tax and social policy function can be of use to other agencies responding to an emergency event. However, there is no permitted legislative disclosure provision that allows Inland Revenue to share this tax information with other agencies in such circumstances. In responding to the COVID-19 pandemic, a permitted disclosure provision was included in legislation, but this was specific to the pandemic and does not apply to other emergencies.

35. The confidentiality provisions of the Tax Administration Act 1994 preclude Inland Revenue from sharing information in such instances. To overcome this issue, we recommend a permitted disclosure provision be included in the Tax Administration Act giving the Commissioner of Inland Revenue a discretion to share tax information with other agencies (and parties used by those agencies) who need that information to help in delivering assistance in an emergency, provided certain safeguards are met. It would contribute to a whole-of-government response, help reduce the overall costs to the government and provide a timelier response in an emergency. This would be activated by an Order in Council that would only apply for the specific emergency event.

Safeguards

36. The information sharing would need to be in relation to a national emergency. This would be consistent with the ability that other agencies have to share information under the Civil Defence National Emergencies (Information Sharing) Code 2020. This code is made under the Privacy Act 2020 and provides a reasonably wide power to share personal information but only for national emergencies. Inland Revenue’s sharing of information would need to be consistent with that code. This would not preclude our undertaking work with the Office of the Privacy Commissioner at a later stage on the appropriateness of extending this treatment to other declared emergencies. From our perspective, it would be preferable for the code to cover a wider range of emergencies given that the 2023 Auckland floods were not initially declared a national emergency.

37. Various other safeguards are also suggested:

    - The Commissioner would need to be satisfied about the integrity of the party that has requested the information, and that the information was readily available.

    - The Order in Council would enable the sharing of information for only as long as is necessary to fulfil the purpose of the information requests for that event, and would need to be within the time limitations set by the Civil Defence National Emergencies (Information Sharing) Code 2020 (i.e. up to 20 working days after the end of a state of emergency).

    - It would require a Memorandum of Understanding (MOU) to be drawn up between the Commissioner and the party who requested the information (if an MOU is not already in place) specifying the information to be shared.

Other options considered

38. We considered the idea of introducing a generic response for any emergency event, rather than just national and local emergencies; for example, when a factory is destroyed by fire. Arguably this would be more equitable across taxpayers rather than differentiating based on the scale of a disaster. An individual taxpayer affected by an event specific to them or just a few other taxpayers could equally have depreciation recovery income for example. However, this is not our preferred option for two reasons.

39. First, it would be difficult to define and substantiate the scope of what would qualify as an emergency in that situation. Second, it would require a policy change, which would require extensive public consultation that is not possible in the current timeframe. To date, stakeholders have identified major emergencies as the priority.

Conclusion

40. Officials recommend introducing a generic set of tax measures for emergency events that can be activated primarily by Orders in Council. The proposed measures are compiled from frequently used provisions from past major emergency events that have proved effective for taxpayers.

Financial implications

41. The recommended new process would not have a fiscal impact because it would not involve automatically activating the measures for any future event. Ministers

and Cabinet would still make those decisions and the fiscal cost of implementation would be considered at that time.

42. The recommended new process should generally reduce administrative costs because activation by Order in Council is a simpler process than amending primary legislation. The recommended new information sharing power would, however, involve some additional administration given that more information is likely to be shared and would involve drafting and agreeing MOUs. Overall, this would not have an impact on baselines.

Next steps

43. If you agree to the new process, we recommend that it be included in the next omnibus tax Bill, scheduled for introduction in August 2024.

44. We recommend that a copy of this report be referred to the Minister of Finance for their information.

Policy and Regulatory Stewardship
Kaupapa me te Tiaki i ngā Ture
55 Featherston Street
PO Box 2198
Wellington 6140
New Zealand

T. 04 890 1500

Briefing note

Reference: BN2024/223

Date: 4 June 2024

To: Revenue Advisor, Minister of Finance – Emma Grigg
Revenue Advisor, Minister of Revenue – Lonnie Liu
Private Secretary, Minister of Revenue – Helen Kuy

From: Richard McLaughlan

Subject: **Cover note – Omnibus Cabinet Paper**

Purpose

1. This briefing note provides you with information about the policy items proposed in the draft cabinet paper in the 2024 omnibus taxation Bill (the Bill).[1] This information includes:

    - An overview of the costs of the policy items,
    - A brief description of the policy items, and
    - A brief overview of their associated Regulatory Impact Statement (where required), and any points of note.

2. This briefing note also summarises the next steps for the Bill process.

Fiscal costs of the items

3. The table below sets out the fiscal implications of the policy items included in the draft Cabinet paper, and how these costs will be recognised:

Policy item	Fiscal cost	How it is recognised
Setting the annual income tax rates for 2024-25	Nil	Nil
Qualifying registered overseas pension schemes	$2 million over the forecast period	Charged against the Tax Policy Scorecard
Approved issuer levy retrospective registration	$0.65 million over the forecast period	Charged against the Tax Policy Scorecard
Exempt employee share scheme threshold increase	$0.16 million over the forecast period	Charged against the Tax Policy Scorecard
New Zealand business number information sharing provision	Nil	Nil
Charities recommended for overseas donee status	Fiscal cost of $2.1 million over the forecast period	Treated as a forecasting change and reflects the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations.

[1] s 9(2)(f)(iv)

Enrolling young persons under 16 into KiwiSaver with the signature of one guardian	Nil	Nil
Crypto-asset reporting framework and amendments to common reporting framework	Increases tax revenue by $50 million per annum from 2027	Agreed to as part of Budget 2024
Generic response measures for emergency events	Nil - The recommended new process would not have a fiscal impact because it would not involve automatically activating the measures for any future event.	Nil

Policy items

4. A brief summary of the items included in the draft 2024-25 Omnibus Cabinet Paper (draft Cabinet Paper) is below. If approved by Cabinet, these items will be included in the Bill at introduction.

Setting the annual income tax rates for 2024-25

Overview

5. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act. This policy proposes setting the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the upcoming changes to be legislated as part of Budget 2024).

Regulatory impact assessment

6. The Ministry for Regulation has confirmed that the proposal to set the annual income tax rates for the 2024–25 tax year does not depart from existing policy, and therefore Cabinet's impact analysis requirements do not apply.

Qualifying registered overseas pension schemes

Overview

7. The interaction between the United Kingdom's and New Zealand's rules for taxing retirement savings, has resulted in a number of cases where migrants transferring their UK pension to a New Zealand "qualifying registered overseas pension scheme"' (QROPS) have a substantial New Zealand tax bill which they struggle to pay. This project proposes a "scheme pays" option for such transfers. We think this will alleviate the cashflow issue and may make it more attractive for migrants and returning New Zealanders to transfer their pension funds to New Zealand.

8. This project also proposes a change to enable KiwiSaver providers to transfer historic UK pension funds, which were "locked in" as a consequence of all KiwiSavers losing QROPS status in 2015, to current QROPS. We think this will remove an impediment to the management of affected KiwiSavers.

Regulatory impact statement

9. The Regulatory Impact Statement has been completed and meets the quality assurance criteria. Consultation identified strong support for the introduction of "scheme pays" as a solution to a long-standing issue with pension transfers from the United Kingdom. As a matter of equity we think this should be offered in other pension transfer scenarios, although this issue has not been raised in connection

with transfers from other countries.[2] While the option preferred by officials (a flat tax rate of 28% on the assessable amount) was not the preferred option of all stakeholders, we have considered the alternatives and think that the small size of the affected population does not justify the excessive administrative burden that would be incurred to support other options.

10. It is our understanding that most QROPS providers will be able to work with the proposed design as it leverages existing investment income rules. If there is more than minor change as a result of the select committee process this may increase the administrative costs and require the application date to be extended.

Approved issuer levy retrospective registration

Overview

11. A New Zealand borrower paying interest to an unassociated non-resident lender can generally opt to pay a 2% approved issuer levy (AIL) on the interest instead of non-resident withholding tax (NRWT) at 10% or 15%. This is conditional on the borrower registering as an approved issuer and registering the relevant security for AIL before the interest payments begin.

12. However, if the borrower has mistakenly not registered the security at the outset and Inland Revenue later becomes aware of the mistake (whether through a voluntary disclosure by the borrower or otherwise) the borrower is required to pay NRWT on any interest payments already made. Inland Revenue does not have the administrative flexibility to allow retrospective registration for AIL.

13. While mistakes with registration for AIL are relatively uncommon, they are a pain point for the taxpayers involved, and impact both large corporates and individuals. We propose to amend the legislation to allow a borrower to retrospectively register for AIL in some limited circumstances. The change would apply on a prospective basis only.

Regulatory impact statement

14. The Regulatory Impact Statement has been completed and partially meets the quality assurance criteria. The Quality Assurance panel comments highlight a risk that there could be situations where AIL remains unavailable even under the proposed retrospective registration but there are no deliberate non-compliance concerns.

15. The proposed change is intended to cover cases where there was a genuine error, and the late registration is made within a particular timeframe as retrospective registration should not be open indefinitely. Bearing in mind that late registration cases are relatively uncommon, and that the settings can be refined through the select committee process (appreciating that there has been limited consultation to date), it is expected that the risk highlighted by the Quality Assurance panel should be able to be appropriately mitigated.

Exempt employee share scheme threshold increase

Overview

16. This policy would increase the thresholds for shares and benefits permitted for employee share schemes which are exempt under section CW 26C of the Income Tax Act 2007. Exempt employee share schemes are widely offered schemes (90% or more of full-time permanent employees) that meet certain criteria. The increase would recognise the impact of inflation since the thresholds were last set and would

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[2] Transfers from Australian superannuation schemes are subject to separate rules under the Trans-Tasman retirement savings portability scheme and are not affected by these changes.

be an increase from $5,000 to $6,250 for the value per annum of shares that can be offered to each employee, and from $2,000 to $2,500 for the maximum discount per annum that those shares can be offered for.

Regulatory impact statement

17. The Ministry for Regulation has determined that this policy item is exempt from the requirement to provide a Regulatory Impact Statement. This is because it is in line with existing policy, and only changes the thresholds of the current exempt regime. Therefore, it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

New Zealand business number information sharing provision

Overview

18. This information sharing provision would allow Inland Revenue to share the contact details and IRD numbers of unincorporated entities with MBIE on a "one-off" basis for the purposes of increasing New Zealand Business Number (NZBN) uptake. Registering for an NZBN is not compulsory for unincorporated entities, and MBIE has no other means to contact and encourage registration for this group other than through an email campaign which would utilize contact details from Inland Revenue.

Regulatory impact statement

19. The Ministry for Regulation has determined that this policy item is exempt from the requirement to provide a Regulatory Impact Statement. This is because it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Charities recommended for overseas donee status

Overview

20. The draft cabinet paper recommends the addition of six new New Zealand charities to the list of overseas donee organisation in the Income Tax Act 2007. The Minister of Revenue previously agreed to the addition of four new charities (IR2023/094, dated 9 April 2024, refers), and the Omnibus policy cover report recommends two additional charities, making six in total.

21. Overseas donee status is an exception to the policy framework that generally limits tax benefits to donations to charities with New Zealand purposes. Decisions to give overseas donee status are assessed against Cabinet criteria and is meant to complement the government's overseas development objectives. The revenue effect of granting six charities is 2.10 million, this change is treated as a forecasting change and reflect the increasing cost of policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations.

Regulatory impact statement

22. The Ministry for Regulation has determined that this policy item is exempt from the requirement to provide a Regulatory Impact Statement. This is because it has no or minimal impacts on businesses, individuals or non-for-profit entities.

Crypto-asset reporting framework and amendments to common reporting standard

Overview

23. This initiative proposes introducing legislation to implement the OECD developed Crypto-Asset Reporting Framework (CARF) in New Zealand. The CARF is an

information reporting and exchange framework that requires intermediaries, such as cryptoasset exchanges, to provide tax authorities with income information in respect of users operating through them. The purpose of this information exchange is to improve Inland Revenue's visibility over incomes derived through cryptoassets and to support increased tax compliance.

24. The Common Reporting Standard (CRS) is a global framework designed to assist in detecting and deterring offshore tax evasion. It was incorporated into New Zealand legislation by reference in 2017. The current amendments primarily support the CARF, but also incorporate several minor technical changes to improve the usability of the CRS.

Regulatory impact statement

25. The Regulatory Impact Statement has been completed and meets the quality assurance criteria. Inland Revenue currently has a lack of visibility over income derived through cryptoassets. This presents a tax compliance risk as taxpayers could underreport or conceal income they generate through these assets. This RIS evaluations options to improve tax compliance in New Zealand in respect of cryptoassets.

26. The Ministry for Regulation has determined that the CRS amendments is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Enrolling young persons under 16 into KiwiSaver with the signature of one guardian

Overview

27. This involves allowing children under 16 to enrol in KiwiSaver with the signature of only one guardian (rather than all guardians, as is currently the case).

Regulatory impact statement

28. The Ministry for Regulation has determined that this policy item is exempt from the requirement to provide a Regulatory Impact Statement. This is because it has no or minimal impacts on businesses, individuals or non-for-profit entities.

Generic response measures for emergency events

Overview

29. This policy would create a generic set of tax relief measures within primary legislation that can be "switched on" as needed in response to emergency events. This would provide a more streamlined and timely process. It would still enable the tax response to be tailored to each event.

Regulatory impact statement

30. The Regulatory Impact Statement for the generic response to emergency events proposal has not yet been completed. This will be provided to your offices prior the lodgement of the draft Cabinet paper on 20 June 2024.

Next steps for the Bill

31. Subject to the agreement of the Minister of Finance and the Minister of Revenue, the draft Cabinet paper will need to be lodged with the cabinet office by **10:00am., Thursday 20 June 2024** in time for Cabinet Economic Policy Committee (ECO)

meeting on **26 June 2024**. If ECO agrees, we expect decisions to be confirmed by Cabinet on **1 July 2024**.

32. If Cabinet agrees officials will develop legislative changes to give effect to the policy proposals. We intend to provide the Ministry of Justice with a draft Bill on **5 July 2024** so that it can conduct its Bill of Rights (BORA) review.

33. We will provide the Minister of Finance and Minister of Revenue a LEG paper with a draft Bill on **25 July 2024** for approval. It is intended that the LEG paper will progress through CAB LEG on **22 August 2024**. If LEG agrees, we expect decisions to be confirmed by Cabinet on **24 June 2024**, prior to introduction on **26 August 2024**.

Richard McLaughlan
Senior Policy Advisor
s 9(2)(a)

Item 09

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill**

Date:	4 June 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/177

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	10am, Thursday 20 June 2024
Minister of Revenue	**Agree** to recommendations **Approve** and **lodge** the attached Cabinet paper with the Cabinet Office by **10:00 a.m., Thursday 20 June 2024**	10am, Thursday 20 June 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

4 June 2024

Minister of Finance
Minister of Revenue

Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill

Executive summary

Setting the annual income tax rates for the 2024-25 tax year

1. This report seeks your agreement to set the annual income tax rates for the 2024–25 tax year in the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

Additional policy items

2. This report also seeks agreement to include the following five policy items in the 2024–25 Omnibus Cabinet Paper (draft Cabinet paper). These items are:

   2.1 Qualifying recognised overseas pension schemes.

   2.2 Approved issuer levy retrospective registration.

   2.3 Exempt employee share scheme threshold increase.

   2.4 New Zealand business number information sharing provision.

   2.5 Charities recommended for overseas donee status.

3. These items have been included in the attached draft Cabinet paper alongside the items noted below. Items approved by Cabinet will be included in the Bill at introduction.

Policy items previously agreed in whole or in part

4. Three policy items below that have been previously agreed in whole or in part by Ministers for inclusion in the draft Cabinet paper are:

   4.1 *Enrolling young persons under 16 into KiwiSaver with the signature of one guardian* (IR2024/144 refers): This policy change would allow children under 16 to enrol in KiwiSaver with the consent of one guardian and was approved for inclusion in the draft Cabinet paper by the Minister of Revenue in May 2024.

   4.2 *Crypto-asset reporting framework* (IR2024/147 refers): Agreement to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard was obtained in April 2024 and approved by Cabinet (CAB-24-MIN-0148 refers). This report seeks decisions on specific amendments to the Inland Revenue Acts.

   4.3 *Generic response measures for emergency events* (IR2024/200 refers): This policy change would introduce a generic set of response measures for

emergency events. The report seeking approval to include this item in the draft Cabinet paper was approved by the Minister of Revenue in May 2024.

5. All of the above items have also been included in the draft Cabinet paper.

Regulatory Impact Assessments

6. The Ministry for Regulation has determined that the following policy items require the completion of a Regulatory Impact Statement:

   6.1 Crypto-Asset Reporting Framework and Amendments to Common Reporting Standard

   6.2 Qualifying recognised overseas pension schemes

   6.3 Approved issuer levy retrospective registration, and

   6.4 Generic response for emergency events.

7. A Regulatory Impact Statement has been prepared for the first three items and is attached to the draft Cabinet Paper. The Quality Assurance panel at Inland Revenue has determined that these Regulatory Impact Statement's meet or partially meet the quality assurance criteria. These comments have been reflected in paragraphs 130 to 134 of the draft Cabinet paper.

8. The regulatory impact assessment for the policy item on generic response measures for emergency events is being finalised. This will be provided to your offices prior the lodgement of the draft Cabinet paper.

Next steps

9. The inclusion of the nine policy items in the Bill at introduction will require the draft Cabinet paper to be considered by the Cabinet Economic Policy Committee (ECO) at its meeting on **26 June 2024** and confirmed by Cabinet on **1 July 2024**.

10. If you agree to all the policy initiatives in this report, please refer the attached Cabinet paper to the Cabinet Office for lodgement by **10:00am, Thursday 20 June 2024**.

Recommended action

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

2. **Note** that the regulatory impact assessments for the following policy items have been completed and are attached to the Cabinet paper:

   - Crypto-Asset Reporting Framework and Amendments to Common Reporting Standard,
   - Qualifying recognised overseas pension schemes, and
   - Approved issuer levy retrospective registration.

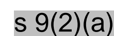
   Noted   Noted

3. **Note** that the regulatory impact assessment relating to generic response measures for emergency events is currently being finalised and will be provided to your offices prior to the lodging of the Cabinet paper.

   Noted   Noted

4. **Approve** and **lodge** the attached Cabinet paper and regulatory impact assessments with the Cabinet Office by **10:00 a.m., Thursday, 20 June 2024** for consideration by Cabinet Economic Policy Committee (ECO) on **26 June 2024**.

   Agreed/Not agreed



Joshua Fowler
Bill Manager
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill

Background

Setting the annual income tax rates for the 2024-25 tax year

11. This report seeks your agreement to set the annual rates for the 2024–25 tax year in the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

Approval for additional policy items

12. This report also seeks your agreement to the inclusion of the additional five policy items below in the Bill. These policy items are:

    12.1 Qualifying recognised overseas pension schemes.

    12.2 Approved issuer levy retrospective registration.

    12.3 Exempt employee share scheme threshold increase.

    12.4 New Zealand Business Number information sharing provision.

    12.5 Charities recommended for overseas donee status.

Policy items already approved in whole or in part

13. Three policy items below that have been previously agreed in whole or in part by Ministers for inclusion in the Bill are:

    13.1 *Enrolling young persons under 16 into KiwiSaver with the signature of one guardian* (IR2024/144 refers): This policy change would allow children under 16 to enrol in KiwiSaver with the consent of one guardian and was approved for inclusion in the 2024–25 Omnibus Cabinet Paper (draft Cabinet paper) by the Minister of Revenue in May 2024.

    13.2 *Crypto-Asset Reporting Framework* (IR2024/147 refers): Agreement to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard was obtained in April 2024 and approved by Cabinet (CAB-24-MIN-0148 refers). This report also seeks your agreement to more detailed policy design features of the Crypto-Asset Reporting Framework and amendments to the Common Reporting Standard.

    13.3 *Generic response measures for emergency events* (IR2024/200 refers): This policy change would introduce a generic set of response measures for emergency events. The report seeking approval to include this item in the draft Cabinet paper was approved by the Minister of Revenue in May 2024.

14. If you agree, please refer the attached Cabinet paper to the Cabinet Office by **10:00 a.m., Thursday 20 June 2024** so that it can be considered by Cabinet Economic Policy Committee (ECO) at its meeting on **26 June 2024**.

Fiscal implications

Items without fiscal implications

15. The following policy items do not have any fiscal implications:

15.1 Setting the annual income tax rates for 2024–25.

15.2 New Zealand Business Number information sharing provision.

15.3 Enrolling young persons under 16 in KiwiSaver with the signature of one guardian.

15.4 Generic response measures for emergency events.

Items with fiscal implications

16. The following items have fiscal implications:

16.1 *Granting overseas donee status to two additional charities*: This item is consistent with existing policy decisions. As such, the revenue impacts are managed through an adjustment to revenue forecasts without being charged to an allowance.

16.2 *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*: Cabinet has previously agreed to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard as part of Budget 2024 (CAB-24-MIN-0148 refers). As such, the fiscal gain of $50m per year associated with this change has already been recognised.

16.3 *Other items:* The changes relating to the following policy items have fiscal implications, which are described in the body of the report:

16.3.1 qualifying recognised overseas pension schemes

16.3.2 approved issuer levy retrospective registration, and

16.3.3 exempt employee share scheme threshold increase.

Scorecard implications

17. Ministers have previously agreed that the Tax Policy Scorecard should be the default option for managing the fiscal impact of tax policy changes, excluding "structural" changes, social policy, departmental funding, and changes mainly intended to achieve non-tax objectives.

18. The Scorecard allows the revenue-negative impacts of some tax changes to be offset against the revenue-positive impacts of other tax changes to better promote a timely and balanced programme of changes. In addition to these criteria for being managed through the Tax Policy Scorecard, the Scorecard's balance may not exceed $200 million over the forecast period, nor fall below zero.

19. The Treasury has advised that the changes proposed in this report are consistent with Ministers' criteria for the Scorecard. There is no risk that the Scorecard may exceed its limits as a result of these changes.

20. If you agree to the policy decisions in this report and to manage them against the Tax Policy Scorecard, there will be no impact on the Between-Budget Contingency (BBC) or future Budget allowances. However, there will be a small impact on the operating balance and net debt from each change.

Administrative implications

21. Inland Revenue can deliver these initiatives based on our current work programme, and on what we understand the Government intends for Inland Revenue to deliver in the future. However, this Bill will reduce Inland Revenue's change capacity, and the resourcing of policy items within the Bill should be considered when thinking about Inland Revenue's ability to deliver future initiatives. While Inland Revenue proposes self-funding the departmental capital and operating costs to deliver these initiatives, this does limit the department's ability to self-fund subsequent initiatives.

Setting the annual income tax rates for 2024–25

22. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.

23. It is proposed that this Bill set the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the changes being legislated as part of Budget 2024).

24. This would not have any fiscal or administrative implications.

Recommended action

25. **Agree** to set the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the changes being legislated as part of Budget 2024).

    Agreed/Not agreed   Agreed/Not agreed

Qualifying recognised overseas pensions scheme

26. Pension transfers to New Zealand, when made outside our four-year transitional residency period, result in New Zealand tax payable at an individual's marginal rate on some of the lump sum transferred. The tax applies only to the amount of income derived by the pension fund (ie, fund growth) after the person became New Zealand tax resident or after their transitional period ended (where applicable). In some cases, the amount of tax payable can be substantial, such as when a person transfers a sizable pension many years after becoming New Zealand resident.

Transfers to New Zealand: introduction of "scheme pays" mechanism

27. The United Kingdom's (UK) pensions rules are strict. Transfers of pension funds outside the UK are only permitted in limited circumstances, one being where the receiving scheme is a Qualifying Recognised Overseas Pension Scheme (QROPS) under UK rules. Broadly, QROPS are schemes that must comply with the UK's rules for pension schemes. These include a rule that disallows withdrawal from the fund before the UK's minimum retirement age (currently 55).

28. The UK rules mean that individuals who withdraw from either their UK pension fund or the receiving QROPS fund to pay the New Zealand tax bill, may incur a UK unauthorised payment charge of up to 55%. This means the tax must be paid out of pocket by the individual. This creates a barrier to transfers and has caused hardship for some individuals.

29. To resolve this issue, we recommend that a "scheme pays" mechanism is introduced. This would make the New Zealand transfer tax a liability of the New Zealand QROPS rather than the individual. "Scheme pays" would allow the New

Zealand QROPS to report the transfer to Inland Revenue and pay the tax due directly from the individuals transferred pension funds (meaning the individual would not need to pay the tax). This mechanism is acceptable to the UK's His Majesty's Revenue and Customs (HMRC) and is also used in Australia to address this problem.

30. We recommend that it is mandatory for QROPS to offer "scheme pays" and that the following features apply:

30.1 The individual will choose whether they, or the scheme, pays the tax due.

30.2 Regardless of the option the individual chooses, the QROPS will be responsible for a monthly digital report of transferred funds. The report should be in the form prescribed by the Commissioner of Inland Revenue and will include details such as the individual's name and IRD number, the amount being transferred and the taxable amount, and whether the scheme will pay the tax.

Option 1: Scheme pays

30.3 If the individual chooses "scheme pays", the QROPS will withhold tax at a flat rate of 28% and pay it directly to Inland Revenue.

Option 2: Pay as an individual

30.4 If the individual chooses to "pay as an individual", the standard rules will apply, meaning that the person will pay tax at their marginal rate. Inland Revenue will use the information supplied to pre-populate the individual's MyIR account; and the individual will either:

30.4.1 pay the tax due as part of the year-end automatic calculation process, or

30.4.2 file their IR 3 self-assessment return and pay the tax (in keeping with the current rules).

31. Increased reporting of pension transfers received in New Zealand may assist in addressing some concerns raised about potential misunderstanding of, and non-compliance with, New Zealand's tax rules.

32. During targeted consultation some submitters preferred using the individual's prescribed investor rate (PIR) to calculate the tax. A PIR is the rate at which an investor pays tax on their taxable income from a portfolio investment entity (PIE). Although many QROPS are structured as PIEs we preferred a flat rate because:

32.1 If the correct PIR is not used, then a year-end "wash up" will result in the individual needing to fund the payment of the additional tax, or receiving a refund of tax or credit against other taxes.

32.2 HMRC's rules prohibit the individual from accessing the QROPS fund, meaning that it will not be possible for any excess amounts to be repaid to the individual.

32.3 For most transferees, the 28% rate provides certainty and prevents the transferred funds from being taxed at marginal rates. This means that the transferred lump sum will not be pushed into an artificially high tax bracket.

32.4 An individual who seeks the benefit of the lower bands may still choose to pay and file under the present system.

32.5 A flat rate system is administratively simple and cost effective relative to the affected population. Other designs will necessarily require greater complexity and cost.

33. We intend that relevant error and correction provisions in the Income Tax Act 2007 and the Tax Administration Act 1994 apply to reporting, withholding and paying of tax due.

34. To ensure that transfers from the UK and elsewhere are treated equally, we recommend that this design applies to all transfers of pension funds to New Zealand pension providers.[1]

35. Appropriate guardrails will be required both to ensure that the new rules apply only to transfers to New Zealand fund providers (as opposed to withdrawals from overseas fund providers, which should be taxable at marginal rates) and to prevent schemes being left liable for incorrect or incomplete information or without funds to pay the tax due.

36. We do not anticipate more than minor changes in the detailed design phase. However, there are boutique providers in the market for whom the cost of changing or developing systems may be higher than it is for larger players offering a PIE. If design changes result from the select committee process there is a small risk that we will not be able to update systems and processes in time for 1 April 2025 and the application date would need to be extended.

37. QROPS and other scheme providers will require time to implement system changes. We propose that the "scheme pays" is introduced from 1 April 2025 but with an optional later application date for fund providers to allow time for implementation.

"Locked-in" KiwiSaver schemes

38. On 17 June 2015, HMRC tightened the QROPS criteria so that any overseas pension scheme allowing withdrawal before the age of 55 could not qualify. This caused KiwiSaver schemes (which allow earlier withdrawals in various circumstances such as hardship), to lose their QROPS status. Grandparenting treatment was applied to the retirement funds of migrants who made the transfer to a KiwiSaver scheme before 17 June 2015. However, they could not subsequently transfer their funds to another KiwiSaver scheme without incurring a UK tax charge. This means they were effectively "locked in" to their current KiwiSaver provider. This also causes problems when a provider planned to merge KiwiSaver schemes with low participation.

39. The UK tax charge applies only for five full UK tax years after the migrant lost their UK tax residence (it was later increased to 10 years, but this is not relevant for historic transfers). Without complicating factors that may arise in individual cases, for most individuals this period expired on 6 April 2021. Nevertheless, legacy cases remain. In addition, certain UK tax reporting requirements apply to former QROPS. Affected scheme providers seek changes to the rules to promote flexibility.

40. We recommend that the KiwiSaver rules be changed to allow "locked-in" UK retirement savings to be transferred from KiwiSaver schemes into another New Zealand QROPS with the consent of the individual member. This would allow the remaining balance of the KiwiSaver account to be managed without UK tax implications. HMRC has confirmed that this solution would be effective. We recommend this change applies from 1 April 2025.

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[1] Noting that transfers between Australian superannuation funds and KiwiSaver funds are treated differently under the Trans-Tasman retirement savings portability scheme. We intend this scheme to be unaffected by the proposed new rules.

Next steps

41. Detailed design to support implementation of the policy will be further developed prior to introduction of the omnibus Bill. This will be in line with the proposals outlined above. We will report to you if significant policy changes are required.

Consultation

42. We undertook three rounds of targeted consultation with QROPS providers as well as industry and professional bodies including Chartered Accountants Australia and New Zealand, Certified Practising Accountants Australia, and the Financial Services Council.

43. All submitters supported the introduction of a "scheme pays" option for QROPS though some preferred using the individual's PIR over a flat rate (see paragraph 32 above). Others were concerned about the extension of the proposal to non-QROPS and the necessary time for implementation. A selection of QROPS providers also supported resolution of the "locked-in" KiwiSaver issue, though the majority made no comment.

44. We also consulted the Financial Markets Authority and the Ministry of Business, Innovation and Employment who were comfortable with these proposals.

Administrative impact

45. The introduction of "scheme pays" is expected to have an administrative implementation cost of $1.700 million capital and $0.800 million operating. Ongoing costs (depreciation and capital costs) will be $1.120 million over the 2024/25 to 2027/28 years. Inland Revenue will absorb this cost within existing baselines, noting that there is a limit to the level of initiatives that the department can absorb. The release of "locked-in" KiwiSavers is not expected to have any administrative impact.

	$ million – increase/(decrease)					
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**7/28 &** **tyears**	**Total**
Capital costs						
System build	–	1.700	–	–	–	1.700
Capital (debt) impact	–	1.700	–	–	–	1.700
Operating costs						
System build	–	0.800	–	–	–	0.800
Depreciation	–	0.100	0.240	0.240	0.240	0.820
Capital charge	–	0.045	0.085	0.085	0.085	0.300
Total net operating impact	**–**	**0.945**	**0.325**	**0.325**	**0.325**	**1.920**
Total capital (debt) impact	**–**	**1.700**	**–**	**–**	**–**	**1.700**

Financial implications

46. The proposed introduction of "scheme pays" will have a negative impact on Crown revenue of $1.3 million in the first year (2026/27), and $0.7 million per year over the remainder of the forecast period.

47. The proposed amendment for "locked-in" KiwiSavers has no fiscal implications.

Recommended action

48. **Agree** that there should be a "scheme pays" mechanism for the payment of New Zealand tax due on transfers of pension funds from the UK and other jurisdictions to New Zealand QROPS or other New Zealand schemes (scheme providers).

    Agreed/Not agreed Agreed/Not agreed

49. **Agree** the "scheme pays" mechanism should, as a whole, have the following features:

    49.1 Offering the "scheme pays" mechanism should be mandatory for scheme providers.

    49.2 The individual transferee will elect whether to use "scheme pays" mechanism or to pay under auto-calculation or via their self-assessment tax return.

    49.3 Scheme providers will be responsible for providing monthly digital reports of transfers received in the form prescribed by the Commissioner of Inland Revenue and, where applicable, make the payment of the tax due to Inland Revenue.

    49.4 Transfers would be subject to tax at a flat rate of 28%.

    49.5 The new rules should apply from 1 April 2025, with provision for a later application date.

    Agreed/Not agreed Agreed/Not agreed

50. **Note** that the existing Trans-Tasman retirement savings portability scheme is not affected by these changes.

    Noted Noted

51. **Agree** that transfers from KiwiSaver accounts of previously transferred UK pension funds to New Zealand QROPS should be permitted from 1 April 2025.

    Agreed/Not agreed Agreed/Not agreed

52. **Note** that detailed design to support implementation of the policy will be consistent with the above recommendations.

    Noted Noted

53. **Note** that Inland Revenue will self-fund the $1.700 million capital cost and $1.920 operating cost to implement and administer this change.

    Noted Noted

54. **Note** the following changes to tax revenue as a result of recommendations 48 and 49 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.000	0.000	(1.300)	(0.700)
Total Operating	**0.000**	**0.000**	**0.000**	**1.300**	**0.700**

Noted Noted

55. **Agree** that the reduction in tax revenue in recommendation 54 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Approved issuer levy retrospective registration

Background

56. A New Zealand borrower paying interest to an unassociated non-resident lender can generally opt to pay a 2% (or in certain cases 0%) approved issuer levy (AIL) on the interest, instead of non-resident withholding tax (NRWT) at 10% or 15%. This is conditional on the borrower registering as an approved issuer and registering the relevant security for AIL before the interest payments begin.

57. However, if the borrower has mistakenly not registered the security at the outset and Inland Revenue later becomes aware of the oversight – whether through a voluntary disclosure by the borrower or otherwise – the borrower is required to pay NRWT on any interest payments already made, increasing the tax cost from 2% to 10% or 15%. Inland Revenue does not have the administrative flexibility to allow retrospective registration for AIL in such circumstances.

58. While failure to register a security for AIL before the first interest payment is not a widespread issue, there is a case to allow retrospective registration in some limited circumstances for a few reasons:

58.1 First, AIL is a concessionary regime originally introduced to lower the cost of capital for New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender is confident that it can easily get a full tax credit for New Zealand NRWT in its own jurisdiction, it will likely require the borrower to gross up their interest payments to cover the NRWT, increasing the cost of capital to the borrower. The AIL regime significantly reduces the tax cost to the borrower. Requiring a taxpayer to pay NRWT rather than AIL because of an administrative mistake increases the tax cost of capital for New Zealand borrowers that the AIL regime is intended to help.

58.2 Second, it provides outcomes in some circumstances that could be seen as unfair and incoherent. For example, consider a borrower who has registered a security for AIL but neglected to pay AIL; such a borrower is still permitted to pay AIL at 2% (with the usual use of money interest and potential penalties) when the mistake is discovered. This can be contrasted with a

borrower that has not registered a security for AIL but has paid AIL on it; such a borrower is liable for NRWT at 10% or 15% when the mistake is discovered. The second borrower has a significantly higher tax cost even though they were arguably less non-compliant than the first borrower by advising Inland Revenue of the interest payments through the AIL return and paying AIL on time (albeit accepting they were not entitled to do so because of the failure to register the security).

58.3 Third, New Zealand's tax system relies on voluntary compliance. If taxpayers know that informing the Commissioner of an administrative mistake will result in a significantly larger than expected tax bill, there is a risk that some may decide not to disclose it, undermining voluntary compliance with AIL and NRWT.

59. That said, it is preferable that registration occurs at the time the security is entered into, and before the borrower makes an interest payment to the lender (as required under the status quo), because it gives Inland Revenue oversight of the securities being registered and provides a potential opportunity to review the borrower's eligibility for AIL before any AIL is paid. It importantly also means that the borrower is aware of their AIL/NRWT obligations and allows Inland Revenue to set up the borrower as an approved issuer (if this is the first security they are registering) before the first payment is due. If the borrower is not in fact eligible for AIL (eg, because they are associated with the lender), and thus has an NRWT liability, the borrower can still withhold and remit the NRWT at the time of the interest payment, which is easier than Inland Revenue attempting to collect the tax at some future date. But if a borrower would otherwise be eligible for AIL (eg, because they are not associated with the lender), then registration is essentially a formality, and reverting an otherwise eligible borrower to NRWT for neglecting to observe this formality at the outset could be seen as harsh in some cases.

History

60. Several private sector firms and groups have written to Inland Revenue and the Minister of Revenue about this issue over the past few years. Inland Revenue has dealt with several borrowers who have neglected to register securities for AIL on time, and required them to pay NRWT. Most recently, the Corporate Taxpayers Group mentioned this issue in their Briefing to the Incoming Minister of Revenue at the end of 2023.

61. We are aware of some cases of a corporate borrower failing to register a new security for AIL at the outset and notifying the Commissioner of the mistake sometime later. In one case this resulted in the borrower incurring an additional $2 million in NRWT.

62. We are also aware of some cases of individual borrowers with foreign mortgages not having registered for AIL at the appropriate time, and being required to pay NRWT instead for interest payments prior to registration. The NRWT payable in each case was generally less than $10,000.

Reasons for failure to register

63. There are a number of possible reasons why a borrower might neglect to register a security for AIL. These reasons fall on a spectrum between genuine error and deliberate non-compliance.

64. Examples of genuine error could include:

64.1 The taxpayer has a strong history of AIL compliance, but forgets to register a particular security which the taxpayer still includes in its AIL returns such that AIL was filed and paid on time (just not registered for the security).

64.2 The taxpayer has a strong history of AIL compliance, but forgets to register a security and pay AIL for a short period of time because of a change in personnel, or temporary lack of coordination between those responsible for treasury and tax.

64.3 Incorrect understanding of AIL compliance obligations at the relevant time (primarily for those new to borrowing from foreign lenders).

65. Examples of deliberate non-compliance could include:

65.1 The taxpayer does not want to bear any tax cost so does not register the security or pay any AIL (or NRWT).

65.2 The taxpayer is an approved issuer but is not eligible for AIL on the particular security (eg, because they are associated with the lender), but does not want to deduct NRWT, so simply pays AIL without registering the security.

66. There could also be examples that fall somewhere between genuine error and deliberate non-compliance.

67. The distinction between genuine error and other reasons is important in designing a policy response to the aforementioned issue. In the relatively few cases that we are aware of, the taxpayer typically notified the Commissioner of the oversight, suggesting it was a genuine error and the taxpayer intended to comply.

Proposal

68. We propose that the legislation be amended to allow a borrower to retrospectively register a security for AIL in limited circumstances. Retrospective registration would allow the borrower to pay AIL on the interest payments made on the security prior to the date of registration, rather than NRWT.

69. Conditions should be designed to ensure that retrospective registration is:

69.1 only available to borrowers who failed to register the security at the outset due to a genuine error, and

69.2 not available indefinitely.

70. The purpose of limiting retrospective registration to cases of genuine error would be to avoid encouraging non-compliance with the AIL regime. If retrospective registration for AIL were permitted in all circumstances, taxpayers could decide deliberately not to register a security in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered the security for and paid AIL on time (although interest and penalties could also be payable in the former case).

71. The reason for imposing a time limit on availability of retrospective registration would be to preserve fiscal and taxpayer certainty, as well as protect against the risk of taxpayers becoming relaxed about the AIL registration requirements.

72. We propose that retrospective registration for AIL only be available from 1 April 2025 and that it cannot be backdated before that date. This means the change will be prospective and it will prevent taxpayers coming forward and seeking refunds of NRWT paid as a consequence of past failures to register securities for AIL on time (with the attendant fiscal cost).

Consultation

73. There has been limited external consultation on allowing retrospective registration, although private sector stakeholders have previously sought it as a solution. The limited external consultation is broadly supportive of a policy change to allow it.

Financial implications

74. Retrospective registration for AIL is expected to have a fiscal cost of approximately $50,000 in the 2024/25 year and $200,000 per year thereafter.

Administrative implications

75. This policy is expected to have minimal administrative impact and the costs can be absorbed within existing baselines.

Recommended action

76. **Agree** to allow a New Zealand borrower paying interest to an unassociated non-resident lender to retrospectively register the relevant security for approved issuer levy (and itself as an approved issuer, if needed) in limited circumstances.

Agreed/Not agreed Agreed/Not agreed

77. **Agree** that retrospective registration should only be available where the borrower has made a genuine error.

Agreed/Not agreed Agreed/Not agreed

78. **Agree** that retrospective registration will only be available from 1 April 2025 and cannot be backdated before that date, meaning this policy change will be prospective.

Agreed/Not agreed Agreed/Not agreed

79. **Note** the following changes to tax revenue as a result of recommendations 76 to 78 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Tax Revenue: Withholding Taxes	0.000	(0.060)	(0.240)	(0.240)	(0.240)
Other Indirect Taxes	0.000	0.010	0.040	0.040	0.040
Total Revenue	**0.000**	**(0.050)**	**(0.200)**	**(0.200)**	**(0.200)**
Total Operating	**0.000**	**0.050**	**0.200**	**0.200**	**0.200**

Noted Noted

80. **Agree** that the reduction in tax revenue in recommendation 79 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Exempt employee share scheme threshold increase

Background

81. The Government is investigating tax changes that would make it easier for companies in the start-up and tech sector to attract and retain talent, particularly through the use of employee share schemes. One of the five priorities for the Science, Innovation and Technology portfolio is to increase the value of the tech sector by $30 billion by 2030.

82. Employee share schemes are arrangements whereby shares in an employer company are provided to an employee in whole or part in return for services. These are an important way of remunerating employees in New Zealand and internationally. Employee share schemes help to align the incentives of employees with those of the firm and its non-employee shareholders and can result in increased output and greater employee engagement. A "benefit" received under an employee share scheme is taxable income unless it is an exempt scheme.

83. Employers can provide exempt benefits to employers under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all or almost all of a business's employees, and where both the benefit of the scheme, and the amount required to be invested by an employee to get that benefit, are limited.

84. Benefits provided under an exempt employee share scheme may be exempt if, among other things:

    84.1 the maximum value of the shares provided to an employee does not exceed $5,000 a year,

    84.2 any discount provided by an employer on the market value of the shares does not exceed $2,000 a year, and

    84.3 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions are eligible to take part in the scheme.[2]

Proposal

85. We recommend that that the two thresholds in paragraph 85 are increased to recognise the impact of inflation since the thresholds were last set in 2018. This would increase the maximum value of the shares that can be offered to $6,250 and the maximum benefit provided to $2,500.

Financial implications

86. Increasing the thresholds used for exempt employee share schemes will reduce the tax that is currently collected under the general scheme. Officials assume that a threshold increase will induce those who are currently unable to access the scheme, due to exceeding relevant thresholds, to enter the scheme.

87. No deductions are available for an exempt employee share scheme, other than in respect of establishing or managing the scheme. Employers who switch from the general scheme to the exempt scheme will no longer be able to claim any deductible expenditure from providing employment income in an employee share scheme. This

[2] If the scheme applies to part-time employees or to seasonal employees, the same threshold applies.

will result in increased company tax collected for Inland Revenue and will offset a significant portion of the cost of the proposal.

88. Increasing the thresholds in line with inflation is forecast to cost $0.16 million over the forecast period. This assumes that the thresholds would apply to offers of shares made under an exempt employee share scheme after 1 April 2025.

Recommended action

89. **Agree** to increase the thresholds relating to exempt employee share schemes to recognise inflation since when they were first introduced.

Agreed/Not agreed Agreed/Not agreed

90. **Agree** that this policy would apply to offers of shares made under exempt employee share schemes after 1 April 2025.

Agreed/Not agreed Agreed/Not agreed

91. **Note** the following changes to tax revenue as a result of recommendations 89 and 90 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown revenue and receipts: Tax Revenue	(0.000)	(0.010)	(0.050)	(0.050)	(0.050)
Total Operating	**0.000**	**0.010**	**0.050**	**0.050**	**0.050**

Noted Noted

92. **Agree** that the reduction in tax revenue in recommendation 91 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

New Zealand business number information sharing provision

Background

93. Currently, unincorporated entities[3] can choose to register with the Companies Office and receive a New Zealand Business Number (NZBN). In contrast, when corporate entities register in New Zealand, they are automatically provided with an NZBN. This has resulted in a slow uptake of NZBNs for unincorporated entities, limiting the effective use of NZBNs because the Companies Office has incomplete data.

94. The Ministry of Business, Innovation and Employment (MBIE) would like to address this issue through an email campaign targeting unincorporated entities. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds. This would be a non-compulsory, low compliance cost approach to support the uptake of NZBNs which would allow businesses to make more effective and widespread use of NZBNs.

[3] For example, sole traders, partnerships, and trustees of trusts.

95. Inland Revenue cannot currently share NZBN numbers with MBIE under the NZBN information sharing provision in the Tax Administration Act 1994. This is because the current information sharing provision permits the sharing of:

    95.1 "primary business data".

    95.2 any information which verifies the correctness of the information included in the New Zealand Business Number Register.

96. Unfortunately, neither of these permissions allow the sharing of information about unincorporated entities. This is because unincorporated entities are not included in the definition of primary business data, and also because the intention of sharing contact information and IRD numbers is to increase the uptake of NZBNs, rather than maintain the correctness of the information included in the New Zealand Business Number Register.

97. Accordingly, sharing information about unincorporated entities with Inland Revenue requires a policy change.

Proposal

98. We recommend introducing an information sharing provision that authorises the "one-off" sharing of the contact details and IRD numbers of unincorporated entities with MBIE.

99. Procedurally, this would involve MBIE using IRD numbers provided by Inland Revenue to determine, or validate if an unincorporated entity is already registered with an NZBN. MBIE would then only contact unincorporated businesses that it has confirmed are not registered for an NZBN. Unincorporated entities who then want to resister for an NZBN based on the information provided by MBIE can follow the traditional process for registering for an NZBN and supply MBIE with their business details.

100. MBIE will destroy unincorporated entities' contact data provided by Inland Revenue once it has made contact with the entities.

Consultation

101. We have consulted with the Office of the Privacy Commissioner (OPC) which has advised that there is a reasonable policy case for targeted information sharing with appropriate risk mitigations, and with the appropriate legislative vehicle.

102. OPC notes that that there is no way for MBIE to get contact information for these unincorporated entities that are not registered for an NZBN other than through information sharing by Inland Revenue. However, their view is that this proposed change should be enabled through an Approved Information Sharing Agreement (AISA) which is currently being worked on and yet to be reported to Ministers.

103. The basis for introducing this information provision through the Taxation Omnibus Bill rather than an AISA, is the associated certainty of application date by incorporating in the Bill and the "one-off" nature of the provision.

104. We have consulted with our colleagues at MBIE, who are supportive of the policy change being included in the Bill.

Recommended action

105. **Agree** to introduce an information sharing provision that authorises the "one-off" sharing of the contact details and IRD numbers of unincorporated entities with the Ministry of Business, Innovation and Employment.

Agreed/Not agreed Agreed/Not agreed

106. **Agree** that this amendment apply from the date of the Royal assent of the Bill.

Agreed/Not agreed Agreed/Not agreed

Charities recommended for overseas donee status

Background

107. The Minister of Revenue previously agreed to the addition of four New Zealand charities to the list of overseas donee organisations in the Income Tax Act 2007 (IR2024/094 refers). These approved charities are:

107.1 Kapuna Education Charitable Trust,

107.2 ReliefAid,

107.3 Rescue and Prevent Trust, and

107.4 Support Services for Humanity.

Proposal

108. We recommend an additional two charities are included in this list of overseas donee organisations. These two charities are:

108.1 Altus Resource Trust, and

108.2 Kiwi Trust for Palestinian Children Relief.

109. These two charities were not included in our report of April 2024 because our review of these charities remained ongoing. This work is now complete, and the purposes of these charities are consistent with Cabinet's approval criteria for obtaining overseas donee status (annexed). Both charities:

109.1 are registered under the Charities Act 2005

109.2 have adequate procedures for the accountability of funds applied to projects outside New Zealand, and

109.3 can demonstrate a track record of activity.

110. Accordingly, we recommend that these two additional charities have overseas donee status with retrospective effect from 1 April 2024, to align with the start of the current income year. This start provides certainty for the charities concerned in respect of their fund-raising activities and does not create any tax administration issues for Inland Revenue. The work of these two charities is described below.

Altus Resource Trust

111. Altus Resource Trust works with in-country partners in the Pacific Islands to provide services and equipment to children and adults with disabilities. Altus is currently working with organisations in Samoa, Vanuatu, Tonga and the Cook Islands.

112. Altus seeks to build capability in these countries by improving the skill base of local field workers, health workers and carers so they can work more effectively with disabled members of the local community. The Trust also facilitates the shipping of disability equipment to the Pacific Islands and the modification of homes to make them more accessible to the disabled.

Kiwi Trust for Palestinian Children Relief

113. Kiwi Trust for Palestinian Children Relief (Kiwi Trust) was founded in 2012 with the goal of providing aid and relief to Palestinian children and their families through humanitarian, educational, social and small enterprise projects. A substantial amount of its aid is provided in the form of food packages and/or the sponsorship of orphans and families in poverty. Kiwi Trust also provides mental health support for children suffering from conflict and hardship-related mental health issues.

114. Kiwi Trust is currently able to deliver food within the Gaza Strip due to a pre-existing relationship with partners located within Israel. Kiwi Trust has a partnership with the Palestinian Family Charitable Association. The Palestinian Family Charitable Association is registered with the Ministry of the Interior in Ramallah, under the Palestinian National Authority, and is accredited by that Authority. Being registered with the Ministry of Interior is a pre-requisite for charities operating in Gaza to have a bank account with approved Palestinian banks. This facilitates the transfer of funds required for humanitarian aid projects in Gaza.

115. s 9(2)(g)(i)

Consultation

116. The Ministry of Foreign Affairs and Trade (Middle East and African and Partnerships, Humanitarian and Multilateral division) (MFAT) was consulted. It is not explicitly aware of Kiwi Trust, nor aware of their work. MFAT notes that it does not have an Embassy in Israel or a representative office in Ramallah so its ability to comment on work undertaken in Palestine is limited.

117. The Treasury and Department of Internal Affairs – Charities Services were consulted as part of our analysis for the charities recommended in this report.

118. The New Zealand Police's vetting service was used for the trustees of the charities recommended in this report.

Financial implications

119. The revenue effect of granting overseas donee status to the two charities above is outlined below:[4]

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
s 6(c)					
Total	0.000	(0.070)	(0.051)	(0.049)	(0.048)

Recommended action

120. **Agree** that the following charities be added to the list of organisations with overseas donee status in the Income Tax Act 2007:

120.1 Altus Resource Trust

Agreed/Not agreed Agreed/Not agreed

120.2 Kiwi Trust for Palestinian Children Relief

Agreed/Not agreed Agreed/Not agreed

121. **Agree** that the charities in recommendation 120 that you have approved are given overseas donee status from 1 April 2024.

Agreed/Not agreed Agreed/Not agreed

122. **Note** the following changes to tax revenue forecasts as a result of recommendations 120 and 121 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.070)	(0.051)	(0.049)	(0.048)
Total Operating	**0.000**	**0.070**	**0.051**	**0.049**	**0.048**

Noted Noted

[4] The total revenue effect for granting all six charities overseas donee status is estimated to be $2.10 million over the forecast period 2023–24 to 2027–28. This total change is included in the attached Cabinet paper.

Crypto-asset reporting framework and amendments to common reporting standard

Background

123. Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-asset's network. This is known as distributed ledger technology and Blockchain is a form of this technology.

124. Since the introduction of the first crypto-asset Bitcoin in 2009, the market for crypto-assets worldwide has experienced rapid growth and development. The current market capitalisation for crypto-assets is almost $7 trillion New Zealand dollars. Between 6% and 10% of New Zealanders own some crypto-currency and Inland Revenue's analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

125. The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers, that are currently subject to little regulatory oversight.

126. This development means that tax authorities do not have visibility over incomes derived through crypto-assets like they do with incomes generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large scale intermediaries. For example, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction.

127. Against this background, the OECD have developed the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (CARF) that is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

Proposal

Crypto-Asset Reporting Framework

128. The CARF provides for the reporting of tax information on transactions in crypto-assets in a standardised manner, with a view to automatically exchanging such information with other jurisdictions.

129. The CARF is a global minimum standard, which means all OECD member countries are expected to implement it. To date, more than 50 jurisdictions worldwide have signed a joint statement outlining their commitment to implement the CARF in time

to commence exchanges of information by 2027. Officials have previously reported to you and obtained your agreement to implement the crypto-asset reporting framework and amendments to the common reporting standard in New Zealand as part of Budget 2024 (IR2024/147 and CAB-24-MIN-0148 refers).

130. Under the CARF, entities or individuals that, as a business, facilitate exchange transactions on behalf of customers, such as crypto-asset exchanges, must collect information on the transactions of its customers, along with personal information, and report that information to the tax authority in which they are tax resident. This includes information on relevant crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets. This can include transfers to wallet addresses as well as high value retail transactions (such as where a crypto-asset intermediary processes payments on behalf of a merchant that accepts crypto-assets as payment for goods or services).

131. The CARF is subject to an automatic information exchange. Reporting crypto-asset service providers must provide the relevant information, in a standardised OECD format, to the tax authority in which they are tax resident. This information is then shared by the tax authority with other tax authorities, to the extent that the information relates to users who are tax resident in their jurisdiction. For example, Inland Revenue would receive information about New Zealand tax resident crypto-asset users that were operating on large offshore crypto-asset exchanges from other OECD jurisdictions.

132. Inland Revenue intends to use the information received under the CARF to support tax compliance. The information received under the CARF would provide increased visibility over incomes derived through crypto-assets, which would be used by Inland Revenue to ensure taxpayers are paying the correct amount of tax.

133. Jurisdictions are required to ensure that they correctly implement the CARF. This means that effective enforcement provisions are required to address any instances of non-compliance by reporting crypto-asset service providers and reportable users. To support the CARF, new civil penalties will be required to be added to the Tax Administration Act 1994. These penalties could apply to crypto-asset service providers with a New Zealand reporting obligation, and users of these service providers, where they fail to comply with the information reporting requirements under the CARF. We consider that these penalties should be based on penalties that were included in the Tax Administration Act 1994 following implementation of the CRS in New Zealand and the implementation of the information reporting and exchange framework for the sharing and gig economy. These two initiatives are OECD information exchange frameworks already implemented in New Zealand.

Amendments to the Common Reporting Standard

134. As previously mentioned, the CRS is a global framework developed by the OECD for the collection, reporting, and exchange of financial account information about people and entities investing outside of their tax residence jurisdiction. It is designed to assist in detecting and deterring offshore tax evasion.

135. The amendments to the CRS that are included in the CARF largely focus on ensuring that crypto-related assets that are held through traditional financial intermediaries are subject to reporting, but also includes several minor or technical amendments to improve the usability of the CRS.

136. The OECD concluded the first comprehensive review of the CRS in 2022 and approved the following amendments:

136.1 inclusion of new digital financial products that are alternative to holding money or financial assets in an account that is currently subject to CRS reporting,

136.2 changes to the definition of financial asset to include derivatives referencing crypto-assets and the definition of investment entity to include those investing in crypto-assets,

136.3 inclusion of an optional election to report under the CRS the information on certain assets that must be reported under the CARF to minimise duplicated reporting,

136.4 introduction of stronger due diligence procedures and more detailed reporting requirements to include contextual information about the account holders, controlling persons, and the financial accounts they own,

136.5 exclusion of capital contribution accounts intended for the incorporation of a new company or a pending capital increase, and

136.6 integration of the interpretative guidance into the OECD Commentary to the CRS (Commentary).

137. The Commentary also contains an optional provision to exclude genuine non-profit entities. It was added out of concern that the imposition of the reporting requirements on such entities can lead to undesirable outcomes such as requiring due diligence for students receiving scholarships.

138. We do not have any concerns about such outcomes arising for New Zealand non-profit entities because they have limited exposure to the CRS. Furthermore, this option would add administrative burden to Inland Revenue because the exclusion must be subjected to adequate verification procedures so that investment entities would not be able to improperly claim non-profit status.

139. Since the CRS was incorporated into the Tax Administration Act 1994 by reference in 2017, the only legislative change required would be to specify the date for the current amendments to take effect. The OECD has left this unspecified to allow tax administration of each jurisdiction and the entities affected to implement the system and administrative changes required. However, the first year the changes would come into operation would be the 2026–27 tax year, with the first reports being made in 2027.

Consultation

140. Officials undertook targeted consultation in October and November 2022 on whether New Zealand should implement the CARF. A consultation letter was sent to New Zealand's main tax advisory firms, along with known players in the crypto-asset industry. Officials subsequently met with interested parties to discuss these submissions further where applicable.

141. The Tax System Forum (TSF) were also consulted on this initiative as part of a broader consultation on proposals set for inclusion in this Bill.

142. Those consulted were largely supportive of adopting the CARF in New Zealand. Although there was some concern for compliance costs suffered by reporting crypto-asset service providers, it was ultimately recognised that adopting the OECD developed CARF is highly preferable to New Zealand developing its own bespoke reporting regime on crypto-assets. This is because having a standardised rule set adopted across jurisdictions, such as the OECD CARF, ensures a consistent worldwide standard which greatly reduces compliance costs for reporting crypto-asset service providers compared to if every jurisdiction developed their own reporting regime. There were also concerns raised about ensuring that reporting crypto-asset service providers have enough lead in time to implement the CARF. As the first reports for CARF are due in 2027 in respect of the 2026/27 tax year, officials

consider that there will be sufficient lead in time following the enactment of legislation for this initiative.

Financial implications

143. The financial implications of implementing the crypto-asset reporting framework have been agreed by you (IR2024/147 refers) and funded as part of Budget 2024 (CAB-24-MIN-0148 refers).

144. The proposal to implement the CARF is forecast to raise $50 million per annum. This arises because Inland Revenue will have more information about crypto-asset trades of New Zealand tax residents, and that information can be used by Inland Revenue to improve tax compliance. The additional tax revenue is forecast from the 2027/28 fiscal year.

145. There are costs associated with administering the CARF for Inland Revenue's system build and ongoing operating costs to fund compliance work. For the CARF proposal the indicative costs are estimated at $6.700 million for the capital build, $1.600 million for the operating build and $8.500 million operating over the forecast period (2023/24 to 2027/28). The operating costs include depreciation and capital charge.

146. The revenue forecast and costs associated with administering the CARF, as previously approved, are set out in the table below:

	$ million – increase/(decrease)					
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**	**Total**
Tax revenue inc/(dec)	–	–	–	–	50.000	50.000
Operating impact	**–**	**–**	**–**	**–**	**(50.000)**	**(50.000)**
Capital costs						
System build	–	–	6.700	–	–	6.700
Capital (debt) impact	**–**	**–**	**6.700**	**–**	**–**	**6.700**
Operating costs						
System build	–	0.700	0.900	–	–	1.600
Ongoing operating	–	0.700	0.800	1.400	2.100	5.000
Depreciation	–	–	0.300	1.300	1.300	2.900
Capital charge	–	–	–	0.300	0.300	0.600
Operating impact	–	1.400	2.000	3.000	3.700	10.100
Total net operating impact	**–**	**1.400**	**2.000**	**3.000**	**(46.300)**	**(39.900)**
Total capital (debt) impact	**–**	**–**	**6.700**	**–**	**–**	**6.700**

147. The introduction of amendments to the CRS is expected to have an administrative implementation cost of $1.000 million capital and $0.200 million operating. Ongoing costs (depreciation and capital costs) will be $0.520 million over the 2024/25 to 2027/28 years. Inland Revenue will absorb this cost within existing baselines, noting that there is a limit to the level of initiatives that the department can absorb.

Recommended action

148. **Note** that Ministers have previously agreed to implement the OECD's *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* in New Zealand as part of Budget 2024.

Noted Noted

149. **Agree** that the OECD's *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* shall apply in New Zealand from the 2026–27 tax year, with the first exchanges of information taking place in 2027.

Agreed/Not agreed Agreed/Not agreed

150. **Agree** to implement the CRS amendments in New Zealand effective from the 2026–2027 tax year, with the first reports due in 2027.

Agreed/Not agreed Agreed/Not agreed

151. **Note** that Inland Revenue will self-fund the $1.200 million capital cost and $0.520 ongoing cost to implement this amendment.

Noted Noted

Crypto-asset reporting framework: penalties

152. **Agree** to introduce a penalty of $300 per failure, up to $10,000 per year (the reportable period) that would apply to New Zealand reporting crypto-asset service providers that failed to comply with their obligations under the CARF.

Agreed/Not agreed Agreed/Not agreed

153. **Agree** to introduce penalties that could apply to New Zealand reporting crypto-asset service providers that fail to take reasonable care in complying with their obligations under the CARF of:

153.1 $20,000 for the first offence, and

153.2 $40,000 for subsequent offences, capped at $100,000 per reportable period.

Agreed/Not agreed Agreed/Not agreed

154. **Agree** to introduce a penalty of $1,000 in circumstances where reportable users who operate through reporting crypto-asset service providers fail to provide the reporting crypto-asset service provider with the information it requires to fulfil its obligations under the CARF.

Agreed/Not agreed Agreed/Not agreed

155. **Agree** that the Commissioner of Inland Revenue can impose the penalties referred to in recommendations 152 to 154.

Agreed/Not agreed Agreed/Not agreed

156. **Note** that the penalties referred to in recommendations 152 to 154 are consistent with penalties introduced in the Tax Administration Act 1994 for financial institutions under the CRS and for digital platforms under the *OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*.

Noted Noted

157. **Note** that the Commissioner of Inland Revenue will focus on supporting New Zealand tax resident reporting crypto-asset service providers and reportable users to comply with their obligations under the CARF and would apply discretion in imposing these penalties.

Noted Noted

Enrolling young persons under 16 in KiwiSaver with the signature of one guardian

158. The Minister of Revenue previously agreed to include the enrolment of young persons under 16 in KiwiSaver with the signature of one guardian in the draft Cabinet paper (IR2024/147 refers).

Recommended action

159. **Note** that the Minister of Revenue has already agreed to include the proposal to enrol young persons under 16 into KiwiSaver with the signature of one guardian in the draft Cabinet paper.

Noted Noted

Generic response measures for emergency events

160. The Minister of Revenue previously agreed to include the generic response measures for emergency events in the draft Cabinet paper (IR2024/200 refers).

Recommended action

161. **Note** that the Minister of Revenue has already agreed to include the generic response measures for emergency events in the draft Cabinet paper.

Noted Noted

Consultation

162. In addition to the consultation outlined for each policy initiative in this report, the Treasury was consulted on the content of this report and draft Cabinet paper. The Department of the Prime Minister and Cabinet was consulted on the draft Cabinet paper.

Next steps

Immediate action

163. If you agree to all the policy items in this report, please refer the attached Cabinet paper to the Cabinet Office for lodgement by **10:00 a.m., Thursday 20 June 2024**.

164. If you and Cabinet agree to the recommendations, officials will develop legislative changes to give effect to the policy proposal. These will be included in Bill scheduled for introduction in August 2024.

s 9(2)(f)(iv)

Annex – Cabinet's approval criteria for obtaining overseas donee status

Since 1978, Cabinet has applied the following criteria to assess applications for overseas donee status.

The basic criteria for adding an organisation to the list of approved "overseas" charities:

(i) *the funds of the charity should be principally applied towards:*

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) *charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;*

**developing countries recognised by the United Nations.*

[CM 78/14/7 refers]

The eligible purposes set out in the criteria are aligned with the Government's overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of "charitable purpose" and the legislative framework in the Charities Act 2005. Determination of donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits that attach to monetary donations.

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Remedials with fiscals for inclusion in the August 2024 omnibus taxation Bill**

Date:	10 June 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/176

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations	24 June 2024
Minister of Finance	**Agree** to recommendations	24 June 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

10 June 2024

Minister of Finance
Minister of Revenue

Remedials with fiscals for inclusion in the August 2024 omnibus taxation Bill

Executive summary

1. This report seeks your agreement to make amendments to several Inland Revenue Acts[1] for inclusion in the taxation Bill scheduled for introduction in August 2024 (the Bill). The Inland Revenue Acts that the Bill would amend are the:

    1.1 Income Tax Act 2007 (ITA)

    1.2 Tax Administration Act 1994 (TAA), and

    1.3 Goods and Services Tax Act 1985 (GST Act).

Fiscal implications

2. The recommended amendments in this report are remedial in nature and are intended to ensure the relevant tax law is consistent with the policy intent. The remedial amendments seek to maintain the coherence and integrity of the tax system. Most of the recommended changes **do** have fiscal costs associated with them.

3. All the initiatives that have fiscal implications will be funded through the Tax Policy Scorecard.

4. While none of these amendments are material enough to require Cabinet approval, they require approval from the Minister of Finance and the Minister of Revenue.

Consultation

5. The Treasury has been consulted on this report and agrees with the recommendations.

6. The Tax System Forum (TSF) was recently consulted on a list of items under consideration for inclusion in the Bill (IR2024/206 refers). We have noted where TSF members' comments have material bearing on specific items.

Next steps

7. If you agree to the recommendations, officials will develop legislative changes to give effect to the remedial proposals. These will be included in the Bill scheduled for introduction in August 2024.

[1] The Inland Revenue Acts are set out in Schedule 1 of the Tax Administration Act 1994.

Recommended action

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

   Indicated Indicated

2. **Indicate** in the body of this report where you agree with the fiscal implications resulting from the recommended change.

   Indicated Indicated

3. **Agree** that the fiscal implications resulting from all these changes will be managed through the Tax Policy Scorecard.

   Agreed/Not agreed Agreed/Not agreed

4. **Note** the net fiscal impact of all the proposed changes on the Tax Policy Scorecard is as follows:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**
Crown Revenue and Receipts: Tax Revenue	0.000	1.068	0.188	0.266	0.151
Total Operating	0.000	(1.068)	(0.188)	(0.266)	(0.151)
	2028/29	**2029/30**	**2030/31**	**2031/32**	**2032/33 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.135	0.257	0.257	0.257	0.257
Total Operating	(0.135)	(0.257)	(0.257)	(0.257)	(0.257)

   Noted Noted

5. **Agree** that, except where specified, the approved amendments outlined in this report will apply from the date of enactment.

   Agreed/Not agreed Agreed/Not agreed

6. **Agree** that approved amendments will be included in the omnibus taxation Bill scheduled for introduction in August 2024.

Agreed/Not agreed

Agreed/Not agreed

Joshua Fowler
Bill Manager
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Background

6. This report seeks your agreement to remedial amendments to several Inland Revenue Acts to be included in the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

7. The recommended changes are designed to align the relevant legislation with the original policy intent or operational practice and do not involve changes to existing policy settings. We do not consider that the recommended changes in this report require Cabinet approval.

8. Most of the changes recommended in this report have fiscal implications. All the fiscal remedials would be managed through the Tax Policy Scorecard.

9. Unless otherwise stated, all recommendations should apply from the date of enactment of the Bill.

Financial implications

10. Ministers have previously agreed (T2021/1273 refers) that the Tax Policy Scorecard should be the default option for managing the fiscal impact of tax policy changes, excluding "structural" changes, social policy, departmental funding, and changes mainly intended to achieve non-tax objectives. The Scorecard allows the revenue-negative impacts of some tax changes to be offset against the revenue-positive impacts of other tax changes to better promote a timely and balanced programme of changes. In addition to these criteria, the Scorecard's balance may not exceed $200 million over the forecast period, nor fall below zero.

11. The Treasury has been consulted on this report, and agrees that the changes proposed in this report are consistent with Ministers' criteria for the Scorecard. There is no risk that the Scorecard may exceed its limits because of these changes. At the time of this report going up the scorecard balance is $18.232 million. There are other reports which propose changes to be charged against the Tax Policy Scorecard, if those changes and those mentioned in this report are agreed and charged, the resulting balance will be around $6 million. The Tax Policy Scorecard will be constrained in its ability to fund future tax changes in the absence of a revenue-positive initiative.

Veterans' Affairs backdated lump sum payments

Background

12. Backdated lump sum payments are a category of payments made by government departments to affected taxpayers. These payments are often compensatory in nature and can relate to more than one prior tax year. However, when made as a single payment, the taxation of these amounts can occur at a higher rate than if the components of the payment had been spread over the years to which they relate.

13. Two tax treatments were recently introduced for Accident Compensation Corporation (ACC) and Ministry of Social Development (MSD) backdated lump sum payments. These were designed to address the issue of adverse tax outcomes due to delays or disputes.

Taxation of Veterans' Affairs backdated lump sum payments

14. The taxation of Veterans' Affairs backdated lump sum payments presents a similar issue for taxpayers and typically arises where a taxpayer receives a large lump sum payment amount that "artificially" pushes a taxpayer into a higher income tax bracket. By contrast, if the backdated lump sum payment had been spread over the tax years to which it applied, the taxpayer would have had a lower tax liability.

15. There has been a recent increase in weekly compensation claims from veterans involved in contemporary deployments. These claims often involve complex medical issues and differing medical and legal interpretations. This can lead to delayed payments being made over multiple tax years because of errors or disputes.[2]

Proposed solution

16. We recommend expanding the tax treatment applied to ACC backdated lump sum payments to Veterans' Affairs backdated lump sum payments. This would involve applying the person's average tax rate over the previous four years before receipt of the backdated lump sum payments (separate from the person's annual income) to the backdated lump sum payments. This would reduce the tax rate applied to lump sum backdated payments by adjusting for short-term changes in a taxpayer's marginal tax rate.

17. Practically, Inland Revenue could calculate a taxpayer's average tax rate using the income information it holds and supply this to Veterans' Affairs before the backdated lump sum payment is made. Veterans' Affairs would then withhold tax on the backdated lump sum payment at the average rate. The lowest rate that would be applied under this approach would be 10.5%.

18. We recommend a "lower of" test to ensure recipients are not worse off under this proposal compared to the status quo. For example, if someone was on a lower tax rate in the current year than in the last four years (including the backdated lump sum payments), the status quo treatment would apply rather than the alternative treatment.

Financial implications

19. Changing the taxation of Veterans' Affairs backdated lump sum payments would have a small fiscal cost of $0.08 million per annum. This fiscal cost is due to the proposed spreading rule reducing the tax liability of recipients of Veterans' Affairs backdated lump sum payments.

Recommended action

20. **Agree** that the current ACC backdated lump sum payment tax treatment apply to Veterans' Affairs backdated lump sum payments.

    Agreed/Not agreed　　　　Agreed/Not agreed

21. **Agree** that a "lower of" test apply to recipients, where if recipients are worse off under the alternative treatment the status quo treatment would apply.

    Agreed/Not agreed　　　　Agreed/Not agreed

[2] The average number of backdated lump sum payments was seven payments per tax year, with an average gross amount of $76,321.71.

22. **Note** the following changes to tax revenue as a as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.020)	(0.080)	(0.080)	(0.080)
Total Operating	0.000	0.020	0.080	0.080	0.080

Noted Noted

23. **Agree** that the reduction in tax revenue in recommendation 22 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

GST associated persons and secondhand goods remedial

24. Under the GST Act, a GST-registered person who purchases secondhand goods from an unregistered person may claim an input tax deduction. However, these deductions are limited when the GST-registered person acquires the secondhand goods from an associated person.

25. A recent amendment to these rules unintentionally allows taxpayers to claim a large GST deduction where the same land is sold multiple times between associated persons.[3] Although we are aware of this situation having arisen only once to date, there is the potential fiscal risk that taxpayers could become aware of the opportunity to create arrangements that use this unintended outcome to produce a tax advantage.

26. We recommend a remedial amendment to address this potential fiscal risk. This remedial amendment should apply retrospectively from 30 March 2022 (ie, when the amendment that created the issue was first introduced). A savings provision will be included for tax positions based on the current law taken in returns filed before the introduction date of the Bill.[4]

Financial implications

27. The proposed remedial amendment will be fiscally positive. However, because of the unusual facts of other potential cases and the large number of property development transactions, it is difficult to estimate the potential additional revenue. Accordingly, we have assumed the fiscal saving could be $1 million per annum.

[3] A tax advantage could arise in the specific situation in which an unregistered person sells land to another unregistered person before being acquired by a GST registered person.
[4] A retrospective application date with a savings provision which preserves existing tax positions is commonly recommended for integrity measures.

Recommended action

28. **Agree** to limit secondhand goods input tax deductions to address the issue identified in the paragraphs above.

    Agreed/Not agreed   Agreed/Not agreed

29. **Agree** that this remedial amendment apply retrospectively from 30 March 2022 (with a savings provision for tax positions based on the current law taken before the introduction date of the Bill).

    Agreed/Not agreed   Agreed/Not agreed

30. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	1.000	1.000	1.000	1.000
Total Operating	0.000	(1.000)	(1.000)	(1.000)	(1.000)

    Noted   Noted

31. **Agree** that the increase in tax revenue in recommendation 30 above be charged against the Tax Policy Scorecard.

    Agreed/Not agreed   Agreed/Not agreed

Defining property developers for the purposes of a GST input tax limitation rule

Input tax deduction limitation

32. A GST-registered person is required to charge GST on the sale of land that has been used for taxable purposes (such as property development). In certain circumstances, some of that land may have been used for private or exempt use (such as a residential tenancy). This non-business use is recognised in the GST rules, which allow a final input tax deduction in respect of the percentage of private or exempt use.

33. For property developers, this input tax deduction is limited to the GST fraction of the original purchase price. This input tax deduction limitation is important to ensuring that GST is collected on the full increase in the land's value. This because the increase is likely to be due to the developer's property development activity (eg, constructing new dwellings on the land), rather than the non-taxable use (eg, continuing a residential tenancy for an old dwelling until the new construction work begins).

Issue and proposed solution

34. The GST rules describe the activity of property development in terms of "developing land". However, case law has interpreted "developing land" narrowly in the context of the ITA.[5] If this narrower definition of "developing land" were to also be applied

[5] This is because the ITA distinguishes between "erecting buildings" and "dealing in land" and has separate provisions that apply to each.

to the GST rules, then the GST rules would apply to a smaller range of property development activity than was originally intended. This could result in fewer than intended property developments being subject to the input tax deduction limitation described above, thereby reducing a property developer's GST liability.

35. We recommend a pre-emptive remedial amendment be made to clarify how property developers are defined for the purposes of a GST rule to limit input tax deductions for land sold by property developers. This remedial amendment should apply retrospectively from 24 February 2020 (ie, when the amendment that created the issue was first introduced). In addition, a savings provision will be required for tax positions taken based on the current law prior to the date that the remedial amendment is introduced in the Bill.[6]

Financial implications

36. The proposed remedial would address a potential risk that we have not observed in practice but which could occur. The amendment could lead to a nominal increase in tax revenue.

Recommended action

37. **Agree** to clarify how property developers are defined for the purposes of a GST rule for limiting input tax deductions for land sold by property developers.

Agreed/Not agreed | Agreed/Not agreed

38. **Agree** that this remedial amendment apply retrospectively from 24 February 2020 (with a savings provision for tax positions taken based on the current law before the introduction of the Bill).

Agreed/Not agreed | Agreed/Not agreed

39. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.050	0.200	0.200	0.200
Total Operating	0.000	(0.050)	(0.200)	(0.200)	(0.200)

Noted | Noted

40. **Agree** that the increase in tax revenue in recommendation 39 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed | Agreed/Not agreed

[6] A retrospective application date with a savings provision which preserves existing tax positions is commonly recommended for integrity measures.

Special time of supply rule for accommodation supplied through online marketplaces

Background

41. The GST Act contains rules that determine when a supplier of goods or services must account to Inland Revenue for GST. These rules are known as the "time of supply rules".

42. The time of supply rules are appropriate for most sectors of the platform economy (eg, ride-sharing and delivery services for food and beverages). However, applying the rules can be challenging for those involved in the supply of accommodation through an online marketplace (eg, Airbnb).

Issue

43. For online marketplace operators, accommodation providers and listing intermediaries, the person treated as the supplier of the accommodation (who could be any of those persons, depending on the circumstances) must account for GST on the supply based on the earlier of when a payment is received, or an invoice is issued, for the services.

44. In the taxable accommodation sector of the platform economy, having to account for GST according to these rules may create:

    44.1 compliance risks due to information mismatches between the parties involved in the supply of the accommodation (that is, where the person required to account for and pay GST to Inland Revenue does not know if/when time of supply occurred),

    44.2 cash flow issues for the person required to account for and pay GST to Inland Revenue, and

    44.3 compliance costs from adjusting GST positions when supplies are cancelled or changed (because time of supply may occur several months in advance of when the stay occurs, if the stay does end up occurring).

45. The first two problems above arise when the person who is required to account for GST on supplies of accommodation is different to the person who issues the invoice to the customer or first receives the customer's payment. This is a common scenario for accommodation supplied through an online marketplace, where there are many different possibilities for when payments for supplies are made and how those payments are made or processed (including whether the funds are held by an agent for a period before being paid to the accommodation provider).

Proposed solution

46. We recommend allowing marketplace operators, accommodation providers and listing intermediaries the choice to treat the time of supply for accommodation supplied through an online marketplace as occurring on the completion of the performance of the services (in other words, the guest's check out date). This would address the problems referred to above. Industry stakeholders and private sector tax advisors support this proposal.

Financial implications

47. Introducing an optional rule allowing taxpayers to treat time of supply for taxable accommodation supplied through an online marketplace as occurring when the

performance of the services is completed would have a small and unquantifiable one-off fiscal cost in the 2024/25 fiscal year due to timing differences.

48. Because of the problems outlined above with the current time of supply rules, officials are aware there is widespread non-compliance in the accommodation industry with the current law regarding time of supply. Therefore, the extent to which the proposed time of supply rule would affect which fiscal year GST receipts are recognised in is expected to be very limited, given the rule would be optional to apply and, in many cases, will merely be codifying widespread industry practice.

Recommended action

49. **Agree** to an optional rule allowing marketplace operators, accommodation providers and listing intermediaries to treat time of supply for taxable accommodation supplied through an online marketplace as occurring when the performance of the services is completed.

Agreed/Not agreed Agreed/Not agreed

50. **Agree** that this amendment apply on and after 1 April 2024, being the date the new GST platform economy rules came into effect.

Agreed/Not agreed Agreed/Not agreed

51. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.200)	0.000	0.000	0.000
Total Operating	0.000	0.200	0.000	0.000	0.000

Noted Noted

52. **Agree** that the reduction in tax revenue in recommendation 51 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

GST flat-rate credit and apportionment of GST-exclusive and GST-inclusive income tax deductions

Background

53. Generally, GST registered online marketplace operators facilitating the sale of "listed services" must collect and return GST of 15% when the service is performed, provided, or received in New Zealand.[7] Taxpayers who are not registered have been subject to a GST flat-rate credit scheme that is equal to 8.5% of the sale made through the online marketplace. This is intended to compensate them for the average amount of GST they would get input tax deductions for if they were

[7] Listed services includes short-term rental accommodation, ride-sharing, and food and beverage delivery services.

registered for GST. It is not included as income in their income tax returns because it is treated the same as ordinary input tax.

54. For income tax purposes, taxpayers are required to take deductions for expenditure on a GST-exclusive basis if the expenditure relates exclusively to income derived through an online marketplace. This is because the GST component of their expenditure is already accounted for in the flat-rate credit scheme. On the other hand, if taxpayers incur expenditure attributable to income that is not derived through an online marketplace, they will take deductions for this expenditure on a GST-inclusive basis. This reflects the fact that they have not received any GST "credit" for this expenditure.

Issue

55. The effect of the existing law is that taxpayers who derive income both through an online marketplace and from another source (ie, not through an online marketplace) will have to apportion their deductions for income tax purposes between GST-inclusive and GST-exclusive amounts. It has been suggested to us by external stakeholders that this results in compliance costs that could be removed if taxpayers had an option to instead include the flat-rate credit as income in their income tax returns and take GST-inclusive deductions on all their expenditure for income tax purposes without the need for apportionment.

Proposed solution

56. Some practitioners have advised us they would choose to use this method, despite taxpayers paying more tax under this method overall, because the additional tax is deemed to be immaterial relative to the benefit of compliance cost reduction. For taxpayers that include the flat-rate credit as income in their income tax returns, they should be able to deduct their GST-inclusive expenditure for income tax purposes.

57. This option should be available for the 2024–25 and later tax years. This would coincide with the introduction of the flat-rate credit scheme and would mean taxpayers could apply this method in their income tax returns for the 2024–25 tax year.

Financial implications

58. We do not hold information on how many taxpayers currently derive income both through an online marketplace and from another source (ie, not through a marketplace), and which of these taxpayers would choose to apply the new method, so it is difficult to estimate the potential increase in tax revenue. We therefore consider this method will have a small and unquantifiable fiscal gain.

Recommended action

59. **Agree** to allow taxpayers the option to deduct the GST-inclusive amount of all their expenditure for income tax purposes when they have income from an online marketplace and from other sources, provided they include the flat-rate credit as income in their income tax returns.

Agreed/Not agreed　　　　　　　　Agreed/Not agreed

60. **Agree** that this amendment apply for the 2024–25 and later tax years.

Agreed/Not agreed Agreed/Not agreed

61. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.200	0.200	0.200	0.200
Total Operating	0.000	(0.200)	(0.200)	(0.200)	(0.200)

Noted Noted

62. **Agree** that the increase in tax revenue in recommendation 61 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Zero-rating rules relating to international vessels exempt from import entries

63. Services that are provided directly in connection with temporarily imported goods are zero-rated for GST purposes. The policy rationale for zero-rating these services is that they ultimately relate to consumption that will occur outside New Zealand when the goods are re-exported. This accords with the destination principle, which is a widely adopted international taxation principle that assigns the right to tax consumption of goods and services to the country in which those goods and services are destined to be consumed.

64. There is currently a disparity in the GST treatment that applies to services provided directly in connection with temporarily imported **non-commercial** vessels and **commercial** vessels that pass through New Zealand. The issue is that services provided in relation to temporarily imported **non-commercial** vessels are zero-rated for GST purposes, but services provided in relation to **commercial** vessels that are passing through New Zealand *are* subject to GST. It is contrary to the policy intent for GST to apply to these services. This is because the services are provided in relation to vessels that are merely passing through New Zealand, and thus ultimately reflect consumption that will occur outside New Zealand.

65. The current treatment of these services also creates inefficiencies in the GST system because it means that foreign entities that operate commercial vessels need to register for GST in New Zealand to claim back the GST charged on these services. By contrast, if services provided in relation to commercial vessels were zero-rated for GST purposes, the foreign entities which operate these vessels would not be required to register for GST.

66. We recommend an amendment to expand the current GST zero-rating rule to also capture services provided directly in connection with commercial vessels passing through New Zealand.

Financial implications

67. There is a small fiscal cost associated with this amendment, as services provided in relation to commercial vessels passing through New Zealand will be zero-rated for GST purposes instead of standard rated with registration required to claim back the GST.

Recommended action

68. **Agree** that services provided in relation to commercial vessels passing through New Zealand should be zero-rated for GST purposes.

    Agreed/Not agreed Agreed/Not agreed

69. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.050)	(0.200)	(0.200)	(0.200)
Total Operating	0.000	0.050	0.200	0.200	0.200

    Noted Noted

70. **Agree** that the reduction in tax revenue in recommendation 69 above be charged against the Tax Policy Scorecard.

    Agreed/Not agreed Agreed/Not agreed

Supply correction information amendment

Background

71. In a GST setting, supply correction information (previously known as credit or debit notes) is issued to reflect that the payment for a good or service may have been incorrect. Supply correction information can be issued to ensure that GST is correctly accounted for on the supply of the good or service. Some examples of when supply correction information may be issued include if an incorrect amount of GST is charged, or if some of the goods are returned to the seller. Adjustments to GST positions as a result of supply correction information being issued are reflected in the current GST return period, rather than applying to the previous return period in which the incorrect supply occurred.

72. Under current law, supply correction information cannot be issued for a supply that gives rise to an overpayment of tax if that supply would have been subject to the time bar. The purpose of the time bar provisions is to ensure that refunds do not remain open ended forever, and are necessary to safeguard the Commissioner against unquantifiable fiscal risk in respect of back years. The time bar provisions achieve this outcome by preventing taxpayers from amending past returns.

73. The policy intent is that supply correction information should not be able to be issued in respect of supplies of goods and services that are contained in a time-barred return period. This is necessary because supply correction information amends the current return period, and therefore the timebar provisions alone are not sufficient in preventing the tax position from being changed (this is because the time bar applies to previous return periods).

Issue

74. When the tax invoicing rules were replaced with the new taxable supply information rules in 2022, the new provision that refers to supply correction information did not

cross reference all the refund provisions. The effect of this omission is that no time limit currently applies to correcting supplies where an overpayment of tax has arisen due to a clear mistake or simple oversight of the taxpayer. This means supply correction information can technically be issued to alter the tax position and circumvent the time bar, and this leaves the Crown exposed to fiscal risk.

75. We recommend an amendment to ensure that supply correction information cannot be issued to correct supplies in all circumstances where that supply is subject to the time bar.

Financial implications

76. There is a small nominal fiscal gain associated with this amendment because it prevents unintended refunds from being issued.

Recommended action

77. **Agree** to an amendment to ensure that supply correction information cannot be issued to correct supplies that give rise to an overpayment of tax that is subject to the time bar provisions.

Agreed/Not agreed Agreed/Not agreed

78. **Agree** that this amendment should apply retrospectively to taxable periods starting on or after 1 April 2023 to provide alignment with the original amendment.

Agreed/Not agreed Agreed/Not agreed

79. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.200	0.200	0.200	0.200
Total Operating	0.000	(0.200)	(0.200)	(0.200)	(0.200)

Noted Noted

80. **Agree** that the increase in tax revenue in recommendation 79 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Foreign tax credits and trusts

81. When a New Zealand resident earns foreign-sourced income and pays foreign tax on that income, they will usually be entitled to a foreign tax credit in New Zealand to offset against their New Zealand tax liability. This prevents tax being paid twice on the same income.

82. The amount of foreign tax credit is capped at the lower of:

82.1 the foreign tax actually paid on that income, or

82.2 the tax that would have been paid in New Zealand if not for the foreign tax credit, calculated on a net basis (ie, after subtracting deductions). This is known as the "notional liability" for the person.

83. However, a base maintenance risk arises when the foreign tax credit rules interact with the trust taxation rules.

84. When a trust incurs expenses, deductions are taken at the level of the trustee, even if the relevant income is distributed to the trust's beneficiaries. Since the beneficiaries are the ones with the taxable income, the beneficiaries would ordinarily receive the foreign tax credit. However, because the deductions are removed from the calculation of the foreign tax credit cap described above, the foreign tax credit available to the beneficiaries could be higher than intended.

85. We therefore recommend amending the ITA to ensure that the foreign tax credit cap works as intended.

86. The TSF did not identify specific concerns with this proposal. One member expressed the importance of keeping the foreign tax credit rules simple. We agree with the importance of keeping the rules simple and consider the remedial can be achieved consistent with this objective.

Financial implications

87. This remedial is expected to have a very small revenue positive impact of around $7,000 per year based on 2022 tax return data because very few trusts are likely to affected by the change.

Recommended action

88. **Agree** that a trust beneficiary's foreign tax credit entitlement should be calculated taking into account any deductions that relate to the relevant foreign-sourced income.

Agreed/Not agreed Agreed/Not agreed

89. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.000	0.007	0.007	0.007
Total Operating	0.000	0.000	(0.007)	(0.007)	(0.007)

Noted Noted

90. **Agree** that the increase in tax revenue in recommendation 89 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Nature of interaction between transfer pricing rule and deemed dividend rule

91. The transfer pricing rule in the ITA governs cross-border transactions between taxpayers and associated persons. This rule protects New Zealand's tax base by requiring taxpayers to adjust their reported income tax liability to reflect the arm's length price (i.e., the price that unrelated entities would agree on).

92. Arrangements that require a transfer pricing adjustment may also give rise to a deemed dividend. This is because a separate provision in the ITA may deem the difference in the market values exchanged by the taxpayer and the associated person to be a dividend payment if the transaction as a whole represents a value transfer from a company to a shareholder.

Issues

93. We have identified two issues arising from the interaction of the transfer pricing and deemed dividend rules. These are:

Clarifying the application of the deemed dividend rule

94. The policy intention is that both the above rules should apply concurrently. However, the relevant provisions in the ITA could be interpreted to mean that the dividend rule does not apply where there is a transfer pricing adjustment unless the other party applies for a matching treatment. We recommend clarifying amendments to ensure that deemed dividends can still arise when transfer pricing adjustments are made regardless of the matching treatment application. Because the changes merely confirm the policy intent, these should have retrospective application to the date the provisions were previously amended.

Alignment of time bars

95. Currently, there is a misalignment of the seven-year time bar that applies to transfer pricing adjustments and the four-year time bar that applies generally to other adjustments such as the withholding requirements on a dividend. We recommend an amendment to ensure that other adjustments related to a transfer pricing adjustment can still apply even if it is done between the fifth and the seventh year. We recommend that this amendment apply prospectively for an arrangement and income years beginning on or after 1 April 2025.

96. The TSF suggested that taxpayers affected by a transfer pricing adjustment should be able to reduce the withholding tax on a deemed dividend as if it has been paid as a normal dividend (for example, by attaching imputation credits). Further discussion with the member confirms that the current legislation already caters for this.

Financial implications

97. The fiscal implications of the two items are as follows:

    97.1 *Clarifying the application of the deemed dividend rule*: The proposed amendment to clarify that the transfer pricing and deemed dividend rules should apply concurrently will not have any fiscal impact as it will only confirm the policy intent.

    97.2 *Alignment of time bars*: The second amendment to align the time bar rules enables the Commissioner to enforce the collection of withholding tax on the deemed dividends after the fourth year. As such, it will be fiscally positive from the fifth year following the application date, which is outside of the current forecast period. The size of the gain is uncertain since the taxpayer may reduce/eliminate the liability, such as by attaching imputation credits or returning the amount, so a nominal gain is assumed.

Recommended action

Clarifying the application of the deemed dividend rule

98. **Agree** to drafting amendments to clarify that the transfer pricing and dividend rules apply concurrently.

Agreed/Not agreed Agreed/Not agreed

99. **Agree** that the amendments to confirm the concurrent application of the transfer pricing and deemed dividend rules should apply retrospectively for income years beginning on or after 1 July 2009.

Agreed/Not agreed Agreed/Not agreed

Alignment of time bars

100. **Agree** to the amendment to ensure that any adjustments related to a transfer pricing adjustment can still apply, even after the general 4-year time bar for adjustments.

Agreed/Not agreed Agreed/Not agreed

101. **Agree** that the amendment to align the time bar rules apply for an arrangement and income years beginning on or after 1 April 2025.

Agreed/Not agreed Agreed/Not agreed

102. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**
Crown Revenue and Receipts: Tax Revenue	0.000	0.000	0.000	0.000	0.000
Total Operating	0.000	0.000	0.000	0.000	0.000
Vote Revenue **Minister of Revenue**	**2028/29**	**2029/30**	**2030/31**	**2031/32**	**2032/33 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.050	0.200	0.200	0.200	0.200
Total Operating	(0.050)	(0.200)	(0.200)	(0.200)	(0.200)

Noted Noted

103. **Agree** to treat the increase in tax revenue in recommendation 102 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

R&D Tax Incentive: imputation credit accounts and shareholder continuity breaches

104. Imputation credits can be attached to dividends so that shareholders of a company receive tax credits for the income tax paid by the company. Companies use an imputation credit account (ICA) to track how much tax they have paid and how much tax has been either passed on to shareholders or refunded to the company.

105. Filing for a Research and Development Tax Incentive (RDTI) tax credit will give rise to an imputation credit in the ICA. If this tax credit is approved, the ICA then has an equal imputation debit if the tax credit is refunded to the company.

106. When shareholder continuity in a company is lost (i.e., when more than 51 percent of the shares in a company change hands during a given year), the company's ICA will have an imputation debit equal to a credit balance in the account.

107. However, an issue arises where a breach in a company's shareholder continuity occurs *after* it has filed its income tax return, but *before* it is refunded an RDTI tax credit. In this situation, the company's ICA will have been credited once due to its filing for an RDTI credit, but will be debited twice (i.e., once due to the breach in shareholder continuity and a second time due to the refund of the RDTI credit).

108. We recommend that these rules be amended so that when a company's shareholder continuity is breached between the time it files its income tax return and the time it is refunded an RDTI tax credit, there is no double debit to the ICA. We recommend that this amendment apply from the start of the RDTI regime (i.e. for the 2019–20 and later income years).

Financial implications

109. The amendment has a small and unquantifiable fiscal cost at a nominal $0.2 million per year to reflect a greater amount of imputation credits that could be attached to dividends.

Recommended action

110. **Agree** that when a Research and Development Tax Incentive (RDTI) tax credit is refunded to a business that has previously incurred an imputation credit account (ICA) debit for a breach in shareholder continuity, two ICA debits are not incurred in relation to one ICA credit.

Agreed/Not agreed　　　　　　　　Agreed/Not agreed

111. **Agree** that this amendment apply for the 2019–20 and later income years, the year the RDTI was introduced.

Agreed/Not agreed　　　　　　　　Agreed/Not agreed

112. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.050)	(0.200)	(0.200)	(0.200)
Total Operating	0.000	0.050	0.200	0.200	0.200

Noted Noted

113. **Agree** that the reduction in tax revenue in paragraph 112 above be charged against the Tax Policy Scorecard

Agreed/Not agreed Agreed/Not agreed

Sale of subdivided land that was acquired from a co-owner

114. Individuals can pool resources to purchase land, becoming co-owners. When co-owners subdivide land and keep a parcel each, each co-owner goes from owning a share in the whole of the undivided land to being the sole owner of the part of the land they obtain. While the share of the divided land they get may reflect the share they held as co-owner, they are considered to have disposed of their share in the parcel they did not keep to the other co-owner (or each other co-owner). These disposals by each co-owner may be taxable events because the land sale rules in the ITA apply in certain situations to tax disposals of land.[8]

115. The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 amended these rules to ensure that no income tax is imposed where there is no substantive change of ownership following a subdivision. However, the intent of this provision would be defeated because a subsequent disposal of the land by the co-owner may be taxable under provisions that impose tax on land acquired from developers or associates in certain circumstances (the land sale rules). To remedy this, the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 inserted a further amendment to ensure that any income arising under the land sale rules, when land subdivided between co-owners is subsequently disposed of, is exempt to the extent to which the income on subdivision is exempt under the previous amendment.

116. However, the section is not operating as intended and two amendments are required.

116.1 _Extending the scope of the section:_ The first amendment we recommend is to extend the scope of the section to include co-owners who are developing land in their personal names (currently it only includes co-owners who set up a separate entity to undertake the development), provided they were not in the business of property development when they originally acquired the land.

116.2 _Understated income amount:_ The second amendment we recommend clarifies the income attributed to the person under the section. Currently, one of the provisions understates the amount of income the person should

[8] This could occur if the disposal is within the bright-line period or if the land was acquired with the intention of disposal.

have where they disposed of land acquired from a co-owner that exceeded their original ownership share in the land.

Financial implications

117. The amendment that extends the scope of the relevant section has a small and unquantifiable fiscal cost. The amendment that clarifies the income attributed to the person has a small and unquantifiable fiscal gain. Officials consider that these broadly net off to produce a net zero.

Recommended action

Extending the scope of the section

118. **Agree** to extend the scope of the section relating to sale of subdivided land between co-owners to include co-owners who are developing land in their personal names.

Agreed/Not agreed Agreed/Not agreed

119. **Agree** that this change applies from 27 March 2021, the date that the rules for subdivisions between co-owners first applied from.

Agreed/Not agreed Agreed/Not agreed

120. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.050)	(0.200)	(0.200)	(0.200)
Total Operating	0.000	0.050	0.200	0.200	0.200

Noted Noted

121. **Agree** that the reduction in tax revenue in recommendation 120 above be charged against the Tax Policy Scorecard

Agreed/Not agreed Agreed/Not agreed

Understated income amount

122. **Agree** to amend the section relating to the sale of subdivided land between co-owners in order to prevent understatement of income in situations where a person has acquired land from another co-owner that exceeded their original ownership share in the land.

Agreed/Not agreed Agreed/Not agreed

123. **Agree** that this change applies from 27 March 2021, the date that the rules for subdivisions between co-owners first applied from.

Agreed/Not agreed Agreed/Not agreed

124. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.050	0.200	0.200	0.200
Total Operating	0.000	(0.050)	(0.200)	(0.200)	(0.200)

Noted Noted

125. **Agree** that the increase in tax revenue in recommendation 124 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Disposal of land to the Crown – repeal of income spreading rule

126. Under a long-standing concessionary rule, a person who derives taxable income from disposing of their land to the Crown can apply to the Commissioner to spread that income (and corresponding deductions) over a four-year period. We are only aware of one successful application to use this concession which was granted in 2021.

127. This concession was enacted to reduce the impact of unexpected tax liabilities arising where land was compulsorily acquired by the Crown. This was a valid concern when the rule was originally introduced in the mid-1950s, as the top income tax rate was very high. However, as income tax rates are now significantly lower than they were in the 1950s, we no longer consider this to be a sufficient reason to depart from standard income tax rules.

128. Furthermore, the wording of the provision allows for spreading in relation to all sales to the Crown – not just compulsory acquisitions. There is no policy rationale to justify taxpayers spreading their income where they have voluntarily entered into a commercial transaction with the Crown.

129. We recommend that the spreading rule be repealed for all disposals of land to the Crown on or after the date of the introduction of the Bill. This would prevent taxpayers from accessing the concession ahead of the enactment of the Bill. It would also protect the position of the one applicant that is currently spreading their income under the rule.

130. The TSF noted that further consultation may be required to assess the impact of repealing the spreading rule. We do not consider this necessary given that we are only aware of one taxpayer having successfully applied to use the rule, and their position in relation to that transaction will be preserved.

Financial implications

131. This amendment would raise $0.422 million over the forecast period. This is on the basis that more taxpayers might apply to use the spreading rule ahead of the introduction of the Bill. We are aware of approximately 270 taxpayers between 2018–2023 that derived income from disposing of their land to the Crown and therefore could have applied to spread their income using the concession. However,

as it affects timing only, the fiscal impact would not extend beyond the 2028–29 fiscal year.

Recommended action

132. **Agree** to repeal the provision allowing taxpayers to apply to the Commissioner to spread income derived by them on disposal of land to the Crown.

Agreed/Not agreed   Agreed/Not agreed

133. **Agree** that the amendment apply for all disposals of land to the Crown on or after the date of introduction of the Bill.

Agreed/Not agreed   Agreed/Not agreed

134. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**
Crown Revenue and Receipts: Tax Revenue	0.000	0.028	0.131	0.169	0.094
Total Operating	0.000	(0.028)	(0.131)	(0.169)	(0.094)
Vote Revenue **Minister of Revenue**	**2028/29**	**2029/30**	**2030/31**	**2031/32**	**2032/33 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.028	0.000	0.000	0.000	0.000
Total Operating	(0.028)	0.000	0.000	0.000	0.000

Noted   Noted

135. **Agree** that the increase in tax revenue in recommendation 134 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed   Agreed/Not agreed

Employee vaccinations

136. Flu vaccinations are a common benefit provided to employees. These will generally not be subject to fringe benefit tax (FBT) when an employer:

136.1 arranges a vaccine clinic on premises, or

136.2 provides a flu vaccine voucher to employees to get their vaccination at their doctor or other clinic.

137. These benefits are exempt because they fall under the health and safety exemption for FBT, in that they are targeting a specific health and safety risk in the workplace. However, if instead an employee pays for their flu vaccine and the employer later reimburses the employee, this cash payment will be taxable and subject to PAYE.

138. We recommend the legislation is amended to ensure consistent treatment of employer-funded flu vaccinations by ensuring reimbursements made by the employer for flu vaccinations are not taxable payments.

Financial implications

139. This change is likely to have a small fiscal cost of $0.090m for the 2024/25 year, and $0.370m for future years. This fiscal cost is due to the loss in PAYE revenue for employers who choose to reimburse for flu vaccines, rather than through vouchers or provision of on-site vaccine clinics.

Recommended action

140. **Agree** to amend the legislation to ensure consistent treatment of employer funded flu vaccinations by ensuring reimbursements made by the employer for flu vaccinations are not taxable payments to employees.

Agreed/Not agreed Agreed/Not agreed

141. **Agree** this amendment apply from 1 April 2025.

Agreed/Not agreed Agreed/Not agreed

142. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.090)	(0.370)	(0.370)	(0.370)
Total Operating	0.000	0.090	0.370	0.370	0.370

Noted Noted

143. **Agree** that the reduction in tax revenue in recommendation 142 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed Agreed/Not agreed

Thin capitalisation changes related to non-debt liabilities

144. The thin capitalisation rules help protect the tax base by preventing the use of excessive debt to reduce the taxable profits in New Zealand for both inbound and outbound investment. In practice, the rules limit interest deductions by setting a maximum allowable debt percentage for the New Zealand group.

145. The debt percentage of a group was historically calculated based on its debt relative to its gross assets: i.e. group debt ÷ group assets. Debt for thin capitalisation purposes is limited to interest-bearing debt. This is narrower than liabilities for accounting purposes that include several other "non-debt liabilities" such as trade credits and provisions. Since the assets related to these non-debt liabilities were historically included as part of group assets, they were effectively treated as equity

(as the corresponding liability was not taken into account as debt for thin capitalisation purposes) and so reduced the debt percentage of a group.

146. This was amended in 2018 so that "non-debt liabilities" are now subtracted from group assets in calculating the debt percentage: i.e. group debt ÷ (group assets – non-debt liabilities). The amendments strengthened the thin capitalisation rules by more accurately reflecting the group's true debt to asset position.

Issues and proposed solutions

147. We propose to address three issues raised by external stakeholders in relation to the calculation of non-debt liabilities and the debt percentage of the group:

Exclusion of interest-free loans from a settlor of a trust in calculating non-debt liabilities of the trust

148. Interest-free shareholder loans to companies are excluded from non-debt liabilities where they are proportional to shareholding or where the shareholder holds at least 10% of the voting interests in the company. This is because such loans are more akin to equity than debt, and so they should not reduce the group assets for thin capitalisation purposes.

149. The current exclusion does not apply to interest-free loans from a settlor to a trust, although they are analogous in some respects to interest-free loans from a shareholder to a company. We recommend a prospective amendment to extend the non-debt liabilities exclusion to include interest-free loans from a settlor that has made a settlement of at least 10% of the value of the total settlements on the trust.

Exclusion of interest-free loans and preference shares from non-corporate member of a wholly-owned group in calculating non-debt liabilities

150. The exclusion for interest-free shareholder loans to companies referred to in paragraph 147 above was extended to exclude interest-free loans provided by any member of the same wholly-owned group of companies (as the shareholder) from non-debt liabilities.

151. The extension to treat members of the same wholly-owned group of companies as the shareholder also covered some preference shares that are excluded from non-debt liabilities where they are proportional to shareholding or where the shareholder holds at least 10% of the voting interests in the company.

152. We recommend a prospective amendment to expand the extension further to cover interest-free loans provided by, and preference shares held by, a non-corporate entity (such as a settlor of trust, trust, or individual) where the entity has an effective 100% ownership/settlement interest in the shareholder or in another member of the wholly-owned group that the shareholder is a member of. This would cover scenarios such as where the shareholder is a foreign company wholly-owned by a foreign trust with a sole settlor where the settlor (or trust) provides interest-free loans directly to the member of the thin capitalisation group. There is a reasonable case that such scenarios are analogous to the interest-free loans being provided by a company in the same wholly-owned group as the shareholder which are excluded from non-debt liabilities.

Correction to the link between the calculation of debt percentage and the requirement to adjust the total interest deductions

153. The debt percentage calculation was amended in 2021 so that the debt percentage is deemed to be zero where non-debt liabilities exceed assets. While not common, this can happen when an entity is insolvent, and should result in the full denial of the interest deductions in New Zealand. However, there is a missing legislative link

which means that it is not clear that an interest appointment is required where non-debt liabilities exceed assets because the thin capitalisation rules generally do not apply where the debt percentage is zero.

154. We recommend an amendment to ensure that entities with non-debt liabilities greater than their total assets are required to reduce their total interest deductions. This change should have retrospective application to the effective date of the previous amendment, as it is consistent with the clear policy intent of the thin capitalisation rules and aligns with how we understand the rules are being applied in practice. In the absence of an interest apportionment, no interest deductions would be denied despite the entity being insolvent.

Financial implications

155. The fiscal implications of the three items are as follows:

155.1 _Exclusion of interest-free loans from a settlor of a trust in calculating non-debt liabilities of the trust_: The proposed change will only apply in limited circumstances. Based on the limited information that we hold, we estimate that the proposal may cost $0.5 million per year.

155.2 _Exclusion of interest-free loans and preference shares from non-corporate member of a wholly-owned group in calculating non-debt liabilities_: The proposed change will only apply in limited circumstances, and is estimated to have a small and unquantifiable fiscal cost of $0.2 million per year.

155.3 _Correction to the link between the calculation of debt percentage and the requirement to adjust the total interest deductions_: The proposed change is not expected to have any fiscal impact. This is because, while it is possible that some taxpayers with non-debt liabilities exceeding assets are claiming their interest deductions, we understand this interpretation is not being applied in practice.

Recommended action

Exclusion of interest-free loans from a settlor of a trust in calculating non-debt liabilities of the trust

156. **Agree** to extend the non-debt liabilities exclusion to interest-free loans from a settlor that has made a settlement of at least 10% of the value of the total settlements on the trust.

Agreed/Not agreed Agreed/Not agreed

157. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.000	(0.500)	(0.500)	(0.500)
Total Operating	0.000	0.000	0.500	0.500	0.500

Noted Noted

158. **Agree** that the reduction in tax revenue in recommendation 157 above be charged against the Tax Policy Scorecard

Agreed/Not agreed Agreed/Not agreed

Exclusion of interest-free loans and preference shares from non-corporate member of a wholly-owned group in calculating non-debt liabilities

159. **Agree** to extend the non-debt liabilities exclusion to situations where interest-free loans are provided by, or preference shares held by, non-corporate entities with an effective 100% ownership/settlement interest in the shareholder or in another member of the wholly-owned group that the shareholder is a member of.

Agreed/Not agreed Agreed/Not agreed

160. **Note** the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	0.000	(0.200)	(0.200)	(0.200)
Total Operating	0.000	0.000	0.200	0.200	0.200

Noted Noted

161. **Agree** that the reduction in tax revenue in recommendation 160 above be charged against the Tax Policy Scorecard

Agreed/Not agreed Agreed/Not agreed

Correction to the link between the calculation of debt percentage and the requirement to adjust the total interest deductions

162. **Agree** to an amendment to ensure that entities with non-debt liabilities greater than the total assets are required to reduce their total interest deductions.

Agreed/Not agreed Agreed/Not agreed

163. **Agree** that the amendment to correct the link between the calculation of debt percentage and the requirement to reduce the total interest deductions should apply retrospectively to income years beginning on or after 1 July 2018.

Agreed/Not agreed Agreed/Not agreed

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Additional non-fiscal remedial items for the August 2024 omnibus taxation Bill**

Date:	10 June 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/203

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister of Finance for her information	24 June 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

10 June 2024

Minister of Revenue

Additional non-fiscal remedial items for the August 2024 omnibus taxation Bill

Executive summary

1. This report seeks your agreement to make amendments to several Inland Revenue Acts[1] for inclusion in the taxation Bill scheduled for introduction in August 2024 (the Bill). The Inland Revenue Acts the Bill would amend are the:

    1.1 Income Tax Act 2007 (ITA)

    1.2 Tax Administration Act 1994 (TAA), and

    1.3 Goods and Services Tax Act 1985 (GST Act).

2. The recommended amendments in this report are remedial in nature and are intended to ensure the relevant tax law is consistent with the policy intent. The remedials seek to maintain the coherence and integrity of the tax system. The recommended changes do not give rise to any material:

    2.1 revenue or other fiscal costs

    2.2 compliance or administrative costs, or

    2.3 systems or technology implications.

3. While none of these amendments are material enough to require Cabinet approval, they require approval from the Minister of Revenue.

Consultation

4. The Treasury has been consulted on this report and agrees with the recommendations.

5. The Tax System Forum (TSF) was recently consulted on a list of items under consideration for inclusion in the Bill (IR2024/206 refers). We have noted where TSF members' comments have material bearing on specific items.

Next steps

6. If you agree to the recommendations, officials will develop legislative changes to give effect to the remedial proposals. These will be included in the Bill scheduled for introduction in August 2024.

[1] The Inland Revenue Acts are described in schedule 1 of the Tax Administration Act 1994.

Recommendations

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

   Indicated

2. **Agree** that, except where specified, the approved amendments outlined in this report will apply from the date of enactment.

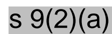
   Agree/Not agreed

3. **Agree** that the approved amendments will be included in the omnibus taxation Bill scheduled for introduction in August 2024.

   Agree/Not agreed

4. **Refer** a copy of this report to the Minister of Finance for her information.

   Referred/Not referred



s 9(2)(a)

Joshua Fowler
Bill Manager
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

Background

5. On 9 May 2024, we reported to you on several non-fiscal remedial items for the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill) (IR2024/092 refers).

6. This report seeks your agreement to additional remedial amendments to various Inland Revenue Acts to be included in the Bill.

7. The recommended changes in this report are remedial in nature and are intended to ensure the relevant tax law is consistent with the policy intent. The remedials seek to maintain the coherence and integrity of the tax system. The recommended changes do not give rise to any material:

   7.1 revenue or other fiscal costs

   7.2 compliance or administrative costs, or

   7.3 systems or technology implications.

8. We do not consider that the recommended changes in this report require Cabinet approval.

9. Unless otherwise stated, all recommendations should apply from the date of enactment of the Bill.

Deemed supply of emissions units on deregistration

10. The supply of emissions units is almost always zero-rated for GST purposes.[2] However, there is a minor technical error with the interaction between one of the deregistration provisions in the GST Act and these zero-rating rules.

11. The relevant provision provides that where a person ceases to be GST registered, any remaining assets which form the part of their activity will be deemed to be supplied by the person in the course or furtherance of taxable activity immediately before they de-register. This deemed supply is treated as occurring for market value (meaning that GST is paid on the market value of the assets when the person deregisters).

12. The current law provides the unintended outcome that a deemed supply of emissions units is standard rated in situations where someone deregisters from GST. We recommend an amendment to ensure these deemed supplies are instead zero-rated, in line with the policy intention.

13. An amendment to zero-rate deemed supplies of emissions units is unlikely to have any fiscal implications because it would be correcting a technical error with the GST rules that taxpayers do not seem to be aware of. Because the current GST outcome is counterintuitive and no one outside Inland Revenue has raised the issue with policy officials, we expect any affected taxpayers are likely treating the deemed supplies of emissions units as zero-rated rather than standard-rated.

Recommendations

Agree that zero-rating apply to a deemed supply of emissions units upon deregistration.

Agree/Not agreed

[2] The only exceptions are two very specific situations where the Crown transfers an emissions unit.

Clarify taxable activity exclusion for certain goods applies when a person deregisters from GST

14. When a person deregisters from GST, the GST Act deems them to make a supply of any goods or services currently used in their taxable activity.

15. A new rule was recently added to the definition of taxable activity to exclude certain qualifying goods from being part of a registered person's taxable activity when the goods are sold (so they would not be required to charge GST in respect of these goods). The qualifying goods will typically be dwellings that have a mainly private or exempt use and some minor business use (such as a home office), which the person has treated as not being used to make their taxable supplies.

16. The policy intent has always been for the new rule to apply to supplies that include the deemed supply that occurs when a person deregisters from GST.[3] However, the rule refers to a "supply of goods, by way of sale", and the deemed supply is not an actual sale. We recommend an amendment to clarify that the new rule can apply to a deemed supply that arises due to the person deregistering from GST.

17. The remedial amendment should have the same retrospective application date as the rule it amends, which applied to supplies made on or after 1 April 2011, but with a savings provision for GST positions taken in returns that were filed prior to August 2022.

18. The remedial is expected to align with current practices and would not have a fiscal cost. This is because the published guidance states that the current rule is intended to apply in cases where a person deregisters from GST. Also, to qualify for the current rule, the person must have not treated the goods as being used to make taxable supplies in their GST returns.

Recommendation

Agree that a rule excluding certain qualifying goods from a person's taxable activity should be amended to clarify it applies when a person deregisters from GST.

Agree/Not agreed

Agree this remedial should have the same retrospective application date as the rule it amends.

Agree/Not agreed

Motor vehicles used wholly and exclusively for business purposes

19. Motor vehicle expenses are generally deductible for income tax purposes if the vehicle is used to help earn income for the business. If a vehicle is used only for business purposes, an individual can claim the full running costs as a business expense. Business use is defined to be travel undertaken by the vehicle wholly in deriving the person's income.

20. The definition of "business use" was amended during the rewrite of the ITA in 2004. Previously, the ITA defined business use (and business purposes) to be travel undertaken "wholly and exclusively" in deriving the person's income. Although the removal of the word "exclusively" was unintentional, it has led to an arguable widening of the business use deduction and should be reinserted.

21. We recommend that the definition of "business use" be clarified to refer to motor vehicles used wholly and exclusively for business purposes. This is in line with the

[3] This includes in Bill commentary and published guidance.

original policy intent of the provision. We recommend this apply retrospectively from the date of the ITA 2004 re-write and later income years.

22. Two members of the TSF questioned whether this remedial amendment s 9(2)(f)(iv) However, s 9(2)(f)(iv) is necessary due to a drafting error made during the rewrite of the ITA. Including this amendment in the current Bill will place the matter beyond doubt.

Recommendation

Agree to amendments that would confirm that motor vehicles must be used wholly and exclusively for business purposes in the context of determining whether a deduction is available.

Agree/Not agreed

Agree to the amendments applying from the date of the re-write of the Income Tax Act in 2004.

Agree/Not agreed

RWT-exempt status, AIL eligibility and other matters relating to partnerships

23. Inland Revenue's Tax Counsel Office has identified issues with the legislative provisions concerning partnerships. These are either misalignments between the legislation and current practice or else they produce unnecessary compliance costs for taxpayers. More specifically:

    23.1 *Applying for RWT-exempt status:* While a general partnership can apply for RWT-exempt status in the partnership's name, partners of a limited partnership must apply individually. There is no reason for this differentiation, which increases costs for limited partnerships. We recommend amending the ITA and TAA to allow limited partnerships to apply for RWT-exempt status in the name of the limited partnership.

    23.2 *Ensuring limited partnerships can use the approved issuer levy (AIL) regime:* The current legislation prevents a non-resident partner in a limited partnership comprised of resident and non-resident partners from accessing the AIL regime. This does not align with the policy intent so we recommend an amendment ensuring that limited partnerships can access the AIL regime.

    23.3 *Other minor and technical remedial issues*: We recommend minor legislative amendments to the partnership provisions of the ITA and TAA relating to non-resident income tax filing, basis calculation errors, balance dates and other wording issues. These minor and technical changes will reduce compliance costs for taxpayers by aligning the legislation with the policy intent or current internal practice, clarifying legislative ambiguities, removing inconsistencies or repealing redundant provisions.

24. The TSF has asked if this item clarifies whether look-through treatment applies to payments to limited partnerships. In our view, clarifying look-through treatment applications to payments to limited partnerships is a larger more complex issue and possible remedies may not align with current policy intent. Therefore, this issue will need further consideration.

25. The TSF also highlighted the importance of applying the grandparenting provisions, which we believe has been achieved.

Recommendation

Agree to amend the ITA and the TAA to allow limited partnerships to apply for RWT-exempt status under the name of the limited partnership.

Agree/Not agreed

Agree that limited partnerships be able to access the AIL regime.

Agree/Not agreed

Agree to amend the partnership provisions in the ITA and TAA to address other minor and technical issues relating to non-resident income tax filing, basis calculation errors, balance dates and other minor drafting issues.

Agreed/Not agreed

Debt-funding special purpose vehicle (SPV) regime eligibility

26. A securitisation is a transaction in which receivables (such as loans to consumers or businesses) originated by a sponsor (typically a finance company) are transferred to a special purpose vehicle (SPV). The ITA contains an elective regime that allows SPVs to be treated as transparent for tax purposes in certain circumstances if all the assets of the SPV originate from sponsors within the same wholly-owned group of companies.

27. Some securitisation trusts are eligible to opt into the SPV regime. However, to do so may be costly due to the number of parties involved and the complexity of the documentation. According to external submitters, a commercially preferable alternative is for the trust to transfer its assets to a new trust (that is eligible to elect into the SPV regime) originated by the same sponsor. This is not directly possible due to the current eligibility requirements of the regime. However, it can be achieved by two separate transfers, namely:

    27.1 a transfer of assets from the original SPV back to its sponsor, then

    27.2 a transfer of those assets from the sponsor to the new SPV.

28. We recommend expanding the eligibility of the regime to allow taxpayers to make one transfer from the original SPV to the new SPV, while remaining eligible for the regime provided the new SPV is consolidated for financial reporting purposes with the sponsor of the original SPV. This will reduce compliance costs by removing the need to make two separate transfers and improve the coherence of the regime.

Recommendation

Agree that the eligibility of the debt-funding SPV regime should be expanded to allow an entity (person A) to elect into the regime if its assets originate from another SPV (person B) that is eligible to elect into the regime but has not done so, and both SPVs are consolidated for financial purposes with the sponsor of person B.

Agreed/Not agreed

Failure to withhold an NRWT amount

29. A person who makes a payment of non-resident passive income (such as interest or dividends) is required to withhold non-resident withholding tax (NRWT). The ITA 2004 clarified the following in relation to this obligation:

29.1 where for any reason NRWT is not withheld, the amount constitutes a debt payable by the person who should have withheld the NRWT (the payer) to the Commissioner

29.2 the Commissioner has the right to recover the amount of the debt payable from either the payer, the payee, or both, and

29.3 the payer has the right to recover from the payee any NRWT that it failed to withhold but is subsequently required to pay the Commissioner.

30. During the 2007 rewrite of the ITA, it became unclear that the payer remains liable to satisfy the NRWT obligations in the instance it is not withheld upon payment, and also whether the Commissioner has a choice as to the party from which the recovery of the amount is sought. Additionally, the provision granting the payer's right to recover from the payee any NRWT that it failed to withhold (but was subsequently required to pay to the Commissioner), was left out. This uncertainty creates undesirable risk for the payer.

31. We recommend some minor drafting amendments to confirm that the payer remains liable to satisfy unpaid NRWT amounts and that the Commissioner can choose to recover it from either the payer, the payee, or both. We also recommend reinstating the provision to ensure that the payer can recover from the payee an amount of NRWT that it fails to withhold but must subsequently pay to the Commissioner. These amendments should apply retrospectively from the 2008–09 income year when the ITA 2007 became effective.

Recommendation

Agree to minor drafting amendments confirming the payer's liability to satisfy an unpaid NRWT amount and the Commissioner's right to choose whether to recover it from the payer, the payee or both.

Agreed/Not agreed

Agree to reinstate the provision confirming the payer's right to recover from the payee any amount of NRWT that it fails to withhold when the payment is made but must subsequently pay to the Commissioner.

Agreed/Not agreed

Agree to these amendments applying with retrospective effect from the 2008-09 income year.

Agreed/Not agreed

FIF cost method eligibility

32. A foreign investment fund (FIF) is a type of offshore investment subject to special tax rules.[4] There are five methods available to calculate FIF income, with restrictions placed on which method a person can choose.

33. The cost method is intended to cater for investments for which market values are not readily available (such as unlisted shares). However, the relevant provision in the ITA can be interpreted to mean that an individual may not be able to access the cost method if they have the valuation skills and experience necessary to determine the market value for themselves.

[4] These include a foreign company, a foreign superannuation scheme and an insurer under a life insurance policy (if it is not offered or entered into in New Zealand).

34. This outcome is undesirable because it requires Inland Revenue to determine whether an individual has the necessary skills to conduct a valuation, and can result in taxpayers with identical investments having to apply different calculation methods due to their respective valuation skills.

35. We recommend a remedial amendment to clarify that taxpayers' eligibility to use the cost method should be determined by the availability of the market value of the investments, rather than the valuation skills of the investor. The amendment should apply retrospectively from the 2008–09 income year when the ITA 2007 became effective.

Recommendation

Agree to drafting amendments to clarify that the eligibility to use the FIF cost method depends on the availability of the market value of the investments, rather than the valuation skills of the investor.

Agreed/Not agreed

Agree to this amendment applying with retrospective effect from the 2008-09 income year.

Agreed/Not agreed

Energy consumer trust exclusion from the 39% trustee tax rate

36. The trustee tax rate was recently aligned with the top personal tax rate of 39% for the 2024–25 and later income years. "Energy consumer trusts", which are trusts that own electricity distribution companies, were excluded from the 39% rate. Most of their beneficiaries are not 39% taxpayers and they face difficulties in distributing income as beneficiary income to mitigate over-taxation. These trusts remain subject to a 33% tax rate on trustee income.

37. The exclusion was based on whether a trust holds shares in an energy company that were allocated, transferred to, or vested in it under an approved establishment plan under the Energy Companies Act 1992.

38. An external stakeholder has suggested the exclusion is too narrow as it does not include trusts that received shares in an energy company under an approved establishment plan, but no longer hold the shares.

39. We recommend a remedial amendment to clarify that a trust still qualifies as an energy consumer trust if it previously held shares in an energy company that it received under an approved establishment plan. This change is estimated to have no fiscal impact.

Recommendation

Agree that a trust is an energy consumer trust if it previously held shares in an energy company that it received under an approved establishment plan under the Energy Companies Act 1992.

Agreed/Not agreed

Additional criteria for the Commissioner to make an assessment

40. The Commissioner may amend a taxpayer's self-assessed tax return by issuing a Notice of Proposed Adjustment (NOPA). This allows the Commissioner to formally dispute one or more tax assessments.

41. There are factors that allow the Commissioner to issue an assessment without the need to issue a NOPA when reviewing a taxpayer's self-assessment. Some of these factors include when a taxpayer is a flight risk, there is a simple error, or suspected fraudulent activity.

42. However, there are circumstances where a taxpayer who is a qualifying individual and receives an auto-calculated assessment may claim expenses against their income. In those cases, the Commissioner can review the taxpayer's assessment and may make enquiries with the taxpayer by requesting additional information about those expenses if the taxpayer's position is thought to be incorrect.

43. In many cases the taxpayer fails to respond to a request for more information from the Commissioner. In this situation the Commissioner has little to no grounds to issue a NOPA but cannot issue an assessment that may resolve the issue. This can result in a backlog of cases with no resolution.

44. We recommend an additional criterion which would allow the Commissioner to make an assessment where the taxpayer is a qualifying individual and the Commissioner has queried expenses claimed by the taxpayer but the taxpayer has not responded to those queries within two months.

45. This would ensure the Commissioner can issue an assessment and resolve a case if the taxpayer fails to respond to the request for additional information on their tax return within two months. This would prevent a backlog of cases sitting with Inland Revenue without resolution. If the taxpayer disputes the position taken by the Commissioner, there is still an avenue of appeal for the taxpayer to issue a NOPA in response.

Recommendation

Agree that the Commissioner be given an additional criterion to issue an assessment without issuing a NOPA where the taxpayer is a qualifying individual, has claimed expenses against that income that the Commissioner has queried with the taxpayer, and the taxpayer has not responded to the Commissioner within two-months.

Agreed/Not agreed

Agree to this amendment applying from 1 April 2025.

Agreed/Not agreed

Sale of business exclusion

46. A "restrictive covenant" payment is the consideration (or payment) given for a restriction on a person's ability to perform services. Broadly, a restrictive covenant payment is taxable to ensure that these payments are not used as a substitute for taxable personal services income (such as salary or wages).

47. However, restrictive covenants are subject to a statutory exclusion from taxation when the payment is received by a person when they sell a business. This recognises that payments received on the sale of a business are part of a larger capital receipt (ie, the purchase price of a business) and are less likely to be substituted for taxable income from services.

48. We recommend an amendment that ensures the sale of business exclusion also applies when a person sells all their shares in a business despite the other shareholders not selling their shares. This amendment aligns with the original policy intent of the existing exclusion and would reduce the compliance costs associated with shareholders selling their shareholding in a business without raising integrity concerns.

Recommendation

Agree that the sale of business exclusion from the taxation of restrictive covenant payments should be available when a person sells all their shares in a business.

Agreed/Not agreed

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill**

Date:	14 June 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/250

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations **Approve** and **lodge** the attached Cabinet paper with the Cabinet Office by **10:00 a.m., Thursday 27 June 2024**	10:00 am, Thursday 27 June 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

14 June 2024

Minister of Finance
Minister of Revenue

Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill

Executive summary

Setting the annual income tax rates for the 2024-25 tax year

1. This report seeks your agreement to set the annual income tax rates for the 2024–25 tax year in the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

Additional policy items

2. This report also seeks agreement to include the following four policy items in the 2024–25 Omnibus Cabinet Paper (draft Cabinet paper). These items are:

   2.1 Approved issuer levy retrospective registration.

   2.2 Exempt employee share scheme threshold increase.

   2.3 New Zealand business number information sharing provision.

   2.4 Charities recommended for overseas donee status.

3. These items have been included in the attached draft Cabinet paper alongside the items noted below. Items approved by Cabinet will be included in the Bill at introduction.

Policy items previously agreed in whole or in part

4. Three policy items below that have been previously agreed in whole or in part by Ministers for inclusion in the draft Cabinet paper are:

   4.1 *Enrolling young persons under 16 into KiwiSaver with the signature of one guardian* (IR2024/144 refers): This policy change would allow children under 16 to enrol in KiwiSaver with the consent of one guardian and was approved for inclusion in the draft Cabinet paper by the Minister of Revenue in May 2024.

   4.2 *Crypto-asset reporting framework* (IR2024/147 refers): Agreement to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard was obtained in April 2024 and approved by Cabinet (CAB-24-MIN-0148 refers). This report seeks decisions on specific amendments to the Inland Revenue Acts.

   4.3 *Generic response measures for emergency events* (IR2024/200 refers): This policy change would introduce a generic set of response measures for emergency events. The report seeking approval to include this item in the draft Cabinet paper was approved by the Minister of Revenue in May 2024.

5. All of the above items have also been included in the draft Cabinet paper.

Regulatory Impact Assessments

6. The Ministry for Regulation has determined that the following policy items require the completion of a Regulatory Impact Statement:

   6.1 Crypto-Asset Reporting Framework and Amendments to Common Reporting Standard,

   6.2 Approved issuer levy retrospective registration, and

   6.3 Generic response for emergency events.

7. A Regulatory Impact Statement has been prepared for the first two items and is attached to the draft Cabinet Paper. The Quality Assurance panel at Inland Revenue has determined that these Regulatory Impact Statement's meet or partially meet the quality assurance criteria. These comments have been reflected in paragraphs 112 to 114 of the draft Cabinet paper.

8. The regulatory impact assessment for the policy item on generic response measures for emergency events is being finalised. This will be provided to your offices prior the lodgement of the draft Cabinet paper.

Next steps

9. The inclusion of the eight policy items in the Bill at introduction will require the draft Cabinet paper to be considered by the Cabinet Business Committee (CBC) at its meeting on **1 July 2024** and confirmed by Cabinet on **8 July 2024**.

10. If you agree to all the policy initiatives in this report, please refer the attached Cabinet paper to the Cabinet Office for lodgement by **10:00am, Thursday 27 June 2024**.

Recommended action

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

2. **Note** that the regulatory impact assessments for the following policy items have been completed and are attached to the Cabinet paper:

   - Crypto-Asset Reporting Framework and Amendments to Common Reporting Standard, and

   - Approved issuer levy retrospective registration.

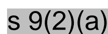
   Noted

3. **Note** that the regulatory impact assessment relating to generic response measures for emergency events is currently being finalised and will be provided to your offices prior to the lodging of the Cabinet paper.

   Noted

4. **Approve** and **lodge** the attached Cabinet paper and regulatory impact assessments with the Cabinet Office by **10:00 a.m., Thursday, 27 June 2024** for consideration by Cabinet Business Committee (CBC) on **1 July 2024**.

   Agreed/Not agreed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Joshua Fowler
Bill Manager
Inland Revenue

Hon Simon Watts
Minister of Revenue
/ /2024

Cabinet paper – Policy measures for inclusion in the August 2024 omnibus taxation Bill

Background

Setting the annual income tax rates for the 2024-25 tax year

11. This report seeks your agreement to set the annual rates for the 2024–25 tax year in the omnibus taxation Bill scheduled for introduction in August 2024 (the Bill).

Approval for additional policy items

12. This report also seeks your agreement to the inclusion of the additional four policy items below in the Bill. These policy items are:

    12.1 Approved issuer levy retrospective registration.

    12.2 Exempt employee share scheme threshold increase.

    12.3 New Zealand Business Number information sharing provision.

    12.4 Charities recommended for overseas donee status.

Policy items already approved in whole or in part

13. Three policy items below that have been previously agreed in whole or in part by Ministers for inclusion in the Bill are:

    13.1 *Enrolling young persons under 16 into KiwiSaver with the signature of one guardian* (IR2024/144 refers): This policy change would allow children under 16 to enrol in KiwiSaver with the consent of one guardian and was approved for inclusion in the 2024–25 Omnibus Cabinet Paper (draft Cabinet paper) by the Minister of Revenue in May 2024.

    13.2 *Crypto-Asset Reporting Framework* (IR2024/147 refers): Agreement to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard was obtained in April 2024 and approved by Cabinet (CAB-24-MIN-0148 refers). This report also seeks your agreement to more detailed policy design features of the Crypto-Asset Reporting Framework and amendments to the Common Reporting Standard.

    13.3 *Generic response measures for emergency events* (IR2024/200 refers): This policy change would introduce a generic set of response measures for emergency events. The report seeking approval to include this item in the draft Cabinet paper was approved by the Minister of Revenue in May 2024.

14. If you agree, please refer the attached Cabinet paper to the Cabinet Office by **10:00 a.m., Thursday 27 June 2024** so that it can be considered by Cabinet Business Committee (CBC) at its meeting on **1 July 2024**.

Fiscal implications

Items without fiscal implications

15. The following policy items do not have any fiscal implications:

    15.1 Setting the annual income tax rates for 2024–25.

15.2 New Zealand Business Number information sharing provision.

15.3 Enrolling young persons under 16 in KiwiSaver with the signature of one guardian.

15.4 Generic response measures for emergency events.

Items with fiscal implications

16. The following items have fiscal implications:

16.1 *Granting overseas donee status to two additional charities*: This item is consistent with existing policy decisions. As such, the revenue impacts are managed through an adjustment to revenue forecasts without being charged to an allowance.

16.2 *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*: Cabinet has previously agreed to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to Common Reporting Standard as part of Budget 2024 (CAB-24-MIN-0148 refers). As such, the fiscal gain of $50m per year associated with this change has already been recognised.

16.3 *Other items:* The changes relating to the following policy items have fiscal implications, which are described in the body of the report:

16.3.1 approved issuer levy retrospective registration, and

16.3.2 exempt employee share scheme threshold increase.

Scorecard implications

17. Ministers have previously agreed that the Tax Policy Scorecard should be the default option for managing the fiscal impact of tax policy changes, excluding "structural" changes, social policy, departmental funding, and changes mainly intended to achieve non-tax objectives.

18. The Scorecard allows the revenue-negative impacts of some tax changes to be offset against the revenue-positive impacts of other tax changes to better promote a timely and balanced programme of changes. In addition to these criteria for being managed through the Tax Policy Scorecard, the Scorecard's balance may not exceed $200 million over the forecast period, nor fall below zero.

19. The Treasury has advised that the changes proposed in this report are consistent with Ministers' criteria for the Scorecard. There is no risk that the Scorecard may exceed its limits as a result of these changes.

20. If you agree to the policy decisions in this report and to manage them against the Tax Policy Scorecard, there will be no impact on the Between-Budget Contingency (BBC) or future Budget allowances. However, there will be a small impact on the operating balance and net debt from each change.

Administrative implications

21. Inland Revenue can deliver these initiatives based on our current work programme, and on what we understand the Government intends for Inland Revenue to deliver in the future. However, this Bill will reduce Inland Revenue's change capacity, and the resourcing of policy items within the Bill should be considered when thinking about Inland Revenue's ability to deliver future initiatives. While Inland Revenue

proposes self-funding the departmental capital and operating costs to deliver these initiatives, this does limit the department's ability to self-fund subsequent initiatives.

Setting the annual income tax rates for 2024–25

22. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.

23. It is proposed that this Bill set the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the changes being legislated as part of Budget 2024).

24. This would not have any fiscal or administrative implications.

Recommended action

25. **Agree** to set the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the changes being legislated as part of Budget 2024).

    Agreed/Not agreed

Approved issuer levy retrospective registration

Background

26. A New Zealand borrower paying interest to an unassociated non-resident lender can generally opt to pay a 2% (or in certain cases 0%) approved issuer levy (AIL) on the interest, instead of non-resident withholding tax (NRWT) at 10% or 15%. This is conditional on the borrower registering as an approved issuer and registering the relevant security for AIL before the interest payments begin.

27. However, if the borrower has mistakenly not registered the security at the outset and Inland Revenue later becomes aware of the oversight – whether through a voluntary disclosure by the borrower or otherwise – the borrower is required to pay NRWT on any interest payments already made, increasing the tax cost from 2% to 10% or 15%. Inland Revenue does not have the administrative flexibility to allow retrospective registration for AIL in such circumstances.

28. While failure to register a security for AIL before the first interest payment is not a widespread issue, there is a case to allow retrospective registration in some limited circumstances for a few reasons:

    28.1 First, AIL is a concessionary regime originally introduced to lower the cost of capital for New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender is confident that it can easily get a full tax credit for New Zealand NRWT in its own jurisdiction, it will likely require the borrower to gross up their interest payments to cover the NRWT, increasing the cost of capital to the borrower. The AIL regime significantly reduces the tax cost to the borrower. Requiring a taxpayer to pay NRWT rather than AIL because of an administrative mistake increases the tax cost of capital for New Zealand borrowers that the AIL regime is intended to help.

    28.2 Second, it provides outcomes in some circumstances that could be seen as unfair and incoherent. For example, consider a borrower who has registered a security for AIL but neglected to pay AIL; such a borrower is still permitted

to pay AIL at 2% (with the usual use of money interest and potential penalties) when the mistake is discovered. This can be contrasted with a borrower that has not registered a security for AIL but has paid AIL on it; such a borrower is liable for NRWT at 10% or 15% when the mistake is discovered. The second borrower has a significantly higher tax cost even though they were arguably less non-compliant than the first borrower by advising Inland Revenue of the interest payments through the AIL return and paying AIL on time (albeit accepting they were not entitled to do so because of the failure to register the security).

28.3 Third, New Zealand's tax system relies on voluntary compliance. If taxpayers know that informing the Commissioner of an administrative mistake will result in a significantly larger than expected tax bill, there is a risk that some may decide not to disclose it, undermining voluntary compliance with AIL and NRWT.

29. That said, it is preferable that registration occurs at the time the security is entered into, and before the borrower makes an interest payment to the lender (as required under the status quo), because it gives Inland Revenue oversight of the securities being registered and provides a potential opportunity to review the borrower's eligibility for AIL before any AIL is paid. It importantly also means that the borrower is aware of their AIL/NRWT obligations and allows Inland Revenue to set up the borrower as an approved issuer (if this is the first security they are registering) before the first payment is due. If the borrower is not in fact eligible for AIL (eg, because they are associated with the lender), and thus has an NRWT liability, the borrower can still withhold and remit the NRWT at the time of the interest payment, which is easier than Inland Revenue attempting to collect the tax at some future date. But if a borrower would otherwise be eligible for AIL (eg, because they are not associated with the lender), then registration is essentially a formality, and reverting an otherwise eligible borrower to NRWT for neglecting to observe this formality at the outset could be seen as harsh in some cases.

History

30. Several private sector firms and groups have written to Inland Revenue and the Minister of Revenue about this issue over the past few years. Inland Revenue has dealt with several borrowers who have neglected to register securities for AIL on time, and required them to pay NRWT. Most recently, the Corporate Taxpayers Group mentioned this issue in their Briefing to the Incoming Minister of Revenue at the end of 2023.

31. We are aware of some cases of a corporate borrower failing to register a new security for AIL at the outset and notifying the Commissioner of the mistake sometime later. In one case this resulted in the borrower incurring an additional $2 million in NRWT.

32. We are also aware of some cases of individual borrowers with foreign mortgages not having registered for AIL at the appropriate time, and being required to pay NRWT instead for interest payments prior to registration. The NRWT payable in each case was generally less than $10,000.

Reasons for failure to register

33. There are a number of possible reasons why a borrower might neglect to register a security for AIL. These reasons fall on a spectrum between genuine error and deliberate non-compliance.

34. Examples of genuine error could include:

34.1 The taxpayer has a strong history of AIL compliance, but forgets to register a particular security which the taxpayer still includes in its AIL returns such that AIL was filed and paid on time (just not registered for the security).

34.2 The taxpayer has a strong history of AIL compliance, but forgets to register a security and pay AIL for a short period of time because of a change in personnel, or temporary lack of coordination between those responsible for treasury and tax.

34.3 Incorrect understanding of AIL compliance obligations at the relevant time (primarily for those new to borrowing from foreign lenders).

35. Examples of deliberate non-compliance could include:

35.1 The taxpayer does not want to bear any tax cost so does not register the security or pay any AIL (or NRWT).

35.2 The taxpayer is an approved issuer but is not eligible for AIL on the particular security (eg, because they are associated with the lender), but does not want to deduct NRWT, so simply pays AIL without registering the security.

36. There could also be examples that fall somewhere between genuine error and deliberate non-compliance.

37. The distinction between genuine error and other reasons is important in designing a policy response to the aforementioned issue. In the relatively few cases that we are aware of, the taxpayer typically notified the Commissioner of the oversight, suggesting it was a genuine error and the taxpayer intended to comply.

Proposal

38. We propose that the legislation be amended to allow a borrower to retrospectively register a security for AIL in limited circumstances. Retrospective registration would allow the borrower to pay AIL on the interest payments made on the security prior to the date of registration, rather than NRWT.

39. Conditions should be designed to ensure that retrospective registration is:

39.1 only available to borrowers who failed to register the security at the outset due to a genuine error, and

39.2 not available indefinitely.

40. The purpose of limiting retrospective registration to cases of genuine error would be to avoid encouraging non-compliance with the AIL regime. If retrospective registration for AIL were permitted in all circumstances, taxpayers could decide deliberately not to register a security in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered the security for and paid AIL on time (although interest and penalties could also be payable in the former case).

41. The reason for imposing a time limit on availability of retrospective registration would be to preserve fiscal and taxpayer certainty, as well as protect against the risk of taxpayers becoming relaxed about the AIL registration requirements.

42. We propose that retrospective registration for AIL only be available from 1 April 2025 and that it cannot be backdated before that date. This means the change will be prospective and it will prevent taxpayers coming forward and seeking refunds of NRWT paid as a consequence of past failures to register securities for AIL on time (with the attendant fiscal cost).

Consultation

43. There has been limited external consultation on allowing retrospective registration, although private sector stakeholders have previously sought it as a solution. The limited external consultation is broadly supportive of a policy change to allow it.

Financial implications

44. Retrospective registration for AIL is expected to have a fiscal cost of approximately $50,000 in the 2024/25 year and $200,000 per year thereafter.

Administrative implications

45. This policy is expected to have minimal administrative impact and the costs can be absorbed within existing baselines.

Recommended action

46. **Agree** to allow a New Zealand borrower paying interest to an unassociated non-resident lender to retrospectively register the relevant security for approved issuer levy (and itself as an approved issuer, if needed) in limited circumstances.

    Agreed/Not agreed

47. **Agree** that retrospective registration should only be available where the borrower has made a genuine error.

    Agreed/Not agreed

48. **Agree** that retrospective registration will only be available from 1 April 2025 and cannot be backdated before that date, meaning this policy change will be prospective.

    Agreed/Not agreed

49. **Note** the following changes to tax revenue as a result of recommendations 46 to 48 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Tax Revenue: Withholding Taxes	0.000	(0.060)	(0.240)	(0.240)	(0.240)
Other Indirect Taxes	0.000	0.010	0.040	0.040	0.040
Total Revenue	**0.000**	**(0.050)**	**(0.200)**	**(0.200)**	**(0.200)**
Total Operating	**0.000**	**0.050**	**0.200**	**0.200**	**0.200**

    Noted

50. **Agree** that the reduction in tax revenue in recommendation 49 above be charged against the Tax Policy Scorecard.

    Agreed/Not agreed

Exempt employee share scheme threshold increase

Background

51. The Government is investigating tax changes that would make it easier for companies in the start-up and tech sector to attract and retain talent, particularly through the use of employee share schemes. One of the five priorities for the Science, Innovation and Technology portfolio is to increase the value of the tech sector by $30 billion by 2030.

52. Employee share schemes are arrangements whereby shares in an employer company are provided to an employee in whole or part in return for services. These are an important way of remunerating employees in New Zealand and internationally. Employee share schemes help to align the incentives of employees with those of the firm and its non-employee shareholders and can result in increased output and greater employee engagement. A "benefit" received under an employee share scheme is taxable income unless it is an exempt scheme.

53. Employers can provide exempt benefits to employers under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all or almost all of a business's employees, and where both the benefit of the scheme, and the amount required to be invested by an employee to get that benefit, are limited.

54. Benefits provided under an exempt employee share scheme may be exempt if, among other things:

    54.1 the maximum value of the shares provided to an employee does not exceed $5,000 a year,

    54.2 any discount provided by an employer on the market value of the shares does not exceed $2,000 a year, and

    54.3 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions are eligible to take part in the scheme.[1]

Proposal

55. We recommend that that the two thresholds in paragraph 54 are increased to recognise the impact of inflation since the thresholds were last set in 2018. This would increase the maximum value of the shares that can be offered to $6,250 and the maximum benefit provided to $2,500.

Financial implications

56. Increasing the thresholds used for exempt employee share schemes will reduce the tax that is currently collected under the general scheme. Officials assume that a threshold increase will induce those who are currently unable to access the scheme, due to exceeding relevant thresholds, to enter the scheme.

57. No deductions are available for an exempt employee share scheme, other than in respect of establishing or managing the scheme. Employers who switch from the general scheme to the exempt scheme will no longer be able to claim any deductible expenditure from providing employment income in an employee share scheme. This

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[1] If the scheme applies to part-time employees or to seasonal employees, the same threshold applies.

will result in increased company tax collected for Inland Revenue and will offset a significant portion of the cost of the proposal.

58. Increasing the thresholds in line with inflation is forecast to cost $0.16 million over the forecast period. This assumes that the thresholds would apply to offers of shares made under an exempt employee share scheme after 1 April 2025.

Recommended action

59. **Agree** to increase the thresholds relating to exempt employee share schemes to recognise inflation since when they were first introduced.

Agreed/Not agreed

60. **Agree** that this policy would apply to offers of shares made under exempt employee share schemes after 1 April 2025.

Agreed/Not agreed

61. **Note** the following changes to tax revenue as a result of recommendations 59 and 60 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown revenue and receipts: Tax Revenue	(0.000)	(0.010)	(0.050)	(0.050)	(0.050)
Total Operating	**0.000**	**0.010**	**0.050**	**0.050**	**0.050**

Noted

62. **Agree** that the reduction in tax revenue in recommendation 61 above be charged against the Tax Policy Scorecard.

Agreed/Not agreed

New Zealand business number information sharing provision

Background

63. Currently, unincorporated entities[2] can choose to register with the Companies Office and receive a New Zealand Business Number (NZBN). In contrast, when corporate entities register in New Zealand, they are automatically provided with an NZBN. This has resulted in a slow uptake of NZBNs for unincorporated entities, limiting the effective use of NZBNs because the Companies Office has incomplete data.

64. The Ministry of Business, Innovation and Employment (MBIE) would like to address this issue through an email campaign targeting unincorporated entities. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds. This would be a non-compulsory, low compliance cost approach to support the uptake of NZBNs which would allow businesses to make more effective and widespread use of NZBNs.

[2] For example, sole traders, partnerships, and trustees of trusts.

65. Inland Revenue cannot currently share NZBN numbers with MBIE under the NZBN information sharing provision in the Tax Administration Act 1994. This is because the current information sharing provision permits the sharing of:

    65.1 “primary business data”.

    65.2 any information which verifies the correctness of the information included in the New Zealand Business Number Register.

66. Unfortunately, neither of these permissions allow the sharing of information about unincorporated entities. This is because unincorporated entities are not included in the definition of primary business data, and also because the intention of sharing contact information and IRD numbers is to increase the uptake of NZBNs, rather than maintain the correctness of the information included in the New Zealand Business Number Register.

67. Accordingly, sharing information about unincorporated entities with Inland Revenue requires a policy change.

Proposal

68. We recommend introducing an information sharing provision that authorises the “one-off” sharing of the contact details and IRD numbers of unincorporated entities with MBIE.

69. Procedurally, this would involve MBIE using IRD numbers provided by Inland Revenue to determine, or validate if an unincorporated entity is already registered with an NZBN. MBIE would then only contact unincorporated businesses that it has confirmed are not registered for an NZBN. Unincorporated entities who then want to resister for an NZBN based on the information provided by MBIE can follow the traditional process for registering for an NZBN and supply MBIE with their business details.

70. MBIE will destroy unincorporated entities’ contact data provided by Inland Revenue once it has made contact with the entities.

Consultation

71. We have consulted with the Office of the Privacy Commissioner (OPC) which has advised that there is a reasonable policy case for targeted information sharing with appropriate risk mitigations, and with the appropriate legislative vehicle.

72. OPC notes that that there is no way for MBIE to get contact information for these unincorporated entities that are not registered for an NZBN other than through information sharing by Inland Revenue. However, their view is that this proposed change should be enabled through an Approved Information Sharing Agreement (AISA) which is currently being worked on and yet to be reported to Ministers.

73. The basis for introducing this information provision through the Taxation Omnibus Bill rather than an AISA, is the associated certainty of application date by incorporating in the Bill and the "one-off" nature of the provision.

74. We have consulted with our colleagues at MBIE, who are supportive of the policy change being included in the Bill.

Recommended action

75. **Agree** to introduce an information sharing provision that authorises the "one-off" sharing of the contact details and IRD numbers of unincorporated entities with the Ministry of Business, Innovation and Employment.

    Agreed/Not agreed

76. **Agree** that this amendment apply from the date of the Royal assent of the Bill.

    Agreed/Not agreed

Charities recommended for overseas donee status

Background

77. The Minister of Revenue previously agreed to the addition of four New Zealand charities to the list of overseas donee organisations in the Income Tax Act 2007 (IR2024/094 refers). These approved charities are:

    77.1 Kapuna Education Charitable Trust,

    77.2 ReliefAid,

    77.3 Rescue and Prevent Trust, and

    77.4 Support Services for Humanity.

Proposal

78. We recommend an additional two charities are included in this list of overseas donee organisations. These two charities are:

    78.1 Altus Resource Trust, and

    78.2 Kiwi Trust for Palestinian Children Relief.

79. These two charities were not included in our report of April 2024 because our review of these charities remained ongoing. This work is now complete, and the purposes of these charities are consistent with Cabinet's approval criteria for obtaining overseas donee status (annexed). Both charities:

    79.1 are registered under the Charities Act 2005

    79.2 have adequate procedures for the accountability of funds applied to projects outside New Zealand, and

    79.3 can demonstrate a track record of activity.

80. Accordingly, we recommend that these two additional charities have overseas donee status with retrospective effect from 1 April 2024, to align with the start of the current income year. This start provides certainty for the charities concerned in respect of their fund-raising activities and does not create any tax administration issues for Inland Revenue. The work of these two charities is described below.

Altus Resource Trust

81. Altus Resource Trust works with in-country partners in the Pacific Islands to provide services and equipment to children and adults with disabilities. Altus is currently working with organisations in Samoa, Vanuatu, Tonga and the Cook Islands.

82. Altus seeks to build capability in these countries by improving the skill base of local field workers, health workers and carers so they can work more effectively with disabled members of the local community. The Trust also facilitates the shipping of disability equipment to the Pacific Islands and the modification of homes to make them more accessible to the disabled.

Kiwi Trust for Palestinian Children Relief

83. Kiwi Trust for Palestinian Children Relief (Kiwi Trust) was founded in 2012 with the goal of providing aid and relief to Palestinian children and their families through humanitarian, educational, social and small enterprise projects. A substantial amount of its aid is provided in the form of food packages and/or the sponsorship of orphans and families in poverty. Kiwi Trust also provides mental health support for children suffering from conflict and hardship-related mental health issues.

84. Kiwi Trust is currently able to deliver food within the Gaza Strip due to a pre-existing relationship with partners located within Israel. Kiwi Trust has a partnership with the Palestinian Family Charitable Association. The Palestinian Family Charitable Association is registered with the Ministry of the Interior in Ramallah, under the Palestinian National Authority, and is accredited by that Authority. Being registered with the Ministry of Interior is a pre-requisite for charities operating in Gaza to have a bank account with approved Palestinian banks. This facilitates the transfer of funds required for humanitarian aid projects in Gaza.

85. s 9(2)(g)(i)

Consultation

86. The Ministry of Foreign Affairs and Trade (Middle East and African and Partnerships, Humanitarian and Multilateral division) (MFAT) was consulted. It is not explicitly aware of Kiwi Trust, nor aware of their work. MFAT notes that it does not have an Embassy in Israel or a representative office in Ramallah so its ability to comment on work undertaken in Palestine is limited.

87. The Treasury and Department of Internal Affairs – Charities Services were consulted as part of our analysis for the charities recommended in this report.

88. The New Zealand Police's vetting service was used for the trustees of the charities recommended in this report.

Financial implications

89. The revenue effect of granting overseas donee status to the two charities above is outlined below:[3]

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
s 6(c)					
Total	0.000	(0.070)	(0.051)	(0.049)	(0.048)

Recommended action

90. **Agree** that the following charities be added to the list of organisations with overseas donee status in the Income Tax Act 2007:

    90.1 Altus Resource Trust

    Agreed/Not agreed

    90.2 Kiwi Trust for Palestinian Children Relief

    Agreed/Not agreed

91. **Agree** that the charities in recommendation 90 that you have approved are given overseas donee status from 1 April 2024.

    Agreed/Not agreed

92. **Note** the following changes to tax revenue forecasts as a result of recommendations 90 and 91 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.070)	(0.051)	(0.049)	(0.048)
Total Operating	**0.000**	**0.070**	**0.051**	**0.049**	**0.048**

Noted

[3] The total revenue effect for granting all six charities overseas donee status is estimated to be $2.10 million over the forecast period 2023–24 to 2027–28. This total change is included in the attached Cabinet paper.

Crypto-asset reporting framework and amendments to common reporting standard

Background

93. Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-asset's network. This is known as distributed ledger technology and Blockchain is a form of this technology.

94. Since the introduction of the first crypto-asset Bitcoin in 2009, the market for crypto-assets worldwide has experienced rapid growth and development. The current market capitalisation for crypto-assets is almost $7 trillion New Zealand dollars. Between 6% and 10% of New Zealanders own some crypto-currency and Inland Revenue's analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

95. The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers, that are currently subject to little regulatory oversight.

96. This development means that tax authorities do not have visibility over incomes derived through crypto-assets like they do with incomes generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large scale intermediaries. For example, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction.

97. Against this background, the OECD have developed the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (CARF) that is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

Proposal

Crypto-Asset Reporting Framework

98. The CARF provides for the reporting of tax information on transactions in crypto-assets in a standardised manner, with a view to automatically exchanging such information with other jurisdictions.

99. The CARF is a global minimum standard, which means all OECD member countries are expected to implement it. To date, more than 50 jurisdictions worldwide have signed a joint statement outlining their commitment to implement the CARF in time

to commence exchanges of information by 2027. Officials have previously reported to you and obtained your agreement to implement the crypto-asset reporting framework and amendments to the common reporting standard in New Zealand as part of Budget 2024 (IR2024/147 and CAB-24-MIN-0148 refers).

100. Under the CARF, entities or individuals that, as a business, facilitate exchange transactions on behalf of customers, such as crypto-asset exchanges, must collect information on the transactions of its customers, along with personal information, and report that information to the tax authority in which they are tax resident. This includes information on relevant crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets. This can include transfers to wallet addresses as well as high value retail transactions (such as where a crypto-asset intermediary processes payments on behalf of a merchant that accepts crypto-assets as payment for goods or services).

101. The CARF is subject to an automatic information exchange. Reporting crypto-asset service providers must provide the relevant information, in a standardised OECD format, to the tax authority in which they are tax resident. This information is then shared by the tax authority with other tax authorities, to the extent that the information relates to users who are tax resident in their jurisdiction. For example, Inland Revenue would receive information about New Zealand tax resident crypto-asset users that were operating on large offshore crypto-asset exchanges from other OECD jurisdictions.

102. Inland Revenue intends to use the information received under the CARF to support tax compliance. The information received under the CARF would provide increased visibility over incomes derived through crypto-assets, which would be used by Inland Revenue to ensure taxpayers are paying the correct amount of tax.

103. Jurisdictions are required to ensure that they correctly implement the CARF. This means that effective enforcement provisions are required to address any instances of non-compliance by reporting crypto-asset service providers and reportable users. To support the CARF, new civil penalties will be required to be added to the Tax Administration Act 1994. These penalties could apply to crypto-asset service providers with a New Zealand reporting obligation, and users of these service providers, where they fail to comply with the information reporting requirements under the CARF. We consider that these penalties should be based on penalties that were included in the Tax Administration Act 1994 following implementation of the CRS in New Zealand and the implementation of the information reporting and exchange framework for the sharing and gig economy. These two initiatives are OECD information exchange frameworks already implemented in New Zealand.

Amendments to the Common Reporting Standard

104. As previously mentioned, the CRS is a global framework developed by the OECD for the collection, reporting, and exchange of financial account information about people and entities investing outside of their tax residence jurisdiction. It is designed to assist in detecting and deterring offshore tax evasion.

105. The amendments to the CRS that are included in the CARF largely focus on ensuring that crypto-related assets that are held through traditional financial intermediaries are subject to reporting, but also includes several minor or technical amendments to improve the usability of the CRS.

106. The OECD concluded the first comprehensive review of the CRS in 2022 and approved the following amendments:

106.1 inclusion of new digital financial products that are alternative to holding money or financial assets in an account that is currently subject to CRS reporting,

106.2 changes to the definition of financial asset to include derivatives referencing crypto-assets and the definition of investment entity to include those investing in crypto-assets,

106.3 inclusion of an optional election to report under the CRS the information on certain assets that must be reported under the CARF to minimise duplicated reporting,

106.4 introduction of stronger due diligence procedures and more detailed reporting requirements to include contextual information about the account holders, controlling persons, and the financial accounts they own,

106.5 exclusion of capital contribution accounts intended for the incorporation of a new company or a pending capital increase, and

106.6 integration of the interpretative guidance into the OECD Commentary to the CRS (Commentary).

107. The Commentary also contains an optional provision to exclude genuine non-profit entities. It was added out of concern that the imposition of the reporting requirements on such entities can lead to undesirable outcomes such as requiring due diligence for students receiving scholarships.

108. We do not have any concerns about such outcomes arising for New Zealand non-profit entities because they have limited exposure to the CRS. Furthermore, this option would add administrative burden to Inland Revenue because the exclusion must be subjected to adequate verification procedures so that investment entities would not be able to improperly claim non-profit status.

109. Since the CRS was incorporated into the Tax Administration Act 1994 by reference in 2017, the only legislative change required would be to specify the date for the current amendments to take effect. The OECD has left this unspecified to allow tax administration of each jurisdiction and the entities affected to implement the system and administrative changes required. However, the first year the changes would come into operation would be the 2026–27 tax year, with the first reports being made in 2027.

Consultation

110. Officials undertook targeted consultation in October and November 2022 on whether New Zealand should implement the CARF. A consultation letter was sent to New Zealand’s main tax advisory firms, along with known players in the crypto-asset industry. Officials subsequently met with interested parties to discuss these submissions further where applicable.

111. The Tax System Forum (TSF) were also consulted on this initiative as part of a broader consultation on proposals set for inclusion in this Bill.

112. Those consulted were largely supportive of adopting the CARF in New Zealand. Although there was some concern for compliance costs suffered by reporting crypto-asset service providers, it was ultimately recognised that adopting the OECD developed CARF is highly preferable to New Zealand developing its own bespoke reporting regime on crypto-assets. This is because having a standardised rule set adopted across jurisdictions, such as the OECD CARF, ensures a consistent worldwide standard which greatly reduces compliance costs for reporting crypto-asset service providers compared to if every jurisdiction developed their own reporting regime. There were also concerns raised about ensuring that reporting crypto-asset service providers have enough lead in time to implement the CARF. As the first reports for CARF are due in 2027 in respect of the 2026/27 tax year, officials

consider that there will be sufficient lead in time following the enactment of legislation for this initiative.

Financial implications

113. The financial implications of implementing the crypto-asset reporting framework have been agreed by you (IR2024/147 refers) and funded as part of Budget 2024 (CAB-24-MIN-0148 refers).

114. The proposal to implement the CARF is forecast to raise $50 million per annum. This arises because Inland Revenue will have more information about crypto-asset trades of New Zealand tax residents, and that information can be used by Inland Revenue to improve tax compliance. The additional tax revenue is forecast from the 2027/28 fiscal year.

115. There are costs associated with administering the CARF for Inland Revenue's system build and ongoing operating costs to fund compliance work. For the CARF proposal the indicative costs are estimated at $6.700 million for the capital build, $1.600 million for the operating build and $8.500 million operating over the forecast period (2023/24 to 2027/28). The operating costs include depreciation and capital charge.

116. The revenue forecast and costs associated with administering the CARF, as previously approved, are set out in the table below:

	$ million – increase/(decrease)					
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**	**Total**
Tax revenue inc/(dec)	–	–	–	–	50.000	50.000
Operating impact	**–**	**–**	**–**	**–**	**(50.000)**	**(50.000)**
Capital costs						
System build	–	–	6.700	–	–	6.700
Capital (debt) impact	**–**	**–**	**6.700**	**–**	**–**	**6.700**
Operating costs						
System build	–	0.700	0.900	–	–	1.600
Ongoing operating	–	0.700	0.800	1.400	2.100	5.000
Depreciation	–	–	0.300	1.300	1.300	2.900
Capital charge	–	–	–	0.300	0.300	0.600
Operating impact	–	1.400	2.000	3.000	3.700	10.100
Total net operating impact	**–**	**1.400**	**2.000**	**3.000**	**(46.300)**	**(39.900)**
Total capital (debt) impact	**–**	**–**	**6.700**	**–**	**–**	**6.700**

117. The introduction of amendments to the CRS is expected to have an administrative implementation cost of $1.000 million capital and $0.200 million operating. Ongoing costs (depreciation and capital costs) will be $0.520 million over the 2024/25 to 2027/28 years. Inland Revenue will absorb this cost within existing baselines, noting that there is a limit to the level of initiatives that the department can absorb.

Recommended action

118. **Note** that Ministers have previously agreed to implement the OECD's *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* in New Zealand as part of Budget 2024.

Noted

119. **Agree** that the OECD's *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* shall apply in New Zealand from the 2026–27 tax year, with the first exchanges of information taking place in 2027.

Agreed/Not agreed

120. **Agree** to implement the CRS amendments in New Zealand effective from the 2026–2027 tax year, with the first reports due in 2027.

Agreed/Not agreed

121. **Note** that Inland Revenue will self-fund the $1.200 million capital cost and $0.520 ongoing cost to implement this amendment.

Noted

Crypto-asset reporting framework: penalties

122. **Agree** to introduce a penalty of $300 per failure, up to $10,000 per year (the reportable period) that would apply to New Zealand reporting crypto-asset service providers that failed to comply with their obligations under the CARF.

Agreed/Not agreed

123. **Agree** to introduce penalties that could apply to New Zealand reporting crypto-asset service providers that fail to take reasonable care in complying with their obligations under the CARF of:

123.1 $20,000 for the first offence, and

123.2 $40,000 for subsequent offences, capped at $100,000 per reportable period.

Agreed/Not agreed

124. **Agree** to introduce a penalty of $1,000 in circumstances where reportable users who operate through reporting crypto-asset service providers fail to provide the reporting crypto-asset service provider with the information it requires to fulfil its obligations under the CARF.

Agreed/Not agreed

125. **Agree** that the Commissioner of Inland Revenue can impose the penalties referred to in recommendations 122 to 124.

Agreed/Not agreed

126. **Note** that the penalties referred to in recommendations 122 to 124 are consistent with penalties introduced in the Tax Administration Act 1994 for financial institutions under the CRS and for digital platforms under the *OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*.

Noted

127. **Note** that the Commissioner of Inland Revenue will focus on supporting New Zealand tax resident reporting crypto-asset service providers and reportable users to comply with their obligations under the CARF and would apply discretion in imposing these penalties.

Noted

Enrolling young persons under 16 in KiwiSaver with the signature of one guardian

128. The Minister of Revenue previously agreed to include the enrolment of young persons under 16 in KiwiSaver with the signature of one guardian in the draft Cabinet paper (IR2024/147 refers).

Recommended action

129. **Note** that the Minister of Revenue has already agreed to include the proposal to enrol young persons under 16 into KiwiSaver with the signature of one guardian in the draft Cabinet paper.

 Noted

Generic response measures for emergency events

130. The Minister of Revenue previously agreed to include the generic response measures for emergency events in the draft Cabinet paper (IR2024/200 refers).

Recommended action

131. **Note** that the Minister of Revenue has already agreed to include the generic response measures for emergency events in the draft Cabinet paper.

 Noted

Consultation

132. In addition to the consultation outlined for each policy initiative in this report, the Treasury was consulted on the content of this report and draft Cabinet paper. The Department of the Prime Minister and Cabinet was consulted on the draft Cabinet paper.

Next steps

Immediate action

133. If you agree to all the policy items in this report, please refer the attached Cabinet paper to the Cabinet Office for lodgement by **10:00 a.m., Thursday 27 June 2024**.

134. If you and Cabinet agree to the recommendations, officials will develop legislative changes to give effect to the policy proposal. These will be included in Bill scheduled for introduction in August 2024.

s 9(2)(f)(iv)

137.
s 9(2)(f)(iv)

Annex – Cabinet's approval criteria for obtaining overseas donee status

Since 1978, Cabinet has applied the following criteria to assess applications for overseas donee status.

The basic criteria for adding an organisation to the list of approved "overseas" charities:

(i) the funds of the charity should be principally applied towards:

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;

**developing countries recognised by the United Nations.*

[CM 78/14/7 refers]

The eligible purposes set out in the criteria are aligned with the Government's overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of "charitable purpose" and the legislative framework in the Charities Act 2005. Determination of donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits that attach to monetary donations.

Item 13

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Research and Development Tax Incentive: General approval application due date**

Date:	19 June 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/261

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister of Finance and the Minister of Science, Innovation and Technology	3 July 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Chris Gillion	Policy Lead	s 9(2)(a)
Callum Aldiss	Senior Policy Advisor	s 9(2)(a)

19 June 2024

Minister of Revenue

Research and Development Tax Incentive: General approval application due date

Purpose

1. This report seeks your agreement to move the general approval application due date for the Research and Development Tax Incentive (RDTI). We recommend moving this due date to make it easier and less costly for taxpayers to apply for and receive the RDTI.

2. We recently reported to you as well as the Minister of Finance and the Minister of Science, Innovation and Technology on several changes to the RDTI (IR2024/209 refers). You indicated that you would like to proceed with a change to the RDTI general approval application due date.

Background

3. The RDTI is a 15% tax credit for eligible R&D expenditure on eligible R&D activities. To participate in the RDTI, businesses need to enrol, submit an application for approval, and later file a supplementary return along with their income tax return.

4. In the years the RDTI has operated, it has become apparent that the due date settings for the RDTI may be preventing genuine R&D from being supported. Approximately 73% of businesses enrolled in the RDTI have a March balance date (i.e., this is when their income year ends). For these businesses, the general approval application deadline of the year falls on 7 May. This is only a week away from the annual peak for filing supplementary returns for the previous year, which falls on 30 April for taxpayers with an extension of time.

5. The proximity of these two dates creates a peak in RDTI filing, which creates a high compliance and administrative burden for businesses and scheme administrators alike.

Recommended change to the timing of due dates

6. We recommend that the general approval application deadline be extended by approximately seven weeks. This date would move to the last day of the third month after the end of the income year. This change should apply for general approval applications due after 1 April 2025.

7. For RDTI recipients with March balance dates, this would move the deadline from 7 May of a given year to 30 June. This provides a greater time gap between this general approval application due date and the supplementary return due date (30 April, given an extension of time). This would lead to a substantial reduction in compliance costs in filing for the RDTI because there would be less pressure on simultaneously preparing general approval applications and supplementary returns.

8. Taxpayers with other balance dates would be no worse off under this proposal.

Fiscal impact

9. There is no fiscal cost to amend the general approval application due date because changing the due date is intended to alleviate the pressures of filing deadlines, rather than lead to more tax credits being paid out.

Consultation

10. The Treasury has not been consulted in the preparation of this report but was consulted on this proposal in relation to the original report *R&D Tax Incentive: Items for next omnibus taxation Bill* (IR2024/209 refers).

11. The Treasury agreed that this proposal would have no fiscal impact.

Next steps

12. Amending the general approval application due date is remedial in nature and does not require approval from Cabinet.

13. If you agree to the recommendations, we will develop legislative changes to give effect to the proposed change. These will be included in the Bill scheduled for introduction in August 2024.

Recommended action

We recommend that you:

1. **agree** to move the general approval application due date to the last day of the third month after the end of the income year;

   Agreed/Not agreed

2. **agree** that this amendment to the due date apply for general approval applications due after 1 April 2025;

   Agreed/Not agreed

3. **note** that moving this due date has no fiscal cost;

   Noted

4. **note** that moving this due date is a remedial change and does not require Cabinet approval;

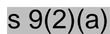
   Noted

5. **agree** that this amendment be included in the omnibus taxation Bill scheduled for introduction in August 2024;

   Agreed/Not agreed

6. **refer** a copy of this report to the Minister of Finance and the Minister of Science, Innovation and Technology.

   Referred/Not referred



Chris Gillion
Policy Lead
Policy and Regulatory Stewardship

Hon Simon Watts
Minister of Revenue
/ /2024

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Business Committee

MEASURES FOR INCLUSION IN THE 2024 OMNIBUS TAXATION BILL

Proposal

1. This paper seeks the Cabinet Business Committee's agreement to eight general policy measures that require changes to tax legislation.

2. If approved, I propose including the necessary legislative amendments in the next omnibus taxation Bill, scheduled for introduction in August 2024.

Relation to Government Priorities

3. The measures in this paper promote Government priorities by maintaining the integrity of the tax system and making it easier for taxpayers to meet their obligations.

Executive Summary

Proposals for the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill

4. I recommend amendments to the Income Tax Act 2007, the Tax Administration Act 1994, the Stamp and Cheque Duties Act 1971 and the KiwiSaver Act 2006 to give effect to the following eight policy proposals, for inclusion in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill:

    4.1. Setting annual income tax rates for the 2024–25 tax year.

    4.2. Generic response measures for emergency events.

    4.3. Crypto-asset reporting framework and amendments to common reporting standard.

    4.4. Approved issuer levy retrospective registration.

    4.5. Exempt employee share scheme threshold increase.

    4.6. New Zealand Business Number information sharing provision.

    4.7. Enrolling young persons under 16 into KiwiSaver with the signature of one parent or guardian.

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4.8. Charities recommended for overseas donee status.

5. These items have been covered in the same paper for efficiency.

Financial implications

6. The proposal implementing the crypto-asset reporting framework and amendments to common reporting standard was funded through the Budget 2024 process.

7. The proposal giving certain charities overseas donee status would be funded through a forecasting adjustment.

8. The following proposals would be funded through the Tax Policy Scorecard mechanism (the Scorecard):

    8.1. Approved issuer levy retrospective registration.

    8.2. Exempt employee share scheme threshold increase.

9. The Scorecard is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. Use of the Scorecard requires joint Minister of Finance and Minister of Revenue agreement. The Minister of Finance and I have agreed to use of the Scorecard for the two proposals listed in paragraph 8.

Setting annual income tax rates for 2024–24

10. The Income Tax Act 2007 requires the rates of income tax to be set in legislation each tax year.

11. I propose that the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill set the annual rates of income tax for the 2024–25 tax year at the same rates specified in Schedule 1 of the Income Tax Act 2007 (including the recent changes legislated as part of Budget 2024). To ensure that the Bill can be enacted by 31 March 2025, the Bill would need to be introduced in August 2024.

12. This will not have any fiscal or administrative implications.

Generic response measures for emergency events

Background

13. Tax relief has been provided during emergency events and in the subsequent recovery phase depending on the nature of the event. Currently, these responses are initiated through a combination of Inland Revenue Commissioner discretions, Orders in Council and primary legislative amendments.

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14. There are timeliness and other efficiency issues with this process. In particular, amending primary legislation, which has been required for major emergencies, can be resource-intensive and creates uncertainty for taxpayers while Parliament considers and passes the legislation, which can take up to a year. This was the case for the 2023 North Island floods.

15. Leaving taxpayers in a state of uncertainty over their tax positions adds to their stress following the event and can lead to a less efficient recovery. It also ties up Inland Revenue resources that could be used on other government priorities.

16. This inefficient process could become increasingly problematic if there are an increasing number of emergency events arising from climate change.

17. The private sector and the Finance and Expenditure Committee (FEC) have recently suggested that consideration be given to a more generic process.

Proposal

18. I propose introducing a more streamlined and timely process for initiating tax relief measures that currently require specific tax legislation. It involves building the measures into the tax legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This would still leave Ministers with the discretion over which measures to apply for a particular emergency for situations not covered by Commissioner discretions, as the measures would not be automatically triggered by an emergency event.

19. I propose using the tax measures used in past major emergency events as the basis for the generic measures. Although each event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui-Kaikōura earthquakes, and the 2023 flooding events. Those measures have proven to be useful to the affected taxpayers.

20. This proposed approach would not affect the Commissioner of Inland Revenue's existing discretionary powers which are often also used in an emergency.

21. I am also suggesting an additional discretionary power for very constrained tax information sharing by Inland Revenue to help other agencies who need to provide assistance to individuals and businesses impacted by a national emergency. Currently, the legislation requires Inland Revenue to keep information confidential and there is no permitted legislative disclosure within the Tax Acts that allows Inland Revenue to share this tax information with other agencies in a timely manner in such circumstances.

22. The current limitation meant, for example, that Inland Revenue was unable to provide information to the Ministry for Primary Industries, to help in the administration of grants paid to persons displaced because of Cyclone Gabrielle.

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Detail of the proposal

Emergency event definition

23. I propose to rely on the existing definitions of “emergency” and the declarations of an emergency under other legislation, rather than creating a new definition for income tax purposes. This would be compatible with a cross-agency response to emergency events. There are existing definitions for local and national emergencies under the Civil Defence Emergency Management Act 2002. Both of those types of emergency events should be included, along with primary industry biological events (e.g. foot and mouth, Mycoplasma bovis).

24. Some events, such as a drought or very localised events, have required fewer measures and have been largely handled through Commissioner discretions. That process will continue. However, widespread and/or protracted events have needed a wider set of measures irrespective of whether they were declared a national or local emergency[1], which means the proposed generic measures would need to cover both.

Proposed measures for inclusion in legislation

25. The measures I recommend for inclusion in the generic response are set out in Table 1, based on the measures used in past major emergency events. Based on that past experience they would only have a minimal fiscal impact if activated. The one Order in Council power that I am suggesting be delegated to the Commissioner of Inland Revenue (the discretion to waive use-of-money-interest) would not involve any fiscal implications when activated.

Table 1: Recommended generic measures

Measure	Current mechanism	Proposed mechanism	When previously used
Taxation rollover relief for: • revenue account property • depreciable property • amortisable land improvements	Primary legislation	Order in Council	Canterbury and Kaikoura earthquakes, 2023 North Island flooding events
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council	Canterbury and Kaikoura earthquakes, 2023 North Island flooding events
Capped employer payments and fringe benefits, and extended tax-free accommodation	Primary legislation	Order in Council	Canterbury earthquakes, and 2023 North Island flooding events

[1] A state of national emergency has only been declared three times - for the February 2011 Christchurch earthquake, the Covid-19 pandemic and the Cyclone Gabrielle flooding. Setting the definition at that level would be a too high threshold and would preclude many events for which emergency tax measures have previously been provided.

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period			
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council	Mycoplasma bovis outbreak commencing 2017
Turning off the bright-line test and other time-based land sale rules	Primary legislation	Order in Council	Canterbury earthquakes and 2023 North Island flooding events because local/central government buy-outs were provided in both cases
Information sharing for a specific event	N/A	Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards	COVID-19 pandemic response, through specific primary legislation
Remission of UOMI	Order in Council	Commissioner discretion	Regularly used for large scale emergencies including Hawke’s Bay gastro medical event

26. Other measures considered included the carry back of losses, an option available during COVID-19 and suggested by some submitters to help affected taxpayers’ cashflows. However, based on its application during COVID-19, the carry back of losses proved to be complex. It could also have a material fiscal cost if activated depending on the nature of the event. For these reasons it was not used as a North Island flood relief measure.

Information sharing

27. Sharing of information would contribute to a whole-of-government response, help reduce the overall costs to the government and provide a timelier response in an emergency. This power would be activated by an Order in Council that would only apply for the specific emergency event. It would need to be in relation to a national emergency, to be consistent with the ability other agencies have to share information under the Civil Defence National Emergencies (Information Sharing) Code 2020. This code is made under the Privacy Act 2020 and provides a fairly wide power to share personal information but only for national emergencies. Ideally sharing of information should be available for other emergencies too (given, for example, that the Auckland floods were not initially a national emergency), but the Office of the Privacy Commissioner is concerned not to pre-empt any work they may undertake on extending the code more widely.

28. Various other safeguards are also suggested:

    28.1. The Commissioner would need to be satisfied about the integrity of the party that has requested the information, and that the information was readily available.

    28.2. The Order in Council would enable the sharing of information for only as long as is necessary to fulfil the purpose of the information requests for that event, and would need to be within the time limitations set by

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the Civil Defence National Emergencies (Information Sharing) Code 2020 (i.e. up to 20 working days after the end of a state of emergency).

28.3. It would require a Memorandum of Understanding to be drawn up between the Commissioner and the party who requested the information specifying the information to be shared.

Application date

29. I recommend the amendments apply from 1 April 2025.

Crypto-asset reporting framework and amendments to common reporting standard

Background

30. Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-asset's network. This is known as distributed ledger technology and Blockchain is a form of this technology.

31. Since the introduction of the first crypto-asset Bitcoin in 2009, the market for crypto-assets worldwide has experienced rapid growth and development. The current market capitalisation for crypto-assets is almost $7 trillion New Zealand dollars. Between 6% and 10% of New Zealanders own some crypto-currency and Inland Revenue's analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

32. The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers that are currently subject to little regulatory oversight.

33. This development means that tax authorities do not have visibility over incomes derived through crypto-assets like they do with incomes generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large scale intermediaries. For example, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction.

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34. Against this background, the OECD has developed the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (CARF) that is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

Proposal

Crypto-Asset Reporting Framework

35. The CARF provides for the reporting of tax information on transactions in crypto-assets in a standardised manner, with a view to automatically exchanging such information with other jurisdictions.

36. The CARF is a global minimum standard, which means all OECD member countries are expected to implement it. To date, more than 50 jurisdictions worldwide have signed a joint statement outlining their commitment to implement the CARF in time to commence exchanges of information by 2027. This Government has also announced New Zealand's intention to implement the CARF and has committed to implementing it as part of Budget 2024 (CAB-24-MIN-0148 refers).

37. Under the CARF, entities or individuals that, as a business, facilitate exchange transactions on behalf of customers, such as crypto-asset exchanges, must collect information on the transactions of its customers, along with personal information, and report that information to the tax authority in which they are tax resident. This includes information on relevant crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets. This can include transfers to wallet addresses as well as high value retail transactions (such as where a crypto-asset intermediary processes payments on behalf of a merchant that accepts crypto-assets as payment for goods or services).

38. The CARF is subject to an automatic information exchange. Reporting crypto-asset service providers must provide the relevant information, in a standardised OECD format, to the tax authority in which they are tax resident. This information is then shared by the tax authority with other tax authorities, to the extent that the information relates to users who are tax resident in their jurisdiction. For example, Inland Revenue would receive information about New Zealand tax resident crypto-asset users that were operating on large offshore crypto-asset exchanges from other OECD jurisdictions.

39. Inland Revenue intends to use the information received under the CARF to support tax compliance. The information received under the CARF would provide increased visibility over incomes derived through crypto-assets, which would be used by Inland Revenue to ensure taxpayers are paying the correct amount of tax.

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40. Jurisdictions are required to ensure that they correctly implement the CARF. This means that effective enforcement provisions are required to address any instances of non-compliance by reporting crypto-asset service providers and reportable users. To support the CARF, I also propose introducing new civil penalties to the Tax Administration Act 1994. These penalties could apply to crypto-asset service providers with a New Zealand reporting obligation, and users of these service providers, where they fail to comply with the information reporting requirements under the CARF. I recommend these penalties are based on penalties that were included in the Tax Administration Act 1994 following implementation of the CRS in New Zealand and the implementation of the information reporting and exchange framework for the sharing and gig economy. These two initiatives are OECD information exchange frameworks already implemented in New Zealand.

Amendments to the Common Reporting Standard

41. As previously mentioned, the CRS is a global framework developed by the OECD for the collection, reporting, and exchange of financial account information about people and entities investing outside of their tax residence jurisdiction. It is designed to assist in detecting and deterring offshore tax evasion.

42. The OECD concluded the first comprehensive review of the CRS in 2022 and approved a number of minor or technical amendments to the CRS, chiefly to support the CARF.

43. The first year that the CRS amendments will be in operation will be the 2026–27 tax year, with the first reports due in 2027.

44. The CRS was incorporated into the Tax Administration Act 1994 by reference in 2017. As such, the only legislative change required would be to specify the date for the current amendments to take effect. The OECD has left this unspecified to allow tax administration of each jurisdiction and the entities affected to implement the system and administrative changes required.

Application date

45. I recommend that the OECD *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* is implemented in New Zealand effective from the 2026–27 tax year, with the first reports due in 2027.

Approved issuer levy retrospective registration

Background

46. A New Zealand borrower paying interest to an unassociated non-resident lender can generally opt to pay a 2% (or in certain cases 0%) approved issuer levy (AIL) on the interest, instead of non-resident withholding tax (NRWT) at 10% or 15%. This is conditional on the borrower registering as an approved

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issuer and registering the relevant security for AIL before the interest payments begin.

47. However, if the borrower has mistakenly not registered the security at the outset and the Commissioner later becomes aware of the oversight – whether through a voluntary disclosure by the borrower or otherwise – the borrower is required to pay NRWT on any interest payments already made, increasing the tax cost from 2% to 10% or 15%. Inland Revenue does not have the administratively flexibility to allow retrospective registration for AIL in such circumstances.

48. While failure to register a security for AIL before the first interest payment is not a widespread issue, there is a case to allow retrospective registration in some limited circumstances for a few reasons:

    48.1. First, AIL is a concessionary regime originally introduced to lower the cost of capital for New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender is confident it can easily get a full tax credit for New Zealand NRWT in its own jurisdiction, it will likely require the borrower to gross up their interest payments to cover the NRWT, increasing the cost of capital to the borrower. The AIL regime significantly reduces the tax cost to the borrower. Requiring a taxpayer to pay NRWT rather than AIL because of an administrative mistake increases the tax cost of capital for New Zealand borrowers that the AIL regime is intended to help.

    48.2. Second, it provides outcomes in some circumstances that could be seen as unfair and incoherent. For example, consider a borrower who has registered a security for AIL but neglected to pay AIL; such a borrower is still permitted to pay AIL at 2% (with the usual use of money interest and potential penalties) when the mistake is discovered. This can be contrasted with a borrower that has not registered a security for AIL but has paid AIL on it; such a borrower is liable for NRWT at 10% or 15% when the mistake is discovered. The second borrower has a significantly higher tax cost even though they were arguably less non-compliant that the first borrower by advising Inland Revenue of the interest payments through the AIL return and paying AIL on time (albeit accepting they were not entitled to do so because of the failure to register the security).

    48.3. Third, New Zealand's tax system relies on voluntary compliance. If taxpayers know that informing the Commissioner of an administrative mistake will result in a significantly larger than expected tax bill, there is a risk that some may decide not to disclose it, undermining voluntary compliance with AIL and NRWT.

49. That said, it is preferable that registration occurs at the time the security is entered into, and before the borrower makes an interest payment to the lender (as required under the status quo), because it gives Inland Revenue

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oversight of the securities being registered and provides a potential opportunity to review the borrower's eligibility for AIL before any AIL is paid. It importantly also means that the borrower is aware of their AIL/NRWT obligations and allows Inland Revenue to set up the borrower as an approved issuer (if it is the first security they are registering) before the first interest payment is due. If the borrower is not in fact eligible for AIL (eg, because they are associated with the lender), and thus has a NRWT liability, the borrower can still withhold and remit the NRWT at the time of the interest payment, which is easier than Inland Revenue attempting to collect the tax at some future date. But if a borrower would otherwise be eligible for AIL (eg, because they are not associated with the lender), then registration is essentially a formality, and reverting an otherwise eligible borrower to NRWT for neglecting to observe this reporting formality at the outset could be seen as harsh in some cases.

History

50. Several private sector firms and groups have written to Inland Revenue and the Minister of Revenue about this issue over the past few years. Inland Revenue has dealt with several borrowers who have neglected to register securities for AIL on time, and required them to pay NRWT. Most recently, the Corporate Taxpayers Group mentioned this issue in their briefing to me as the incoming Minister at the end of 2023.

51. Inland Revenue is aware of some cases of a corporate borrower failing to register a new security for AIL at the outset and notifying the Commissioner of the mistake sometime later. In one case this resulted in the borrower incurring an additional $2 million in NRWT.

52. Inland Revenue is also aware of some cases of individual borrowers with foreign mortgages not having registered for AIL at the appropriate time, and being required to pay NRWT instead for interest payments prior to registration. The NRWT payable in each case was generally less than $10,000.

Reasons for failure to register

53. There are a number of possible reasons why a borrower might neglect to register a security for AIL. These reasons fall on a spectrum between genuine error and deliberate non-compliance.

54. Examples of genuine error could include:

    54.1. The taxpayer has a strong history of AIL compliance, but forgets to register a particular security which the taxpayer still includes in its AIL returns such that AIL was filed and paid on time (just not registered for the security).

    54.2. The taxpayer has a strong history of AIL compliance, but forgets to register a security for a short period of time because of a change in personnel, or temporary lack of coordination between those responsible for treasury and tax.

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54.3. Incorrect understanding of compliance obligations at the relevant time (primarily for those new to borrowing from foreign lenders).

55. Examples of deliberate non-compliance:

55.1. The taxpayer does not want to bear any tax cost so does not register the security or pay any AIL (or NRWT).

55.2. The taxpayer is an approved issuer but is not eligible for AIL on the particular security (eg, because they are associated with the lender), but does not want to deduct NRWT, so simply pays AIL without registering the security.

56. There could also be examples that fall somewhere between genuine error and deliberate non-compliance.

57. The distinction between genuine error and deliberate non-compliance is important in designing a policy response to the aforementioned issue. In the relatively few cases that Inland Revenue can recall, the taxpayer typically notified the Commissioner of the oversight, suggesting it was a genuine error and the taxpayer intended to comply.

Proposal

58. I propose that the legislation be amended to allow a borrower to retrospectively register a security for AIL in limited circumstances. Retrospective registration would allow the borrower to pay AIL on the interest payments made on the security prior to the date of registration, rather than NRWT.

59. Conditions should be designed to ensure that retrospective registration is:

59.1. available only to borrowers who failed to register the security at the outset due to a genuine error, and

59.2. not available indefinitely.

60. The purpose of limiting retrospective registration to cases of genuine error would be to avoid encouraging non-compliance with the AIL regime. If retrospective registration for AIL were permitted in all circumstances, taxpayers could decide deliberately not to register a security in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered the security for and paid AIL on time (although interest and penalties could also be payable in the former case). The reason for imposing a time limit on availability of retrospective registration would be to preserve fiscal and taxpayer certainty, as well as protect against the risk of taxpayers becoming relaxed about the AIL registration requirements.

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Application date

61. I recommend that retrospective registration only be available from 1 April 2025 and cannot be backdated before that date, meaning this policy change will be prospective.

Exempt employee share scheme threshold increase

Background

62. Employee share schemes are arrangements whereby shares in an employer company are provided in whole or in part in return for services. These are an important way of remunerating employees in New Zealand and internationally.

63. Employers can provide exempt benefits to employers under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all or almost all a business's employees, and where both the benefit of the scheme, and the amount required to be invested by an employee to get that benefit, is limited.

64. The eligibility criteria include, among other things, the following conditions:

    64.1. the maximum value of the shares provided to an employee is $5,000 a year;

    64.2. the maximum discount an employer can provide on the market value of the shares to an employee is $2,000 a year, and

    64.3. 90% or more of full-time permanent employees who are not subject to securities law of other jurisdictions must be eligible to take part in the scheme.

Proposal

65. I propose that the two thresholds are increased to recognise inflation since the thresholds were last set in 2018. This would increase the maximum value of the shares that can be offered to $6,250 and the maximum benefit provided to $2,500.

Application date

66. I recommend that this proposal apply to offers of shares made under exempt employee share schemes after 1 April 2025.

New Zealand Business Number information sharing provision

Background

67. Currently there is a slow uptake of New Zealand Business Numbers (NZBN) among unincorporated entities because while they can choose to register with the Companies Office and receive an NZBN, it is not compulsory for unincorporated entities to do so.

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68. The Ministry of Business, Innovation and Employment (MBIE) would like to address this issue through an email campaign targeting unincorporated entities. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds to identify the unincorporated entities already registered.

69. MBIE would use the IRD numbers provided by Inland Revenue to determine or validate if an unincorporated entity is already registered with an NZBN. MBIE would then only contact unincorporated businesses that it has confirmed are not registered for an NZBN. Unincorporated entities who then want to register for an NZBN based on the information provided by MBIE can follow the traditional process for registering for an NZBN and supply MBIE with their business details.

70. Inland Revenue cannot currently share NZBN numbers with MBIE under the NZBN information sharing provision in the Tax Administration Act 1994, since the definitions utilised in the provision do not include unincorporated entities, and the purpose of the information sharing provision does not entirely align with the scope of this project.

Proposal

71. I propose that a "one-off" sharing of contact details and IRD numbers takes place between Inland Revenue and MBIE.

72. This will not have any fiscal or administrative implications.

Application date

73. I recommend that this applies from the date of the Royal assent to the Bill.

Enrolment of young persons under 16 in KiwiSaver with the signature of one guardian

Background

74. KiwiSaver settings for the enrolment of people under 18 seek to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the welfare of the young persons for whom they are responsible. As a result, the statutory criteria for enrolling young people in KiwiSaver vary with age. For example:

    74.1. Individuals aged 18 or over who meet the eligibility criteria can join KiwiSaver "as of right" by either contracting directly with a KiwiSaver provider or enrolling through their employer.

    74.2. Individuals aged 16–17 may enrol with the consent of only one guardian.

75. However, the enrolment of individuals aged under 16 who are not in Oranga Tamariki care and wish to enrol in KiwiSaver requires the consent of all

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guardians. This can pose a challenge for solo parents in instances where it is hard to secure the agreement of a former partner.[2]

Proposal

76. I propose that the enrolment signature requirements for those under 16 be eased from requiring the signature of all guardians to one guardian only. This would allow KiwiSaver accounts to be set up for children with greater ease, and allow financial contributions to be made by family members without the administrative efforts associated with setting up a specific savings vehicle.

Application date

77. I recommend that this proposal apply from 1 July 2025.

Charities recommended for overseas donee status

Background

78. New Zealand charities that support activities overseas and want their donors to be eligible for tax benefits (such as the donation tax credit) must be approved for overseas donee status and listed in Schedule 32 of the Income Tax Act 2007. Monetary donations to organisations listed in Schedule 32 entitle individual New Zealand taxpayers to a tax credit of 33.33% of the amount donated, up to the amount of their taxable income. Companies and Māori authorities are eligible for tax deductions for monetary donations to the listed charities, up to the level of their net income.

79. Generally, tax benefits are available in relation to donations to charities with New Zealand purposes only. However, in 1962, the government made provision to add charities that furthered government objectives, such as international aid and development, on a case-by-case basis. Overseas donee status is therefore an established exception for a specific class of charity. Giving overseas donee status requires legislative change by adding the charity to the list of overseas donee organisations in Schedule 32 of the Income Tax Act 2007. Advice from the Legislative Design and Advisory Committee in 2016 has confirmed that the use of legislation to implement decisions to grant overseas donee status is appropriate.

80. Cabinet has established criteria for granting overseas donee status:

The basic criteria for adding an organisation to the list of approved "overseas" charities:

(i) the funds of the charity should be principally applied towards:

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any

[2] This issue was raised by a petition from a solo parent, which received media attention in 2021 https://www.stuff.co.nz/business/money/124711473/call-to-change-archaic-kiwisaver-rule-stopping-solo-parents-signing-up-kids

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religion, cult or political creed should not qualify.

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Proposal

81. I propose that the charities named in paragraphs 83 to 89 be granted overseas donee status. The purposes of the recommended charities come within Cabinet criteria. My officials consider the charities recommended in this paper have adequate procedures to support the accountability of funds applied to projects and can demonstrate a track record of activity.[3] They are all registered under the Charities Act 2005.

82. The recommended charities are seeking overseas donee status to grow their New Zealand donor bases and increase the scope and scale of their in-country activities.

Altus Resource Trust

83. Altus Resource Trust works with in-country partners in the Pacific Islands to provide services and equipment to children and adults with disabilities. Altus is currently working with organisations in Samoa, Vanuatu, Tonga and the Cook Islands. Altus seeks to build capability in these countries by improving the skill base of local field workers, health workers and carers so they can work more effectively with members of the local community who are disabled.

Kapuna Education Charitable Trust

84. Kapuna Educational Charitable Trust (KECT) operates in the Kikori District in the Gulf Province in Papua New Guinea. KECT was created to support the Kapuna Life School and improve education outcomes for children in the district.

Kiwi Trust for Palestinian Children Relief

85. Kiwi Trust for Palestinian Children Relief provides aid and relief to Palestinian children and their families through humanitarian, educational, social and small enterprise projects. The Trust was founded with the purpose of providing general aid, education and capacity building assistance to children and their families primarily located in the Gaza Strip.

ReliefAid

86. ReliefAid is a New Zealand charity that has been operating internationally since 2015, focusing on providing aid for people affected by armed conflict and natural disasters. ReliefAid provides shelter materials, food, water and medical supplies to families in need in several different conflict zones throughout the world.

Rescue and Prevent Trust

[3] Officials' analysis of the charities recommended in this report followed the guidance in CBC Min (09) 12/2. This guidance is designed to establish whether the charity is capable of meeting its purposes, is credible, and accountable for the funds it collects.

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87. Rescue and Prevent Trust (Rescue and Prevent) is a New Zealand charity operating in Thailand with a goal to rescue and educate victims of sex trafficking. Rescue and Prevent provides resources to help rescue victims of sex trafficking including drug rehabilitation and providing opportunities for vocational training.

Support Services for Humanity

88. Support Services for Humanity is a Hamilton-based charity that operates in Uganda. The charity raises funds in New Zealand towards pop-up medical camps in Uganda. It partners with local Ugandan health services and hospitals to provide medical services such as vaccines, treatment and testing to local communities.

89. I also recommend that Support Services for Humanity's donee status be time limited and end on 31 March 2029 (five years). The charity is new and to date has an irregular and periodic track record of activity. I have asked Inland Revenue to review the operations of the trust in 2028 to assess its ongoing viability.

Application date

90. I recommend that the six charities be given overseas donee status with effect from 1 April 2024, with Support Services for Humanity's overseas donee status time limited until 31 March 2029. The recommended application date aligns with the start of the income year and ensures that the charities have certainty for the purposes of their fund raising.

Cost-of-living implications

91. There are no cost-of-living implications associated with the recommended changes in this paper.

Financial implications

92. The proposal giving certain charities overseas donee status would be funded through a forecasting adjustment. The following proposals would be funded through the Tax Policy Scorecard mechanism (the Scorecard):

    92.1. approved issuer levy retrospective registration, and

    92.2. exempt employee share scheme threshold increase.

93. The Scorecard is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. The use of the Scorecard requires joint Minster of Finance and Minister of Revenue agreement. The initiatives in this paper have been jointly agreed to by us.

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Generic response measures for emergency events

94. The recommended new process would not have a fiscal impact because it would not involve automatically activating the measures for any future event. Ministers and Cabinet would still make those decisions and the fiscal cost of implementation would be considered at that time.

95. The recommended new process should generally reduce administrative costs as activation by Order in Council is a simpler process than amending primary legislation. The recommended new information sharing power would, however, involve some additional administration given that more information is likely to be shared. Overall, this would not have an impact on baselines.

Crypto-asset reporting framework and changes to common reporting standard

96. Cabinet has previously agreed to implement the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* as part of Budget 2024. The estimated revenue implications of implementing this initiative are shown in the table below. It is expected the proposal will increase tax revenue by $50 million per annum, with a corresponding impact on the operating balance and/or net debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	–	–	–	–	50.000

97. This positive revenue impact arises because Inland Revenue will have more information about crypto-asset trades by New Zealand tax residents, and the information can be used by Inland Revenue to improve general tax compliance for these taxpayers.

98. There are costs to Inland Revenue for implementing the crypto-asset reporting framework. This is comprised of $6.700 million for the capital build, $1.600 million for the operating build and $8.500 million in operating over the forecast period (2023/24 to 2027/28).

99. The amendments to the CRS are not expected to have revenue implications. Inland Revenue will self-fund the capital and operating cost of $1.200 and ongoing costs of $0.520 million (2024/25 to 2027/28) to implement the CRS amendment.

100. These costs and revenue impacts have already been accounted for as part of Budget 2024. Therefore, I am not seeking Cabinet's agreement to any spending.

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Approved issuer levy retrospective registration

101. Retrospective registration for AIL is expected to have a fiscal cost of approximately $50,000 in the 2024/25 year and $200,000 per year thereafter with a corresponding impact on the operating balance and net debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.05)	(0.200)	(0.200)	(0.200)

102. This should be charged against the Scorecard.

Exempt employee share scheme threshold increase

103. The estimated financial implications of increasing the thresholds in line with inflation is forecast to cost $0.16 million over the forecast period (2024/25 to 2027/28) with a corresponding impact on the operating balance and net debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.010)	(0.050)	(0.050)	(0.050)

104. This should be charged against the Scorecard.

Charities to be granted overseas donee status

105. The estimated financial implications of adding the six charities recommended in this paper are shown in the table below. Over the forecast period (2023/24 to 2027/28) the expected financial impact is $2.10 million. The financial implications will be treated as a forecasting change and reflect the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations. The revenue estimates are based on projections made by the charities about the monetary donations they expect to receive for the forecast period.

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	–	(0.291)	(0.427)	(0.665)	(0.723)

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Legislative implications

106. Implementing these proposals requires changes to the Income Tax Act 2007, Tax Administration Act 1994, the Stamp and Cheque Duties Act 1971 and the KiwiSaver Act 2006.

107. If approved, I propose including the legislative changes resulting from these proposals in the next omnibus taxation Bill, scheduled for introduction in August 2024.

108. The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill holds a category 5 priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024).

Impact analysis

Regulatory Impact Assessment

109. The Ministry for Regulation has confirmed that the proposal to set the annual income tax rates for the 2024–25 tax year does not depart from existing policy, and therefore Cabinet's impact analysis requirements do not apply.

110. The Ministry for Regulation has determined that the following proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals and not-for-profit entities:

    110.1. amendments to common reporting standard.

    110.2. exempt employee share scheme threshold increase.

    110.3. charities recommended for overseas donee status.

    110.4. enrolment of young persons under 16 in KiwiSaver with the signature of one guardian.

    110.5. New Zealand Business Number information sharing provision.

111. The Quality Assurance panel at Inland Revenue has reviewed the *Generic Response to Emergency Events* Regulatory Impact Statement prepared by Inland Revenue and considers that the information and analysis summarised in the Regulatory Impact Statement **meets** the quality assurance criteria. However, the panel notes that the scope of options has been limited due to time constraints.

112. The Quality Assurance panel at Inland Revenue has reviewed the *Crypto-asset Reporting Framework* Regulatory Impact Statement prepared by Inland Revenue and considers that the information and analysis summarised in the Regulatory Impact Statement **meets** the quality assurance criteria.

113. The Quality Assurance panel at Inland Revenue has reviewed the *Approved Issuer Levy Retrospective Registration* Regulatory Impact Statement prepared

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by Inland Revenue and considers that the information and analysis summarised in the Regulatory Impact Statement **partially meets** the quality assurance criteria.

114. The Regulatory Impact Statement for the *Approved Issuer Levy Retrospective Registration* sets out the problem with the status quo and provides a convincing argument that retrospective registration should be available in certain circumstances. The Regulatory Impact Statement only partially meets the complete criteria as it does not consider situations where AIL would not be available even under the proposed retrospective registration but there are no deliberate non-compliance concerns. The preferred option in the Regulatory Impact Statement will reduce the instances of the problem arising but there is a risk that it does not remove it from all potentially valid circumstances.

Climate Implications of Policy Assessment

115. For all of the initiatives the Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to the proposals because the threshold for significance is not met.

Population implications

Generic response measures for emergency events

116. This change does not have population implications.

Crypto-asset reporting framework and changes to common reporting standard

117. The change to implement the CARF and amend CRS does not have population implications.

Approved issuer levy retrospective registration

118. The amendment to the approved issuer levy retrospective registration does not have any population implications.

Exempt employee share scheme threshold increase

119. The amendments to exempt employee share schemes do not have population implications.

New Zealand Business Number information sharing provision

120. The information sharing provision proposal does not have population implications.

Enrolment of young persons under 16 in KiwiSaver with the signature of one guardian

121. The proposal allowing the enrolment of young persons under 16 proposal with the consent of one guardian will make KiwiSaver membership more accessible for those aged under 16.

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Charities recommended for overseas donee status

122. New Zealand's strategy for overseas development is underpinned by four development principles: effectiveness, inclusiveness, resilience and sustainability. Each of the recommended charities specifically target development and aid for communities in the Middle East, Asia, Africa and the Pacific. Each charity has a particular focus on promoting economic development, health, education, or relieving the effects of warfare on civilian populations.

123. Altus Resource Trust has a particular focus in the Pacific, providing relief in Samoa, Tonga, Vanuatu, Rarotonga, and Niue, providing aid and services for children and adults with disabilities. Strong relationships in the Pacific are an important aspect of New Zealand's diplomatic and development strategy.

Human rights

124. There are no human rights implications associated with the recommended changes in this paper. The information sharing proposal for emergency events has some privacy aspects but the Office of the Privacy Commissioner has confirmed that they are comfortable with the proposal, including the proposed safeguards.

Consultation

125. In addition to the specific consultation undertaken for each of the policy initiatives as outlined below, the Treasury and Department of the Prime Minister and Cabinet were consulted on the contents of this Cabinet paper.

Generic response measures for emergency events

126. Some submissions on the tax Bill enacted early this year advocated a more generic approach for emergency events and the Finance and Expenditure Committee recommended this as an area for Inland Revenue to consider in the future.

127. Inland Revenue also have undertaken targeted consultation on the recommended new process and the measures that it would cover with the key stakeholder groups that were consulted last year following the North Island flooding event (Chartered Accountants Australia and New Zealand and other accounting groups, Corporate Taxpayers Group, Bankers Association) and government agencies that are likely to have an interest in this work (Ministry for Primary Industries, Ministry of Social Development, Department of Internal Affairs, Parliamentary Council Office and the Privacy Commissioner, National Emergency Management Agency). Feedback has generally been supportive. Both the Legislation Design and Advisory Committee and Federated Farmers were informed about the proposals, Federated Farmers having previously indicated support for making the measures generic.

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Crypto-asset reporting framework and changes to common reporting standard

128. A targeted consultation and submissions process has been undertaken with the private sector and with New Zealand financial service providers that deal in crypto-assets. Officials have also consulted with the Reserve Bank of New Zealand in relation to the proposals.

Approved issuer levy retrospective registration

129. There has been limited external consultation on allowing retrospective registration, although private sector stakeholders have previously sought it as a solution. The limited external consultation is broadly supportive of a policy change to allow it.

Exempt employee share scheme threshold increase

130. The Treasury and MBIE were consulted in the preparation of this proposal.

New Zealand Business Number information sharing provision

131. The Office of the Privacy Commissioner was consulted in the preparation of the proposal and have advised that there is a reasonable policy case for targeted information sharing with appropriate risk mitigations, and with the appropriate legislative vehicle. MBIE were also consulted in the preparation of this proposal and are supportive of the policy change.

Enrolment of young persons under 16 in KiwiSaver with the signature of one guardian

132. The Treasury and MBIE were consulted in the preparation of this proposal.

Charities recommended for overseas donee status

133. The Treasury, Ministry of Foreign Affairs and Trade (Middle East and Africa and Partnerships, Humanitarian and Multilateral groups) and the Department of Internal Affairs – Charities Services, were consulted as part of the analysis of the six charities recommended in this paper.

Communications

134. I will make an announcement regarding the proposals in this paper when the omnibus tax Bill containing the proposals is introduced (currently scheduled for August 2024). 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

135. I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers until after the introduction of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill containing these proposals. The expected introduction date for this Bill is August 2024.

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Recommendations

The Minister of Revenue recommends that the Committee:

Annual Rates of income tax for 2024–25

1. **Agree** to set the annual rates of income tax for the 2024–25 tax year at the same rates currently specified in schedule 1 of the Income Tax Act 2007 (including the recent changes legislated as part of Budget 2024).

Generic response measures for emergency events

2. **Agree** to introduce a generic set of tax relief measures for future emergency events for inclusion in primary legislation and activation primarily by Order in Council.

3. **Agree** that the measures include a very constrained tax information sharing power to assist other agencies who need to provide assistance to individuals and businesses impacted by an emergency.

4. **Agree** this change take effect from 1 April 2025.

5. **Note** this recommended new process has no fiscal costs.

Crypto-asset reporting framework and amendments to common reporting framework

6. **Note** that Cabinet has previously agreed to implement the OECD's Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard in New Zealand as part of Budget 2024.

7. **Agree** that the OECD's Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard shall be implemented in New Zealand from the 2026–27 tax year, with the first exchanges of information taking place in 2027.

8. **Agree** to implement penalties that apply to New Zealand tax resident reporting crypto-asset service providers that fail to comply with their obligations under the CARF of:

    8.1. $300 per instance, up to $10,000, per reporting period (1 year), and

    8.2. $20,000 for the first offence, and $40,000 for subsequent offences, up to $100,000 per reporting period, in circumstances where reporting crypto-asset service providers fail to take reasonable care in complying with their obligations under the CARF.

9. **Agree** to introduce a penalty of $1,000 in circumstances where reportable users who operate through reporting crypto-asset service providers fail to provide the reporting crypto-asset service provider with the information it requires to fulfil its obligations under the CARF.

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10. **Agree** that the Commissioner of Inland Revenue can impose the penalties referred to in recommendations 8 and 9.

11. **Note** that the penalties referred to in recommendations 8 and 9 are consistent with penalties introduced in the Tax Administration Act 1994 for financial institutions under the CRS and for digital platforms under the OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy.

12. **Note** that the Commissioner of Inland Revenue will focus on supporting New Zealand tax resident reporting crypto-asset service providers and reportable users to comply with their obligations under the CARF and would apply discretion in imposing these penalties.

Approved issuer levy retrospective registration

13. **Agree** to allow a New Zealand borrower paying interest to an unassociated non-resident lender to retrospectively register the relevant security for approved issuer levy (and itself as an approved issuer, if needed) in limited circumstances.

14. **Agree** that retrospective registration should only be available where the borrower has made a genuine error.

15. **Agree** that retrospective registration will only be available from 1 April 2025 and cannot be backdated before that date, meaning this policy change will be prospective.

16. **Note** the following changes to tax revenue as a result of recommendations 13 to 15, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Tax Revenue: Withholding Taxes	0.000	(0.060)	(0.240)	(0.240)	(0.240)
Other Indirect Taxes	0.000	0.010	0.040	0.040	0.040
Total Revenue	**0.000**	**(0.050)**	**(0.200)**	**(0.200)**	**(0.200)**
Total Operating	**0.000**	**0.050**	**0.200**	**0.200**	**0.200**

17. **Note** the reduction in tax revenue in recommendation 16 above will be charged against the Tax Policy Scorecard as agreed by Joint Ministers (IR2024/177 refers).

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Exempt employee share scheme threshold increase

18. **Agree** to increase the thresholds relating to exempt employee share schemes to recognise inflation since when they were first introduced.

19. **Agree** that this applies to offers of shares made under exempt employee share schemes after 1 April 2025.

20. **Note** the following changes to tax revenue as a result of recommendations 18 and 19, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.010)	(0.050)	(0.050)	(0.050)
Total Operating	**0.000**	**0.010**	**0.050**	**0.050**	**0.050**

21. **Note** the reduction in tax revenue in recommendation 20 above will be charged against the Tax Policy Scorecard as agreed by Joint Ministers (IR2024/177 refers).

New Zealand Business Number information sharing provision

22. **Agree** to introduce an information sharing provision that authorises the "one-off" sharing of the contact details and IRD numbers of unincorporated entities with the Ministry for Business, Innovation and Employment.

23. **Agree** that this applies from the date of Royal assent of the Bill.

Enrolling young persons under 16 in KiwiSaver with the signature of one guardian

24. **Agree** to allow persons under 16 to enrol in KiwiSaver with the signature of one guardian.

25. **Agree** this change take effect from 1 July 2025.

Charities recommended for overseas donee status

26. **Agree** that the following six charities be given overseas donee status and listed in schedule 32 of the Income Tax Act 2007, with effect from 1 April 2024:

    26.1. Altus Resource Trust, Kapuna Education Charitable Trust, Kiwi Trust for Palestinian Childrens Relief, ReliefAid, Rescue and Prevent Trust, and Support Services for Humanity.

27. **Note** that overseas donee status will only apply for a limited time to Support Services for Humanity and will end on 31 March 2029.

28. **Note** the following changes to tax revenue as a result of recommendation 26, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.291)	(0.427)	(0.665)	(0.723)
Total Operating	**0.000**	**0.291**	**0.427**	**0.665**	**0.723**

Next steps

29. **Agree** that the above recommendations be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill scheduled for introduction in August 2024.

30. **Agree** to delegate authority to the Minister of Revenue to make minor and technical changes to the policies included in this paper before introduction of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

31. **Agree** to defer the proactive release of this Cabinet paper, associated minutes, and key advice papers until after the introduction of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill containing these proposals.

Authorised for lodgement

Hon Simon Watts
Minister of Revenue

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Cabinet Business 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.

Measures for Inclusion in the 2024 Omnibus Taxation Bill

Portfolio **Revenue**

On 1 July 2024, the Cabinet Business Committee:

Annual rates of income tax for 2024-25

1 **agreed** to set the annual rates of income tax for the 2024–25 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007 (including the recent changes legislated as part of Budget 2024);

Generic response measures for emergency events

2 **agreed** to introduce a generic set of tax relief measures for future emergency events for inclusion in primary legislation and activation primarily by Order in Council;

3 **agreed** that the measures include a very constrained tax information sharing power to assist other agencies who need to provide assistance to individuals and businesses impacted by an emergency;

4 **agreed** that the above change take effect from 1 April 2025;

5 **noted** that the above recommended new process has no fiscal costs;

Crypto-asset reporting framework and amendments to common reporting framework

6 **noted** that in April 2024, as part of Budget 2024, Cabinet agreed to implement the OECD's Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard in New Zealand (CRS) [CAB-24-MIN-0148];

7 **agreed** that the OECD's CARF and Amendments to the CRS be implemented in New Zealand from the 2026–27 tax year, with the first exchanges of information taking place in 2027;

8 **agreed** to implement penalties that apply to New Zealand tax resident reporting crypto-asset service providers that fail to comply with their obligations under the CARF of:

8.1 $300 per instance, up to $10,000, per reporting period (one year);

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8.2 $20,000 for the first offence, and $40,000 for subsequent offences, up to $100,000 per reporting period, in circumstances where reporting crypto-asset service providers fail to take reasonable care in complying with their obligations under the CARF;

9 **agreed** to introduce a penalty of $1,000 in circumstances where reportable users who operate through reporting crypto-asset service providers fail to provide the reporting crypto-asset service provider with the information it requires to fulfil its obligations under the CARF;

10 **agreed** that the Commissioner of Inland Revenue can impose the above penalties;

11 **noted** that the above penalties are consistent with penalties introduced in the Tax Administration Act 1994 for financial institutions under the CRS and for digital platforms under the OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy;

12 **noted** that the Commissioner of Inland Revenue will focus on supporting New Zealand tax resident reporting crypto-asset service providers and reportable users to comply with their obligations under the CARF and would apply discretion in imposing the above penalties;

Approved issuer levy retrospective registration

13 **agreed** to allow a New Zealand borrower paying interest to an un-associated non-resident lender to retrospectively register the relevant security for approved issuer levy (and itself as an approved issuer, if needed) in limited circumstances;

14 **agreed** that retrospective registration should only be available where the borrower has made a genuine error;

15 **agreed** that retrospective registration will only be available from 1 April 2025 and cannot be backdated before that date, meaning the above policy change will be prospective;

16 **noted** the following changes to tax revenue as a result of paragraphs 13 to 15 above, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Tax Revenue: Withholding Taxes	0.000	(0.060)	(0.240)	(0.240)	(0.240)
Other Indirect Taxes	0.000	0.010	0.040	0.040	0.040
Total Revenue	**0.000**	**(0.050)**	**(0.200)**	**(0.200)**	**(0.200)**
Total Operating	**0.000**	**0.050**	**0.200**	**0.200**	**0.200**

17 **noted** that the reduction in tax revenue above will be charged against the Tax Policy Scorecard as agreed by the Ministers of Finance and Revenue (joint Ministers) (IR2024/177);

Exempt employee share scheme threshold increase

18 **agreed** to increase the thresholds relating to exempt employee share schemes to recognise inflation since they were first introduced;

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19 **agreed** that the above applies to offers of shares made under exempt employee share schemes after 1 April 2025;

20 **noted** the following changes to tax revenue as a result of paragraphs 18 and 19 above, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.010)	(0.050)	(0.050)	(0.050)
Total Operating	**0.000**	**0.010**	**0.050**	**0.050**	**0.050**

21 **noted** that the reduction in tax revenue above will be charged against the Tax Policy Scorecard as agreed by joint Ministers (IR2024/177);

New Zealand Business Number information sharing provision

22 **agreed** to introduce an information sharing provision that authorises the 'one-off' sharing of the contact details and IRD numbers of unincorporated entities with the Ministry of Business, Innovation and Employment;

23 **agreed** that the above change applies from the date of Royal assent of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill;

Enrolling young persons under 16 in KiwiSaver with the signature of one guardian

24 **agreed** to allow persons under 16 to enrol in KiwiSaver with the signature of one guardian;

25 **agreed** that the above change take effect from 1 July 2025;

Charities recommended for overseas donee status

26 **agreed** that the following six charities be given overseas donee status and listed in Schedule 32 of the Income Tax Act 2007, with effect from 1 April 2024:

26.1 Altus Resource Trust;

26.2 Kapuna Education Charitable Trust;

26.3 Kiwi Trust for Palestinian Children Relief;

26.4 ReliefAid;

26.5 Rescue and Prevent Trust;

26.6 Support Services for Humanity;

27 **noted** that overseas donee status will only apply for a limited time to Support Services for Humanity and will end on 31 March 2029;

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28 **noted** the following changes to tax revenue as a result of paragraph 26 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.291)	(0.427)	(0.665)	(0.723)
Total Operating	**0.000**	**0.291**	**0.427**	**0.665**	**0.723**

Next steps

29 **agreed** that the above decisions be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill, scheduled for introduction in August 2024;

30 **authorised** the Minister of Revenue to make minor and technical changes to the policies included in the paper under CBC-24-SUB-0065 prior to the introduction of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

Janine Harvey
Committee Secretary

Present:
Rt Hon Christopher Luxon (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Chris Bishop
Hon Shane Jones
Hon Dr Shane Reti
Hon Simeon Brown
Hon Erica Stanford
Hon Paul Goldsmith
Hon Mark Mitchell
Hon Simon Watts
Hon Casey Costello
Hon Chris Penk
Hon Andrew Hoggard

Officials present from:
Department of the Prime Minister and Cabinet
Inland Revenue

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Policy
Taukaea
55 Featherston Street
PO Box 2198
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New Zealand

T. 04 890 1500

Briefing note

Reference: BN2024/288

Date: 8 July 2024

To: Revenue Advisor, Minister of Revenue – Angela Graham
Private Secretary, Minister of Revenue – Helen Kuy

From: Paul Fulton

Subject: **PIE eligibility proposals**

Purpose

1. This briefing provides the information you have asked for on communication with the Corporate Taxpayers Group (CTG) in developing the PIE eligibility proposals for the August 2024 Omnibus Tax Bill.

Initial consultation

2. The PIE eligibility proposals were first consulted on by release of a targeted letter on 9 February 2024. This was provided directly to 15 stakeholders including CTG and we advised it could be distributed further as required. The response date for this letter was Tuesday 2 April 2024.

3. Following an agreed extension, we discussed the proposals with CTG on Wednesday 3 April and received a written submission on Tuesday 9 April. Officials also met with and received submissions from other stakeholders (including some who are also members of CTG). In these meetings, we advised we would keep stakeholders informed of the development of the proposals where possible. However, no undertaking to engage in a second round of consultation was provided.

Response to initial consultation

4. A summary of submissions was incorporated into the report that made final recommendations (IR2024/189 provided 3 May 2024). That report reflected the submissions received and officials' response. For example, paragraph 12 states:

> *Many submitters suggest that a more comprehensive review of the PIE rules should be undertaken, or that the proposed amendments are not consistent with the original policy intent. Officials have reviewed the original policy documents in relation to these rules and are confident that a more comprehensive review is unnecessary and that the proposed amendments do align with the original policy intention for PIEs. Officials consider, especially given the long-term nature of many PIE investments, that the eligibility criteria remain as consistent as possible over time and that the proposed amendments support that.*

5. The final recommendations were updated to reflect the submissions received. For example, the land development proposals included the following changes compared to the original proposal:

   - Replacement of reference to a specific land taxing provision[1] with words identifying the specific activities that have always been against the policy intent of the PIE rules.
   - A carve out for minor development activity – for example, where a large piece of land is acquired and part of that land is subdivided off and sold so the remaining land can be developed for lease.
   - A 5-year grandparenting provision so the existing legislation would continue to apply until 1 April 2030 for land owned prior to 1 April 2025. This ensures that no PIE that is currently compliant with the legislation would be removed from the PIE rules as a result of the proposals.

6. Through the submissions process and officials' discussions with stakeholders no PIE or transaction has been identified that would cause any existing PIE to be in breach of the PIE eligibility criteria or would be in breach if the proposals applied.

7. Most submitters agreed that PIEs should not undertake land development activities, and many supported the proposal to clarify this position. From submissions:

   - CA ANZ said a PIE carrying on property development would be tax avoidance, PwC didn't think a PIE undertaking property development was even a risk.
   - KPMG, Kiwi Property Group, Buddle Findlay understand the need but want to ensure there is no policy change in the boundary.
   - Kernal Wealth, Corporate Trustees Association, Financial Services Council NZ support the changes.
   - Deloitte and CTG disagreed that land developers should be excluded from the PIE rules.

8. In developing the final recommendations, officials considered we had taken all reasonable steps to address submitters concerns and where no agreement could be reached, for example CTG's view that these are not remedial changes, our views reflect the long-held policy position of officials and successive governments (including guidance documentation released as part of the development of the PIE rules in 2006).

9. Once these proposals were agreed we have, consistent with our general approach to all Bill proposals, been careful regarding the release of decisions that have yet to be approved by Cabinet (especially where there is limited opportunity for further development).

Further consultation with CTG

10. We have scheduled a further discussion with CTG on 9 July. Following this meeting, we will update the Minister at a scheduled meeting on 12 July.

Available options

11. We understand the Minister has asked us to consider the extent to which the PIE eligibility proposals should remain in the Bill. Legislative options include:

   - Continuing with the proposals as currently drafted
   - Removing all PIE eligibility proposals from the Bill

[1] s CB 7 - Disposal: land acquired for purposes of business relating to land

- Retaining the deposit taker and associated interest proposals but remove the land development proposal.

12. In the event the land development proposal is removed from the Bill (under either of those options above), the current IRD Tax Counsel Office interpretation will continue to apply. As there is some uncertainty surrounding the tax treatment of PIEs engaging in land development (to the extent any are), one of the following steps will be required:

    - Inland Revenue could release, initially in draft, interpretation guidance confirming that PIEs cannot undertake land development for resale. This would result in a similar outcome to proposed remedial but would retain the current legislation which is less certain resulting in higher compliance costs. There would be no ability to include a 5-year grandparenting provision equivalent to the proposed legislation. It would also remove the ability for taxpayers to participate, through the Finance and Expenditure Select Committee process, in developing a clear boundary of eligible activities.
    - Inland Revenue policy could commence a policy project to determine whether the eligibility rules should be extended to include land development for resale. A likely outcome of such a project is to recommend that this extension not be provided as it would be inconsistent with the intent of the PIE rules. However, if Ministers decided to provide an extension this is likely to have a significant fiscal cost and would make decisions on further extensions to eligible activity outside of land harder to defend.

Consultation with the Treasury

13. The Treasury was informed about this briefing note.

Paul Fulton
Principal Policy Advisor
s 9(2)(a)

Policy
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55 Featherston Street
PO Box 2198
Wellington 6140
New Zealand

T. 04 890 1500

Briefing note

Reference:	BN2024/285
Date:	11 July 2024
To:	Revenue Advisor, Minister of Revenue – Angela Graham Private Secretary, Minister of Revenue – Helen Kuy
From:	Richard McLaughlan
Subject:	Fiscal implications of further increases to exempt employee share schemes

Purpose

1. This briefing note provides the fiscal implications of increasing the thresholds used for exempt employee share schemes (ESS) by more than what is currently proposed in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill).

2. This briefing note also provides some more background information on the relationship between the two thresholds used in exempt ESS.

Context

3. The Minister of Revenue has previously agreed to increase the thresholds relating to exempt ESS to recognise inflation (IR2024/250 refers). This would increase the maximum value of the shares that can be offered to $6,250, and the maximum benefit provided to $2,500. It is proposed that this change will be included in the Bill, which is scheduled for introduction in August 2024.

4. The Minister of Revenue has requested information on what the fiscal implications would be if these thresholds were increased further. Namely, if the maximum value of the shares that can be offered is increased to $7,500 or $10,000. We have assumed a proportional increase in the value of the shares that can be offered. The second threshold has a greater impact on the costing and should also be adjusted to justify receiving employment income in the form of shares (explained below). The additional costed scenarios are as follows:

   - **Scenario one** – Maximum value of the shares that can be offered from $5,000 to $7,500; and the maximum benefit that can be provided from $2,000 to $3,000, and

   - **Scenario two** – Maximum value of the shares that can be offered from $5,000 to $10,000; and the maximum benefit that can be provided from $2,000 to $4,000.

Exempt employee share schemes

5. The Income Tax Act 2007 provides a concessionary regime to employers who offer shares to employees under certain widely offered "exempt employee share schemes". No deductions are available for an employer in relation to an exempt scheme other than for establishing or managing the scheme.

6. The eligibility criteria include, among other things, the following conditions:

   - the maximum value of the shares provided to an employee is $5,000 a year,

   - the maximum discount that an employer can provide on the market value of shares to an employee is $2,000 a year, and

   - 90% or more of full-time permanent employees who are not subject to securities law of other jurisdictions must be eligible to take part in the scheme.

7. The thresholds relate to the value of the shares offered and the value of the tax-free benefit offered. The current thresholds mean the most an employee will be able to spend buying shares is $3,000 per year provided they are receiving the maximum discount rate ($3,000 plus the $2,000 discount means a maximum value of $5,000 worth of shares).

Maximum value of the shares

8. The first threshold is intended to ensure that all employees can afford to participate in the scheme, not just highly paid employees. This is achieved by limiting the cost of shares that can be offered.

9. This threshold only has a minor influence on the fiscal cost. In addition, Inland Revenue is unable to determine the market share valuation information. The costing includes all ESS not currently in the exempt scheme regardless of their market value, provided they meet the tax-free benefit. There has also been some filtering to account for other conditions such as the 90% requirement.

Maximum tax free benefit

10. The second threshold has a major influence on the fiscal cost. This is because as the tax-free benefit changes, tax collected in the general scheme reduces with greater access to the exemption scheme.

11. This threshold should be increased proportionally to the maximum value of shares. For example, say that the maximum value of the shares that can be offered was increased to $100,000, but the tax-free benefit offered remained at $2,000. It is unlikely that anyone would opt to receive employment remuneration in the form of shares because a large portion of their income would be non-liquid and inaccessible. The tax-free benefit would not justify the value of the shares.

Further increases to the thresholds used for exempt employee share schemes

Costing background

12. Increasing the thresholds used for exempt ESS will reduce the tax that is currently collected in the general scheme. Officials assume that a threshold increase will induce those who are currently unable to access the scheme, due to exceeding the employer discount threshold or market value threshold, to enter the scheme. That

is provided they meet other eligibility criteria including that their respective ESS is widely offered.[1]

13. No deductions are available for an exempt ESS, other than in respect of establishing or managing the scheme. Employers who switch from the general scheme to the exempt scheme will no longer be able to claim any deductible expenditure from providing employment income in an ESS. This will result in increased company tax collected for Inland Revenue and will offset a significant portion of the cost of the proposal.

Status quo increase in August Bill

14. Increasing the maximum value of the shares to $6,250, and the maximum discount an employer can provide to $2,500 is forecast to cost **$0.16 million** over the forecast period. This is expected to affect approximately **172 employers** and **1,343 employees**. This assumes that the thresholds would increase from 1 April 2025.

	$ million increase / (decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & Outyears**
- Other persons	0	(0.105)	(0.420)	(0.420)	(0.420)
- Company tax	0	0.095	0.370	0.370	0.370
Total tax revenue		**(0.010)**	**(0.050)**	**(0.050)**	**(0.050)**

Scenario one

15. Increasing the maximum value of the shares to $7,500, and the maximum discount an employer can provide to $3,000 is forecast to cost **$0.227 million** over the forecast period. This is expected to affect approximately **197 employers** and **1,535 employees**. This assumes that the thresholds would increase from 1 April 2025.

	$ million increase / (decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & Outyears**
- Other persons	0	(0.150)	(0.600)	(0.600)	(0.600)
- Company tax	0	0.133	0.530	0.530	0.530
Total tax revenue	**0**	**(0.017)**	**(0.070)**	**(0.070)**	**(0.070)**

Scenario two

16. Increasing the maximum value of the shares to $10,000, and the maximum discount an employer can provide to $4,000 is forecast to cost **$0.422 million** over the forecast period. This is expected to affect approximately **247 employers** and **1,825 employees**. This assumes that the thresholds would increase from 1 April 2025.

	$ million increase / (decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & Outyears**
- Other persons	0	(0.230)	(0.920)	(0.920)	(0.920)
- Company tax	0	0.198	0.790	0.790	0.790
Total tax revenue	**0**	**(0.032)**	**(0.130)**	**(0.130)**	**(0.130)**

[1] Officials cannot fully identify whether most employees are granted eligibility to participate in any particular ESS scheme. It is assumed that if over half of employees are participating in the ESS scheme, in any one year, then it qualifies for an exemption.

Next steps

17. Cabinet has now agreed to increase the thresholds used for exempt ESS to recognise inflation since they were last set in 2018 [CAB-24-MIN-0248 refers]. The increase will be included in the Bill, which is scheduled for introduction in August 2024. The Bill will be considered at the Cabinet Legislation Committee (LEG) meeting on Thursday 22 August 2024.

18. If the Minister of Revenue would like to increase the thresholds by more than what is proposed (ie, under scenario one or two) this could occur prior to introduction of the Bill. This would be part of the Minister of Revenue's delegation to make minor or technical amendments to the policy. It should be noted that this will require both the Minister of Revenue and Minister of Finance to agree that this additional reduction in tax revenue will be charged against the Tax Policy Scorecard.

19. Approval for an additional increase to the existing thresholds could be obtained through the cover report to the draft Cabinet LEG paper. You will receive this cover report on 25 July 2024. The Minister will need to agree to the recommendations in the cover report so that the cabinet paper can be lodged by 10:00a.m., Thursday 15 August 2024.

Consultation with the Treasury

20. The Treasury was informed about this briefing note.

Richard McLaughlan
Senior Policy Advisor
s 9(2)(a)

Item 18

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: PIE eligibility remedials

Date:	26 July 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/301

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	1 August 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Chris Gillion	Policy Lead	s 9(2)(a)
Paul Fulton	Principal Policy Advisor	s 9(2)(a)

26 July 2024

Minister of Revenue

PIE eligibility remedials

Purpose

1. This report includes a letter from the Corporate Taxpayers Group (CTG) regarding the portfolio investment entity (PIE) eligibility proposals planned for the upcoming omnibus tax Bill. Officials disagree with many items in this letter and note that it does not reflect the views of other submitters during consultation on these proposals.

2. The report also updates our position from the 8 July 2024 briefing note on this issue (BN2024/288 refers) and seeks your decision whether, and to what extent, these proposals should continue to be included in the Bill.

Engagement with the Corporate Taxpayers Group

3. As referred to in CTG's letter, we met with CTG on 9 July 2024 to discuss the draft legislation and relevant commentary for the PIE eligibility proposals. We had a further meeting with them on 18 July 2024 to discuss their specific drafting suggestions. Following this meeting we received their 24 July 2024 letter that is attached to this report.

Deposit taker and interest from associated persons proposals

4. CTG's letter states that the deposit taker and interest from associated persons proposals should proceed subject to certain conditions. These conditions are:

   4.1 there is a clear exclusion from the amendments for bank and non-bank deposit taker sponsored PIEs; and

   4.2 Inland Revenue has undertaken a sufficiently thorough and careful consultation with other stakeholders to have a high level of comfort that the proposed amendments will not adversely affect existing arrangement or have other untended consequences.

5. Officials are confident that we will have met all of these conditions by the introduction of the Bill. We have conducted a robust consultation and development process and are confident that unintended consequences have been prevented to the extent possible. We will also engage with submitters through the Finance and Expenditure Committee process consistent with our standard approach to ensure that the legislation is fit for purpose. We consider that these proposals, subject to the minor change recommended in the following paragraphs, should continue to be included in the Bill.

6. The interest from associated persons proposal would clarify that active business income cannot be channelled into a PIE by way of an interest payment from an associated person. This prevents a single business splitting into a PIE and a non-PIE with common ownership to take advantage of the PIE rules in a way the single business would be unable to.

7. You agreed that this proposal should be subject to exceptions, for example where the associated entity is also a PIE. After discussion with CTG and other submitters, we recommend that a further exception should be made for interest income derived from a licenced deposit taker (i.e. registered banks and finance companies). While most, if not all, cash PIEs do not have common voting interests with a bank, CTG have identified that it would be possible for one to do so in the future. We agree an amendment would provide extra clarity that we do not intend to prevent cash PIEs with this proposal.

Land development proposals

8. CTG has a view that income from property development is eligible PIE income. This is not consistent with the longstanding intent of the PIE rules[1], other submissions on this project[2], its widespread application[3] or the Tax Counsel Office interpretation of the current law. The distinction between land development for long term lease as an eligible activity and land development for resale as a non-eligible activity is well established and not an area that we recommend is revisited. We do not expect to be able to accommodate CTG's view of the boundary between eligible and non-eligible land development activity before the Bill is introduced. Therefore, we recommend that this proposal is removed from the upcoming Bill.

9. Given there is clearly some uncertainty on the current law in this area, CTG has requested that Inland Revenue consult on its interpretation. If the amendment proposal is not included in the Bill, it is likely that (consistent with the CTG request) Inland Revenue will release, initially in draft, interpretation guidance confirming the Commissioner's view that land development for resale is not an eligible activity under the current law. If that interpretive view is maintained following consultation, we will continue to engage with CTG.

10. In the event external review of the Commissioner's draft interpretation resulted in a change in the interpretation we would recommend a legislative change consistent with the current proposals to maintain the longstanding policy position. Changing this policy position to extend eligible PIE income to include income from land development for resale would be inconsistent with the policy framework, would make decisions on further extensions to eligible activity outside of land harder to defend and would likely have a significant fiscal cost.

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[1] For example, PAD2006-043 from the introduction of the PIE rules includes "*We consider that a [PIE] should be an entity that pools investors' funds for a fee and invests these funds to derive passive investment income on behalf of its investors. The definition of passive investment income would encompass income from activities such as investment or trading in shares, securities, loans and derivatives as well as investment in land for rental purposes*".

[2] Aside from submissions from CTG and its members no other submitters suggested that land development was an eligible activity

[3] Through the consultation process no PIEs were identified having undertaken property development for resale and officials' analysis identified that at least 76 of 78 land PIEs do not appear to undertake this activity.

Recommended action

We recommend that you:

1. **note** the letter from Corporate Taxpayers Group on the PIE eligibility proposals included with this report.

   Noted

2. **agree** to retain the deposit taker proposals in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill as agreed in IR2024/189.

   Agreed/Not agreed

3. **agree** to remove from the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill the land development proposals agreed in IR2024/189.

   Agreed/Not agreed

4. **note** recommendation 3 does not change officials' view of the appropriate policy treatment of income from land development and is likely to result in Inland Revenue publicly consulting on its interpretation of the current law.

   Noted

5. **agree** to retain the interest from associated persons proposals in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill as agreed in IR2024/189 subject to the change in recommendation 6.

   Agreed/Not agreed

6. **agree** the restriction on PIEs deriving interest income from an associated person should not apply where interest income is derived from an entity that is a licenced deposit taker.

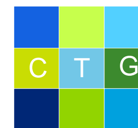
   Agreed/Not agreed

s 9(2)(a)

Paul Fulton
Principal Policy Advisor
Policy

Hon Simon Watts
Minister of Revenue
/ /2024

Corporate Taxpayers Group



24 July 2024

David Carrigan
Policy and Regulatory Stewardship
Inland Revenue Department
WELLINGTON

Dear David

PIE eligibility amendments: proposed wording and commentary

The Corporate Taxpayers Group ("the Group") is writing to you following the Group's update meetings with Inland Revenue Officials on the proposed changes to PIE eligibility on 9 July 2024 and 18 July 2024. As discussed with your officials during those meetings, the Group continues to have concerns about potential unintended consequences of the proposed changes. The purpose of this letter is to document these concerns and propose a way forward, whilst reserving the right to raise other issues that may arise as the Group's membership digests the proposals.

The Group has provided drafting suggestions on two of the three amendments included in the draft legislation provided on 9 July 2024. Additional comments on the draft legislation and the accompanying draft commentary are set out in the letter below. In providing comments on the draft legislation, the Group is not to be taken to be endorsing the objective of the amendments or the process that has been followed. Rather, our comments are intended to assist in minimising unintended consequences that may result.

In summary, and for the reasons more fully set out below:

- The three proposed amendments are not anchored in any articulated tax policy principle other than reference to a distinction between active and passive investments which (for the reasons given below) is not reflected in the existing law and cannot explain distinctions that would be drawn by the proposed amendments. The proposed amendments instead seem to reflect Inland Revenue's view of particular arrangements, and, at least in the case of the proposed amendment concerning land disposals, an attempt to buttress a Tax Counsel Office (TCO) interpretation of existing law which has not been published. This has made it difficult for the Group and other stakeholders to engage on the merits of the proposed amendments. Further, discussions with officials to date have highlighted the risk of unintended consequences from the proposals, in circumstances where the PIE eligibility rules need to be certain, predictable and based on stable and coherent tax policy principles.

- Given that background, the Group recommends that:

    - The proposed new section HM 10B (which would prohibit banks and non-bank deposit takers (NBDTs) from being PIEs) and new section HM 12(1B) (which would deem certain associated party interest to be ineligible income for PIE purposes) should proceed only if there is a clear exclusion from the amendments for bank and NBDT sponsored PIEs (such as the Group recommended in its drafting suggestions) and if Inland Revenue has undertaken a sufficiently thorough and careful consultation with other stakeholders (especially those in the financial services sector) to have a high level of

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We note the views in this document are a reflection of the views of the Corporate Taxpayers Group and do not necessarily reflect the views of individual members.

comfort that the proposed amendments will not adversely affect existing arrangements or have other unintended consequences. Consistent with our understanding that the associated interest concern was with stapled structures, the design should also ensure that a PIE sponsored by a corporate which invests in debt issuances by the sponsoring entity is able to continue to exist as a PIE where there is no stapling of the PIE security with equity issued by the sponsoring entity, such that there is no sharing of equity/business returns. Whether this can be achieved in time for the amendments to be progressed in the August Bill is a matter for Inland Revenue.

 - The proposed amendment to section HM 12(1)(b)(v) (concerning disposals of land) should not proceed at this time. Instead, Inland Revenue should consult on the TCO interpretation that (we understand) the proposed amendment seeks to defend, and, in light of that consultation, consider whether legislative amendment is necessary and if so, consult thoroughly on the form of any proposed amendment.

- Given the highly disruptive consequences (including to individual investors) of unintended consequences affecting PIE eligibility, the Group seeks Inland Revenue's assurance that any unintended consequences from any amendments will be remedied promptly, and that Inland Revenue will not invoke fiscal cost or lack of resourcing as reasons for declining to make, or delaying, remedial amendments to address such unintended consequences.

- The Group respectfully suggests that in future, consultation on proposed amendments of this nature (ie, that Inland Revenue asserts are clarificatory, but which reflect a contested interpretation of existing law) would benefit from being both more transparent and more thorough. Transparency could be enhanced by releasing and being prepared to discuss the merits of the relevant interpretation of current law. And a more thorough process would entail doing more than just advising affected stakeholders as to the broad effect of proposed amendments and inviting comment. It should include ongoing consultation on the detail of proposed amendments as those are developed. Recent experience (such as the amendments proposed in 2022 to the GST treatment of fund manager fees)[1] illustrates that even seemingly technical amendments can affect confidence in the stability and coherence of tax policy settings, and that thorough and meaningful consultation in such cases is critical.

The proposed amendments do not reflect a coherent tax policy principle

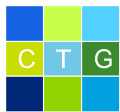
Based on discussions with Officials, Inland Revenue's position appears to be that the proposals would clarify what has always been the legislative intent of the PIE regime, which rests on a distinction (not found in the legislation) between 'active' and 'passive' investments. The Group understands this position is held by both the TCO and Policy and Regulatory Stewardship (PaRS) teams.

The draft commentary sent to the Group states that this distinction was Parliament's intent. In this regard, reliance is placed on the following passage at page 14 of the Officials' Report on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill:

> *It is also important that the PIE has the majority of its assets employed in deriving what is typically known as passive income (such as income from trading shares, dividends, land and rents).*

The extract relied on, however, does not reflect an intent that PIEs should derive only passive income. Rather, the focus is on certain classes of assets (the examples given being shares and land). The extract does not support a

[1] https://www.beehive.govt.nz/release/gst-proposal-kiwisaver-fees-will-not-go-ahead



prohibition on a PIE deriving income from actively managing and enhancing the value of its assets, as is well accepted in relation to share trading, for example.

In any case, the Group cautions against the use of an Officials' report as a means of demonstrating Parliamentary intent. As per *CIR v Roberts* [2019]:[2]

> *"Comments in reports by officials… do not assist the Commissioner when that is not the wording of the statute…. The task of the Court is to interpret the words used in the statute, not paraphrases, and in particular imprecise paraphrases, used in discussion papers and officials' reports. We should add that comments by officials, unless they form part of the parliamentary record, are not an especially reliable, or orthodox, form of legislative history…"*

There may be a policy argument for restricting PIEs to passive business activities or restricting the type of active business activities PIEs can carry on. However, we have not seen that argument clearly articulated and it is not intuitively sensible. Why should a PIE be able to develop a property if it is going to use it to derive rental income but not if someone else (a purchaser of the property) is going acquire it to rent out?

Moreover, the Group's discussions with officials would suggest that the real objective of the proposed amendments is to try to bolster Inland Revenue's view of how the PIE eligibility rules should apply to particular arrangements of which Inland Revenue has become aware. In the course of those discussions, Inland Revenue has suggested that the amendments 'do not change the law', or are not intended to.

If that is so, Inland Revenue should articulate, through published guidance, its view of how the law currently applies. If Inland Revenue's view is challenged, Inland Revenue should defend its interpretation before the courts, as is the usual way of resolving disputes as to legal interpretation. If Inland Revenue does not believe it would be successful in defending its interpretation (and therefore needs to change the law to secure its preferred view of how the rules 'should' apply) then it is misleading to suggest that the amendments do not change the law; and in that case, Inland Revenue should instead consult on the basis that the Government wishes to tighten the eligibility of the PIE rules, and explain where the line should be drawn and why; ie, there should be a well-articulated policy argument as is noted above.

The need for a principled approach to the PIE eligibility rules

PIEs are the usual vehicle for collective investment (and in particular of retirement savings) for the vast majority of New Zealanders. Almost 2/3rds of New Zealanders have a KiwiSaver account and these are typically PIEs.

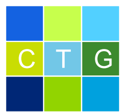
In this regard, the Group considers it problematic for the eligibility criteria for PIEs (which for the reasons noted above need to be stable and easy to apply) to be tinkered with from time to time to address particular arrangements that Inland Revenue does not approve of. Such an approach is likely to lead to legislation that reflects a patchwork of Inland Revenue reactions to particular arrangements, rather than a coherent principle.

With that background, we provide comments on two of the proposals Inland Revenue has raised with us. As noted above, by doing so the Group is not to be taken to be endorsing the objective of the amendments. Rather, our comments are intended to assist in minimising unintended consequences that may result.

Proposed new section HM 12(1B) (interest from associated persons)

During the 9 July meeting, there was recognition that excluding associated party interest income from PIE eligible income may have unintended consequences for cash and term deposit PIEs. The concern could be broader than

[2] At [62].



this, as the amendment could affect any PIE that receives interest income from the bank or deposit-taker that established and manages that PIE.

Because banks (and potentially other deposit-takers and debt issuers) are both issuers of highly-rated deposits and debt securities on the one hand, and sponsors of PIEs on the other, it would make no sense to use non-association as part of the criterion for interest income being eligible income for PIE purposes: it would lead to (for example) a Bank A sponsored PIE deriving eligible income if it holds debt in Bank B but not if it holds debt in Bank A.

Currently the draft legislation proposes to ensure that the treatment of cash and term deposit PIEs is not changed by 'switching off' the control by any other means limb of the association test. This is on the assumption (which holds true for at least some cash and term deposit PIEs) that the investors hold the voting rights. However, as was raised during the meeting on 9 July, this assumption may not be satisfied in all cases, and PIE eligibility should not depend on the voting rights in PIEs from time to time. In our meeting, the Group raised the following example:

- The arrangement in Product Ruling (BR Prd 14/09) was not a cash PIE but a PIE that issued income securities to investors, the proceeds of which it used to subscribe for debt securities in the bank. In that arrangement, the PIE, Rabo Capital, issued non-voting preference shares ("PIE Capital Securities") to investors while the voting rights in the PIE were 100% owned by Rabobank.

- Under Inland Revenue's proposed amendments, Rabo Capital would have been excluded from being a PIE under s YB 2(1) as the two companies (the PIE and the bank) were associated persons because there was a 50% or greater common voting interest; the bank held 100% of the voting rights in the PIE.

Given this scenario did not seem to have been contemplated prior to the Group's meeting, we are concerned that other unintended consequences may arise if the proposals proceed in their current form. The Group is not confident that any unintended consequences, once identified, would be remedied promptly. Rather, the Group's experience has been that there is no transparency as to how remedial issues are being progressed, and that taxpayer-initiated remedial issues often seem to not be prioritised, or to be dismissed on the basis that they might involve fiscal costs, or because Inland Revenue does not have time to address them.

Consistent with our understanding that the associated interest concern was with stapled structures, the design should also ensure that a PIE sponsored by a corporate which invests in debt issuances by the sponsoring entity is able to continue to exist as a PIE where there is no stapling of the PIE security with equity issued by the sponsoring entity.

Proposed amendment to section HM 12(1)(b)(v) (PIE eligibility of income from land disposals)

The Group continues to disagree with the approach to land disposals. The law in its current form does not prevent income derived from land developments (in excess of 10%) from being eligible PIE income. Sections HM 11 and HM 12 allow PIEs to hold interests in land and to earn income from the disposal of those interests.

If these proposals are to proceed, the Group submits that IR should instead frame this as a policy change to remove a concessionary treatment permitted by the Parliament of the day, a position inconsistent with the overall policy framework as envisaged initially (i.e., chiefly intended for 'passive' investment).

The transition and sunset clauses in the current proposals should also be maintained, however the Group considers the articulation of the transition clause in the Commentary to be unnecessarily threatening when any impacted taxpayers have been following black letter law and effectively results in no transition period. The Commentary states (emphasis added):

> *"This amendment would generally apply from 1 April 2025.*
>
> *"However, it is proposed that there would be a transitional provision to allow existing PIEs to continue to apply the current law (should they wish to dispute the Commissioner's current position) until 31 March 2030 in relation to income from any land owned before 1 April 2025. It is Inland Revenue officials' view that the proposed law is consistent with the existing law so the later application date will not widen the scope of the eligibility criteria during the transition period. However, it will provide certainty that no existing PIEs will be removed from the regime as a result of development of existing land under the proposed changes during the transitional period."*

The Group does not consider it appropriate to reference the disputes process in this way in a policy document. This creates further uncertainty unnecessarily, and again appears to be as a result of a desire to frame the changes as remedial, when the reality is more complex.

We discussed with Officials that changes to the land disposal rules, in particular attempting to distinguish between develop-to-sell and develop-to-lease developments, is an area rife with the potential for unintended consequences. We raised a scenario like the one that follows with Officials at the meeting on 9 July 2024:

> *A PIE holds a Wellington building for lease. As a result of rezoning it decides to reweight its portfolio and sell the Wellington building to purchase an Auckland building. However, the Wellington building is earthquake prone so seismic strengthening work is required in order to facilitate the building being marketable. The issue is whether the work is minor or not.*
>
> *The sale of the property is taxable under section CB 14.*

The draft legislation provided proposes to alter section HM 12(1)(b)(v) to change what is incorporated within the list of 'permitted' income types:

> (v) an amount derived from the disposal of property referred to in section HM 11, other than an amount derived from the sale of land if the entity, or another person for them, carried out development, division, or building work on or relating to the land, that is not minor, for the purpose of sale and not for the purpose of leasing the land:

Under Inland Revenue's proposed wording the income in the above scenario would likely not be eligible PIE income because more than minor work has occurred in order to facilitate a sale. This scenario is not, in the Group's experience, an unusual one. It illustrates the risk of unintended consequences when legislation is drafted to catch a particular arrangement that Inland Revenue disapproves of without being based on a broader underlying principle.

The Group notes that the basis for the proposed land development amendments, per the provided commentary, is that "*The Commissioner has not provided positive binding rulings on these applications as he considers the reference in section HM 12(1)(b)(v) to income derived from the disposal of property listed in section HM 11 is intended to refer only to the disposal of that property in its original form*."

The Group's view is that the basis for this ruling, being the land must remain unchanged from when it was acquired, is contrary to what Officials say is acceptable in a buy, develop, hold/lease and then sell scenario. The Commentary says that the Commissioner's interpretation of the law would not prevent a PIE from deriving income from the sale of land developed for leasing. This conflicts with the statement that it must remain in its original form. The nature of the land has changed in this scenario. Bare land was acquired, and development took place. The only difference is that it was leased in the interim. The Group finds this difficult to rationalise. Again, the problematic concept that

appears to underlie this (if not necessarily explicitly said) is the active vs. passive distinction. This concept is not present in the Income Tax Act and is, therefore, unsuitable to be the basis of the change.

The Group understands from discussions with Officials that the proposed changes and Officials' views may be based on the legislative background of the PIE regime, which shows the purpose of section HM 12 was to ensure a PIE only derived passive income. Given that this is fundamental to the adopted position, the Group would be interested in reading this background material, as we have not come across any materials with a similar view (other than the singular reference on page 14 of the Officials' Report on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill as referred to earlier in this submission, which as noted above is open to interpretation). If there is no further background material, then we suggest again that seeking to present this change as remedial and based on an active/passive distinction creates a number of problems. Again, a suggested alternative that we consider to align more with what has occurred, is to present this as a policy change to remove a concessionary treatment permitted by the Parliament of the day but now considered inconsistent with the overall policy framework.

For these reasons, the Group provided Officials with suggested amendments to the draft legislation if it were to proceed. The suggested amendments attempt to base the new exception on a more principled approach using concepts in the existing law, to frame the exclusion as income from a business of developing land, dividing land into lots, or erecting buildings. This approach should exclude the earthquake strengthening example above, because the PIE would not be in the business of erecting buildings itself. If the disposal proceeds are income (say under section CB 14, or even under section CB 6 or section CB 9), any income arising from disposal would not be from a business of development, division or erecting buildings.

A way forward

The Group submits that the best way forward may be to split out the proposals:

Deposit takers and related party interest changes

On the understanding that the deposit takers proposals and related-party interest changes are not intended to capture cash or term deposit PIEs or other bank and NBDT sponsored PIEs, and the Group's suggestions on this section of the draft legislation are adopted, these proposals could be included in the August tax bill. The Group notes that wider consultation should still occur now to draw out any unintended consequences, as this will allow time to properly consider any issues raised before the FEC submission process begins.

The Group does still have concerns that there may be unintended consequences to these changes. Any unintended or unwarranted changes arising as a result of these changes should be dealt with through a prompt remedial amendment.

Land development proposals

The land development proposals should not be included in the next tax bill. Instead, these proposals should be consulted on more broadly so that the relevant issues can be properly considered.

This consultation process has only illustrated that there is not agreement on the current position such that this can be considered a remedial. The Group does not see any need for urgency in progressing this proposal in the next tax bill and can see no harm in taking the time to properly consider these issues. This is particularly important in the context of PIEs, as the consequences of ineligibility are significant, and so any changes should proceed with caution – a point the Group will make as part of the FEC process.

To this end, the Group suggests TCO should consult on its view of the law as it relates to land disposals by PIEs to allow a better understanding of that interpretation. This also would alert taxpayers to Inland Revenue's views on the eligibility for PIE purposes of income from land development activity. This consultation can be followed by any policy work if it is clear from the consultation that there are different views as to what the current law does or does not allow. If this does proceed to policy work, there will be more time to consider other solutions. This includes what the right policy answer should be in relation to land use (in light of Government priorities) and clearer rules of what is eligible or what is ineligible, including a framework for understanding any distinction. Work can also be undertaken on an appropriate spreading rule, or other tax treatment if the 10% rule is breached (for example having that income be attributable to investors, rather than the entity losing its PIE status). The Group would be happy to discuss these points further with you.

We note the views in this document are a reflection of the views of the Corporate Taxpayers Group and do not necessarily reflect the views of individual members.

Yours sincerely

John Payne
For the Corporate Taxpayers Group

CC:
Paul Fulton
Chris Gillion
Paul Kilford
Catherine Milner

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Revised cover report - Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction**

Date:	26 July 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/306

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations	10:00am, Thursday 15 August 2024
Minister of Revenue	**Agree** to recommendations **Authorise** the lodgement of the attached Cabinet paper by **10:00am, Thursday 15 August 2024**	10:00am, Thursday 15 August 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

26 July 2024

Minister of Finance
Minister of Revenue

Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction

Executive summary

1. This report asks the Minister of Revenue to authorise the lodgement of the attached draft Cabinet paper and associated draft departmental disclosure statement with the Cabinet Office by **10:00am, Thursday 15 August 2024**. This will be considered at the Cabinet Legislation Committee (LEG) meeting on **Thursday 22 August 2024**. We will provide you with a copy of the draft Bill ahead of lodgement.

2. The Cabinet paper seeks approval to introduce the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill) on 26 August 2024. The Cabinet paper recommends the Bill is referred to the Finance and Expenditure Committee following its first reading. The Bill contains the items listed below.

Further approval sought for policy items

3. This report also seeks the Minister of Finance and Minister of Revenue's agreement to increase the thresholds relating to exempt employee share schemes by more than was previously agreed by Cabinet [CAB-24-MIN-0248 refers]. Cabinet has delegated the Minister of Revenue authority to make minor or technical changes to the policy. However, this change will require both the Minister of Finance and Minister of Revenue to agree that the additional reduction in tax revenue will be charged against the Tax Policy Scorecard.

4. This report seeks the Minister of Revenue's agreement to two amendments to the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard, for which Cabinet delegated the authority to make minor or technical changes.

Further approvals sought for remedial items

5. This report also seeks the Minister of Revenue's agreement regarding changes to four proposed remedial amendments. These remedials concern:

   5.1 the thin capitalisation rules

   5.2 the GST platform economy rules

   5.3 foreign investment fund cost method eligibility, and

   5.4 approved taxable period end dates.

6. This report also notes that changes may be made to the portfolio investment entity proposals in the Bill. This decision will be reported separately (IR2024/301 refers).

Procedural matters

7. We have drafted the Cabinet paper and the Bill on the basis you agree to the recommendations in this report. Please advise us if you would like to make any changes to the Cabinet paper.

8. We will shortly be providing the Bill to the Ministry of Justice for its Bill of Rights Act 1990 vetting. We will advise the Minister of Revenue if any issues arise from this process.

Summary of proposed Bill content

Policy items approved by Cabinet

9. The Bill contains amendments on the following matters, as previously agreed by Cabinet:

   9.1 Setting the annual rates of income tax for the 2024 24 tax year [CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)].

   9.2 Generic response measures for emergency events [CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)].

   9.3 Implementation of the OECD's Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard [CAB-24-MIN-0148 (29 April 2024), and CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)].

   9.4 Qualifying recognised overseas pension schemes [CBC-24-MIN-0070 (8 July 2024) & CAB-24-MIN-0259 (22 July 2024)].

   9.5 Approved issuer levy retrospective registration [CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)].

   9.6 Exempt employee share scheme threshold increase [CBC-24-MIN-0065 (1 July 2024) and CAB-24-MIN-0248 (8 July 2024)].

   9.7 New Zealand Business Number information sharing provision [CBC-24-MIN-0065 (1 July 2024) and CAB-24-MIN-0248 (8 July 2024)].

   9.8 Enrolling young persons under 16 in KiwiSaver with the signature of one guardian [CBC-24-MIN-0065 (1 July 2024) and CAB-24-MIN-0248 (8 July 2024)].

   9.9 Granting six charities overseas donee status [CBC-24-MIN-0065 (1 July 2024) and CAB-24-MIN-0248 (8 July)].

Remedial items approved by Minister of Revenue

10. The Bill contains a number of remedial amendments you have previously agreed to in the following reports:

    10.1 Non-fiscal remedial items for the August 2024 omnibus taxation Bill (9 May 2024, IR2024/092 refers).

    10.2 Portfolio investment entity eligibility (21 May 2024, IR2024/189 refers).

    10.3 Additional non-fiscal remedial items for the August 2024 omnibus taxation Bill (10 June 2024, IR2024/203 refers).

10.4 Remedials with fiscals for inclusion in the August 2024 omnibus taxation Bill (10 June 2024, IR2024/176 refers).

10.5 Research and Development Tax Incentive: General approval application due date (19 June 2024, IR2024/261 refers).

Maintenance items

11. The Bill contains several minor maintenance items, consisting mainly of correcting minor faults of expression, reader's aids and incorrect cross-references. This also includes the removal of two charities from the overseas donee status list, which have ceased operations.

Further approvals sought for policy items

Further increase to exempt employee share schemes

Background

12. Cabinet delegated authority to the Minister of Revenue to make minor and technical changes to give effect to a threshold increase for exempt employee share schemes [CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)]. However, because a further increase has fiscal implications, we seek the agreement of both the Minister of Finance and the Minister of Revenue to this change.

13. Employers can provide exempt benefits under an exempt employee share scheme. For a scheme to be exempt, it must meet criteria which include, among other things, thresholds that limit the maximum value of the shares that can be offered to an employee, as well as the maximum discount an employer can provide on the market value of those shares.

14. It was previously agreed that these thresholds would increase in line with inflation from when they were last set in 2018 (IR2024/250 refers). This would increase the maximum value of the shares that can be offered from $5,000 to $6,250, and the maximum discount that can be provided from $2,000 to $2,500.

15. The Minister of Revenue has since requested that these thresholds are increased further. We propose that the maximum value of the shares that can be offered is increased from $5,000 to $7,500, and the maximum discount that can be provided from $2,000 to $3,000. The new thresholds mean that the most an employee will be able to spend buying shares under an exempt scheme is $4,500 a year ($4,500 plus the $3,000 discount means a maximum value of $7,500 worth of shares).

Fiscal implications

16. Increasing the thresholds for exempt employee share schemes will reduce the tax that is currently collected in the general scheme. Officials assume that a threshold increase will induce those who are currently unable to access the scheme, due to exceeding the employer discount threshold or market value threshold, to enter the scheme. That is provided they meet other eligibility criteria including that their respective employee share scheme is widely offered.[1]

[1] Officials cannot fully identify whether most employees are granted eligibility to participate in any particular employee share scheme. It is assumed that if over 50% of employees are participating in the employee share scheme, in any one year, then it qualifies for an exemption.

17. No deductions are available for an exempt employee share scheme, other than in respect of establishing or managing the scheme. Employers who switch from the general scheme to the exempt scheme will no longer be able to claim any deductible expenditure from providing employment income in an employee share scheme. This will result in increased company tax collected for Inland Revenue and offset a significant portion of the cost of the proposal.

18. Increasing the maximum value of the shares to $7,500, and the maximum discount an employer can provide to $3,000 is forecast to cost $0.227 million over the forecast period. This is expected to benefit approximately 197 employers and 1,535 employees. This assumes that the thresholds would increase on or after 1 April 2025.

Amendments to Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

19. Cabinet delegated authority to the Minister of Revenue to make minor and technical changes to the Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Framework (CRS) prior to the introduction of the Bill [CBC-24-MIN-0065 (1 July 2024) & CAB-24-MIN-0248 (8 July 2024)].

Regulation-making power for Crypto-Asset Reporting Framework

20. As a default position, once New Zealand has implemented the CARF, any changes made by the CARF at OECD level would take effect in New Zealand without the need for any further regulation or legislative change. This is intended to ensure that New Zealand's rules are aligned with other OECD members that have implemented the rules.

21. When New Zealand implemented the OECD rules in the context of the platform economy and the Common Reporting Standard, a regulation-making power was included in New Zealand law to provide a mechanism for blocking changes from having effect in New Zealand that may be deemed inappropriate. This could occur, for example, if the OECD updated the standard to include optional changes that the Government decides should not have legislative effect.

22. To that end, officials also seek approval to include a regulation-making power that enables an Order in Council to be made to provide for the cancellation, reversal or non-application of amendments to the OECD CARF from New Zealand's domestic law.

Common Reporting Standard

23. We seek the Minister of Revenue's approval to make minor and technical amendments to the CRS as described below, namely:

    23.1 <u>*Exclusion of non-profit entities:*</u> In our previous report, we noted that the Amendments to the CRS included an optional provision for non-profit entities. We did not propose implementing this option as we did not share the policy concern it responded to and thought it would impose an administrative burden (*IR2024/250 refers*). However, the overall approach to the implementation of the CRS in domestic law requires an explicit exclusion to avoid adopting the option. We therefore seek the Minister of Revenue's approval to add this item to the specific exclusions from the CRS.

    23.2 <u>*Minor consequential amendments:*</u> In addition, we have found that a small number of consequential amendments to the domestic legislation implementing the CRS are required. These flow from the Amendments to the

CRS but were not made to the CRS itself. These don't change the application of the CRS but are necessary to implement it through our legislation. The consequential changes affect certain definitions, particularly those for "low" and "high" value accounts. We seek the Minister of Revenue's approval to make the necessary consequential changes in domestic law.

Further approvals sought for remedial items

Thin capitalisation changes

24. You previously agreed to an amendment to the thin capitalisation rules that would correct the link between the calculation of a taxpayer's debt percentage and the requirement to reduce the taxpayer's total interest deductions (IR2024/176 refers). You agreed that this would apply retrospectively to income years beginning on or after 1 July 2018. The intention was to amend the rules with effect from the date the provisions were last amended.

25. While the effective date of 1 July 2018 is correct for the rules that govern entities, we have since learned that the rules that govern natural persons were amended with effect from 1 April 2011. Accordingly, the dates on which the remedials should take effect should be different.

26. We therefore recommend that the amendment to correct the link between the calculation of a *natural person's* debt percentage and the requirement for that *natural person* to reduce their total interest deductions should apply retrospectively from 1 April 2011 (ie, when the provision relating to natural persons was last amended).

GST platform economy – minor change to timing of GST on accommodation proposal

27. You previously agreed to allow accommodation providers, listing intermediaries and marketplace operators affected by the GST platform economy rules the option to account for GST on accommodation in the GST return corresponding with the guest's check-out date (IR2024/176 refers). This is intended to align the law with current commercial practices and reduce compliance costs.

28. Following further feedback from targeted consultation, we consider the proposal should offer more flexibility. Specifically, we recommend that it should allow accommodation providers, listing intermediaries, and marketplace operators the choice of accounting for GST on accommodation in any GST return before the return that includes the guest's check-out date. This would allow those who want to account for GST earlier to do so.

29. This does not change the estimated fiscal impact of the proposal.

Foreign investment fund cost method eligibility

30. The Minister of Revenue previously agreed that the amendment to the foreign investment fund (FIF) cost method eligibility provision would have retrospective effect from the 2008 09 income year, in line with officials' recommendation (IR2024/203 refers).

31. During the drafting process, it has become clear that proposing an effective date for the amendment *prior* to the date the last amendment took effect will unnecessarily restrict the way in which the provision can be rewritten.

32. Accordingly, officials now recommend that the proposed amendment to the FIF cost method eligibility should have effect from 1 July 2011 (which is when the provision was last amended), rather than from the 2008 09 income year. This change in application date would have no impact in practice because both dates are beyond the general four-year time bar to amend a person's income tax assessment (and we understand the amendment is consistent with taxpayer practice).

Approved taxable period end dates

33. The Minister of Revenue previously agreed to amendments to provide more flexibility for GST-registered taxpayers to have taxable period end dates approved by the Commissioner of Inland Revenue (IR2024/092 refers). These amendments would ensure that those who have accounting cycles based on 13-week quarters can have taxable period end dates that are aligned with their accounting calendar. However, we have identified problems with other rules for approved taxable period end dates.

34. A small number of taxpayers filing monthly or two-monthly have approved taxable period end dates based on a four-weekly accounting cycle, which divides their yearly accounting calendar into thirteen four-week periods. The issue is that dividing these filers' annual GST cycle into taxable periods of four or eight weeks produces a "leftover" four-week period.[2] Unfortunately, the current rules for managing this issue are complex and do not work as they were intended to.

35. Because these rules are only relevant for a very small number of GST-registered businesses, we recommend replacing them with a power for the Commissioner to prescribe methods that affected taxpayers could use to determine their end dates. The prescribed methods would be published in Inland Revenue guidance shortly after enactment of the Bill. These would include the method currently set out in the legislation, along with at least one alternative method that would be simpler.

Portfolio investment entity eligibility

36. The Minister of Revenue previously agreed to remedial amendments to the portfolio investment entity (PIE) eligibility rules (IR2024/189 refers). The Minister of Revenue has been provided with advice as to the extent the PIE remedials should be included in the Bill (IR2024/301 refers).

37. Changes to the PIE eligibility rules will not affect the content of the attached draft LEG cabinet paper. This is independent and can be consulted on irrespective of your decision on this matter. We will ensure your decisions are reflected in the draft Bill when it is provided to you.

Departmental disclosure statement

38. A draft departmental disclosure statement is attached to accompany the Cabinet paper in accordance with Cabinet guidelines. The draft departmental disclosure statement must be lodged alongside the LEG paper in accordance with Cabinet guidelines.

39. The departmental disclosure statement must be finalised by Inland Revenue and sent to the Parliamentary Counsel Office two working days before the introduction of the Bill. It will be made publicly available when the Bill is introduced.

[2] For example, dividing a GST cycle into taxable periods of four weeks will produce 13 periods rather than 12, while doing the same with an eight-week period will produce six and a half periods rather than six.

New Zealand Bill of Rights Act 1990

40. We believe the provisions in the Bill are consistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990 (BORA). The Ministry of Justice will soon be undertaking the required BORA vetting of the Bill. Although not expected, we will advise if any issues arise from this process.

Ministerial consultation

41. We recommend that the Bill is introduced in the House shortly after Cabinet approves it for introduction. To achieve this, Ministerial consultation will need to occur in advance of Cabinet's final decision.

42. We can provide you with additional information on the contents of the Bill to support your office's caucus consultation in relation to the introduction of the Bill.

Proactive release

43. We propose to proactively release the Cabinet paper, Cabinet minutes and key advice papers after the Bill is introduced.

Next steps

44. We have drafted the attached Cabinet paper and associated documents on the basis that you agree to the recommendations in this report. Please advise if there are any changes to the paper that you wish to make.

45. To be considered at the LEG meeting on Thursday 22 August 2024, the Cabinet paper needs to be lodged with the Cabinet Office by **10:00am on Thursday 15 August 2024.** The departmental disclosure statement must also be lodged with the Cabinet Office at this time.

46. We will provide the Minister of Revenue's office with a copy of the draft Bill ahead of this lodgement date.

47. We will liaise with the Minister of Revenue's office to arrange appropriate publicity for the introduction of the Bill.

Treasury consultation

48. Treasury were informed about this report.

Recommended action

We recommend that you:

1. **Note** the contents of this report, attached draft Cabinet paper, and draft departmental disclosure statement.

Noted

Further increase to exempt employee share schemes

2. **Note** that Cabinet previously agreed to increase the thresholds relating to exempt employee share schemes to recognise the effect of inflation from when they were last set in 2018 [CBC-24-MIN-0065 & CAB-24-MIN-0248].

   Noted Noted

3. **Agree** to increase the thresholds relating to exempt employee share schemes to recognise past inflation, and provide a buffer against future inflation, by increasing the:

   3.1 maximum value of shares that can be offered from $5,000 to $7,500, and

   3.2 maximum discount an employer can provide from $2,000 to $3,000.

   Agreed/Not agreed Agreed/Not agreed

4. **Agree** that this should apply to offers of shares made under exempt employee shares schemes on and after 1 April 2025.

   Agreed/Not agreed Agreed/Not agreed

5. **Note** the following changes to tax revenue as a result of recommendations 3 and 4 above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown revenue and receipts: Tax Revenue	(0.000)	(0.017)	(0.070)	(0.070)	(0.070)
Total Operating	**0.000**	**0.017**	**0.070**	**0.070**	**0.070**

   Noted Noted

6. **Agree** that the reduction in tax revenue in recommendation 5 above be charged against the Tax Policy Scorecard.

   Agreed/Not agreed Agreed/Not agreed

Crypto-Asset Reporting Framework and Amendments to Common Reporting Framework

7. **Agree** to insert a regulation making power in the Tax Administration Act 1994 that enables an Order in Council to be made to provide for the cancellation, reversal or non-application of any future amendments to the OECD CARF from New Zealand's domestic law.

Agreed/Not agreed

8. **Agree** to amend the law to ensure the optional provision for non-profit entities is not adopted and to make consequential amendments to New Zealand's domestic law for the implementation of the Common Reporting Standard.

Agreed/Not agreed

Remedial amendment changes

9. **Agree** that the amendment to the thin cap rules which corrects the link between the calculation of a natural person's debt percentage and the requirement for that natural person to reduce their total interest deductions should apply retrospectively from 1 April 2011.

Agreed/Not agreed

10. **Agree** to allow accommodation providers, listing intermediaries, and marketplace operators to account for GST on accommodation provided through an electronic marketplace in the GST return that includes the guest's check-out date, or in any earlier GST return.

Agreed/Not agreed

11. **Agree** that the amendment to the FIF cost method eligibility should apply retrospectively to income years beginning on or after 1 July 2011 (rather than from the 2008 09 income year).

Agreed/Not agreed

12. **Agree** to replace the rules that apply when a registered person has taxable period end dates based on a four-weekly accounting cycle with a power for the Commissioner to prescribe a method for determining the person's end dates.

Agreed/Not agreed

Portfolio investment entity eligibility rules

13. **Note** that the Minister of Revenue has been provided with advice as to the extent the PIE remedials should be included in the Bill (IR2024/301 refers).

Noted

14. **Note** that the content of the attached draft LEG paper will not change as a result of the report (IR2024/301 refers).

Noted

Next steps

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

Agreed/Not agreed

16. **Authorise** the lodgement of the attached Cabinet paper and associated documents with the Cabinet Office by **10:00am Thursday 15 August 2024**.

Authorised/Not authorised

Joshua Fowler
Bill Manager
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Revised cover report - Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction**

Date:	16 August 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/335

Action sought

	Action sought	**Deadline**
Minister of Finance	**Note** the contents of the report **Authorise** the lodgement of the attached Cabinet paper by mid-day Tuesday 20 August	Tuesday 20 August 2024
Minister of Revenue	**Note** the contents of the report **Authorise** the lodgement of the attached Cabinet paper by mid-day Tuesday 20 August	Tuesday 20 August 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Joshua Fowler	Bill Manager	s 9(2)(a)
Richard McLaughlan	Bill Coordinator	s 9(2)(a)

16 August 2024

Minister of Finance
Minister of Revenue

Cabinet paper – Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill: Approval for introduction

Purpose

1. This report asks the Minister of Revenue and the Minister of Finance to authorise the lodgement of the attached revised Cabinet paper and associated draft departmental disclosure statement with the Cabinet Office in time for the Cabinet Legislation Committee (LEG) meeting on **Thursday, 22 August 2024**.

Revised cabinet paper

2. The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill) is scheduled to be considered for introduction into the House at the LEG meeting of **22 August 2024**. Assuming Cabinet agrees, introduction is expected to occur on 26 August 2024, with first reading taking place on 29 August 2024.

Background

3. You will recall the Minister of Revenue identified a conflict of interest in connection with the Taxation of Transfers from Overseas Pension Schemes (formerly known as QROPS) proposal contained within the Bill.

4. This conflict was managed through the transfer of responsibilities for the Taxation of Transfers from Overseas Pension Schemes policy changes from the Minister of Revenue to the Minister of Finance, who took the proposal included in this Bill through Cabinet as the Acting Minister of Revenue.

Further amendments

5. The Cabinet Office has requested that the LEG paper seeking approval for introduction of the Bill be amended and re-lodged to ensure consistency with the measures put in place to manage the Minister of Revenue's conflict of interest in relation to the Taxation of Transfers from Overseas Pension Schemes proposal.

6. Accordingly, the enclosed revised LEG paper now includes a sentence noting that the paragraph relating to the Taxation of Transfers from Overseas Pension Schemes proposal [paragraph 20] is being brought to Cabinet by the Acting Minister of Revenue. As a consequence, the paper will be brought to Cabinet in the names of both the Minister of Revenue and the Minister of Finance (in her capacity as Acting Minister of Revenue for this matter).

7. A revised version of the paper will be lodged with the Cabinet office as soon as this has been authorised by the two Ministers.

Next steps

8. We have re-drafted the attached Cabinet paper on the basis that you agree to the recommendations in this report. Please advise if there are any changes to the paper that you wish to make.

9. To be considered at the LEG meeting on **Thursday, 22 August 2024**, the Cabinet paper needs to be re-lodged with the Cabinet Office on or before Tuesday 20 August.

Treasury consultation

10. Treasury were informed about this report.

Recommended action

We recommend that you:

11. **Note** the contents of this report, attached draft Cabinet paper, and draft departmental disclosure statement.

Noted	Noted
Minister of Finance	**Minister of Revenue**

12. **Authorise** the lodgement of the attached Cabinet paper and associated documents with the Cabinet Office in time for the Cabinet LEG Committee meeting to be held on **Thursday, 22 August 2024**.

Authorised/Not authorised	Authorised/Not authorised
Minister of Finance	**Minister of Revenue**

Joshua Fowler
Bill Manager
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

In Confidence

Office of the Minister of Finance

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

TAXATION (ANNUAL RATES FOR 2024–25, EMERGENCY RESPONSE, AND REMEDIAL MEASURES) BILL: APPROVAL FOR INTRODUCTION

Proposal

1 This paper seeks the Cabinet Legislation Committee's agreement to introduce the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill) on 26 August 2024. The Bill introduces amendments to the:

1.1 Income Tax Act 2007

1.2 Income Tax Act 2004

1.3 Tax Administration Act 1994

1.4 Goods and Services Tax Act 1985

1.5 KiwiSaver Act 2006

1.6 Stamp and Cheque Duties Act 1971

1.7 Gaming Duties Act 1971

1.8 Child Support Act 1991

1.9 Local Government Act 2002, and

1.10 Taxation (Annual Rates for 2022−23, Platform Economy, and Remedial Matters) Act 2023.

2 The Bill holds a category 5 priority on the 2024 Legislative Programme (to be referred to a select committee in the year).

3 The Bill is currently in the process of being prepared by Inland Revenue. Accordingly, a draft of the Bill is enclosed. This is likely to undergo further revisions prior to introduction on 26 August 2024.

4 This paper also seeks Cabinet's agreement to increase the thresholds for exempt employee share schemes by more than previously agreed [CBC-24-MIN-0065 & CAB-

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24-MIN-0248]. This would recognise the impact of past inflation and provide a buffer against future inflation on the thresholds, which were last set in 2018.

Policy

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

Further increase to exempt employee share schemes

6 Employee share schemes are arrangements whereby shares in an employer company are provided in whole or in part in return for services. These are an important way of remunerating employees in New Zealand and internationally.

7 Employers can provide exempt benefits to employees under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes:

7.1 that are offered to all or almost all a business's employees, and

7.2 for which the benefit of the scheme, and the amount required to be invested by an employee to get that benefit, are limited.

8 Cabinet previously agreed to increase the thresholds relating to exempt employee share schemes to recognise the effect of inflation since they were last set in 2018.[1] This decision would increase the maximum value of the shares that can be provided to an employee to $6,250, and the maximum benefit provided to $2,500.

9 We propose that these thresholds are increased further. This would recognise past inflation and provide a buffer against anticipated future inflation. This would increase the maximum value of the shares that can be provided to $7,500, and the maximum benefit that can be provided to $3,000.

10 We recommend that this proposal apply to offers of shares made under exempt employee share schemes on and after 1 April 2025.

Policy items with Cabinet approval

Setting annual rates of income tax for the 2024–25 tax year [CBC-24-MIN-0065 & CAB-24-MIN-0248]

11 The Income Tax Act 2007 requires the rates of income tax to be set in legislation each tax year.

12 The Bill proposes that the annual rates of income tax for the 2024–25 tax year be set at the rates currently specified in schedule 1 of the Income Tax Act 2007 (including the recent changes legislated as part of Budget 2024).

Generic response measures for emergency events [CBC-24-MIN-0065 & CAB-24-MIN-0248]

13 The Bill introduces a generic set of tax relief measures for future emergency events. The proposed amendments build measures into the tax legislation and use Orders in

[1] CBC-24-MIN-0065 & CAB-24-MIN-0248 refer.

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Council to activate them when there is an emergency event that warrants their use. This would still leave Ministers with the discretion over which measures to apply for a particular emergency for situations not covered by Commissioner discretions because the measures would not be automatically triggered by an emergency event.

14 The Bill also introduces an additional discretionary power for very constrained tax information sharing by Inland Revenue to help other agencies who need to provide assistance to individuals and businesses impacted by a national emergency. Currently, the legislation requires Inland Revenue to keep information confidential. There is no permitted legislative disclosure within the Inland Revenue Acts that allows Inland Revenue to share this tax information with other agencies in a timely manner in such circumstances.

15 These amendments would apply from 1 April 2025.

Implementation of the OECD's Crypto-Asset Reporting Framework and Amendments to Common Reporting Standard [CAB-24-MIN-0148, CBC-24-MIN-0065 & CAB-24-MIN-0248]

16 The Bill implements the Organisation for Economic Co-operation and Development's (OECD) *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*. This is a global minimum standard, that will provide for the collection and automatic exchange of information on crypto-assets. It will require entities that facilitate exchange transactions on behalf of users to provide tax authorities with information regarding the crypto-asset transactions of these users.

17 The Bill implements a series of civil penalties that apply to New Zealand tax resident reporting crypto-asset service providers as well as reportable users. These penalties are necessary to ensure compliance with the Crypto-asset Reporting Framework (CARF) and would apply in circumstances where a reporting crypto-asset service provider or reportable user fails to comply with the requirements set out in the CARF.

18 The Bill also incorporates some minor and technical changes to the Common Reporting Standard (CRS), a global framework designed to assist in detecting and deterring offshore tax evasion. The CRS was incorporated into New Zealand legislation by reference in 2017. The proposed changes support the CARF and improve the usability of CRS.

19 The Bill proposes that the implementation date for the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard in New Zealand is set from the 2026−27 tax year, with the first exchanges of information taking place in 2027.

Taxation of transfers from overseas pension schemes (formerly known as Qualifying Recognised Overseas Pension Schemes) [CBC-24-MIN-0070 & CAB-24-MIN-0259]

20 This section is brought by the Acting Minister of Revenue in accordance with measures put in place to manage a conflict of interest.

21 The Bill proposes amendments that are primarily intended to assist migrants from the United Kingdom (UK) who may face unforeseen financial difficulties in paying New Zealand tax due on the transfer of their UK pension fund to a New Zealand "qualifying recognised overseas pension scheme" (QROPS). Under UK rules, migrants cannot

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withdraw from either the UK pension scheme or the QROPS to pay the New Zealand tax due without incurring an unauthorised payment charge of up to 55%. The individual therefore has to pay the tax from personal sources.

22 To remove the cashflow barrier to transfers, the Bill would implement a "scheme pays" mechanism. This would allow an individual to elect for the New Zealand scheme provider to pay the tax directly to Inland Revenue from the transferred pension funds at a flat 28% (meaning the individual would not need to pay the tax). It would be mandatory for relevant scheme providers to offer this option. An individual would still be able to choose to pay the tax themselves at their marginal rate if they preferred to do so. Regardless, scheme providers would have to report all transfers to Inland Revenue. For equity reasons, the Bill would also make "scheme pays" available for pension fund transfers from countries other than the UK to KiwiSaver schemes. The Trans-Tasman retirement savings portability scheme is not affected by this proposal because these transfers are not taxed.

23 The Bill also proposes that the KiwiSaver rules be changed to allow "locked-in" UK pension funds to be transferred from KiwiSaver schemes into New Zealand QROPS with the consent of the individual member.

24 "Scheme pays" would be available from 1 April 2026. The "locked-in" KiwiSaver proposal would apply from 1 April 2025.

Approved issuer levy retrospective registration [CBC-24-MIN-0065 & CAB-24-MIN-0248]

25 The Bill proposes amendments to allow a borrower who did not register a security for approved issuer levy (AIL) on time to register it retrospectively in limited circumstances. This would generally allow the borrower to pay AIL at 2% on the interest payments made on the security prior to the date of registration, rather than non-resident withholding tax (NRWT) at 10% or 15%.

26 The Bill would make retrospective registration available only to borrowers who failed to register the security at the outset due to a genuine error, and only for a limited period of time (ie, within two years of the first interest payment on which the borrower had an NRWT liability on the security).

27 The amendments to allow retrospective registration would be effective from 1 April 2025. Retrospective registration could not be backdated before that date; the policy change would be prospective.

New Zealand Business Number information sharing provision [CBC-24-MIN-0065 & CAB-24-MIN-0248]

28 The Bill proposes a "one-off" information sharing provision with the Ministry of Business, Innovation and Employment (MBIE). The amendments will address the low uptake of New Zealand Business Numbers amongst unincorporated entities. The information sharing will allow MBIE to progress an email campaign utilising the contact details and IRD numbers for unincorporated entities.

29 The amendments will apply from the date the Bill receives the Royal Assent.

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Enrolling young persons under 16 in KiwiSaver with signature of one guardian [CBC-24-MIN-0065 & CAB-24-MIN-0248]

30 The Bill proposes allowing persons under 16 to enrol in KiwiSaver with the signature of one guardian. The proposed amendments are intended to allow KiwiSaver accounts to be set up for children with greater ease and allow financial contributions to be made by family members without the administrative efforts associated with setting up a specific savings vehicle.

31 The amendments will apply from 1 July 2025.

Granting six charities overseas donee status [CBC-24-MIN-0065 & CAB-24-MIN-0248]

32 The Bill proposes six charities with overseas charitable purposes be granted overseas donee status and listed in schedule 32 of the Income Tax Act 2007.

33 The status would have effect from 1 April 2024. However, the Support Services for Humanity's overseas donee status would be limited until 31 March 2029, because the charity's work is largely project based and is expected to end in 2028.

Items not requiring Cabinet approval

34 The Bill contains a number of remedial amendments that do not require Cabinet approval. These remedial amendments support the coherence and integrity of the tax system and ensure the relevant tax law is consistent with the original policy intent.

35 The Bill also contains various maintenance items. These correct minor faults of expression, reader's aids, and incorrect cross-references.

Financial implications

36 The proposal to increase the thresholds for exempt employee share schemes by more than was previously agreed by Cabinet is forecast to cost $0.227 million over the forecast period (2024/25 to 2027/28) with a corresponding impact on the operating balance and net debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.017)	(0.070)	(0.070)	(0.070)

37 This proposal would be funded through the Tax Policy Scorecard mechanism (the Scorecard). The use of the Scorecard requires joint Minister of Finance and Minister of Revenue agreement. This initiative has been jointly agreed by us.

Impact analysis

38 Regulatory impact statements were prepared, where required, for the policy items in the Bill. The following were submitted at the time that Cabinet Committee approval for the policy items was sought:

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38.1 *Generic response measures for emergency events*, 19 June 2024

38.2 *Crypto-Asset Reporting Framework*, 8 May 2024

38.3 *Taxation of transfers from overseas pension schemes*, 23 May 2024, and

38.4 *Approved issuer levy retrospective registration*, 31 May 2024.

Compliance

39 The Bill complies with:

39.1 the principles of the Treaty of Waitangi

39.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

39.3 the disclosure statement requirements (the draft disclosure statement is attached)

39.4 the principles and guidelines set out in the Privacy Act 1993

39.5 relevant international standards and obligations

39.6 the *Legislation Guidelines* (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

40 The Bill is currently being evaluated for its consistency with the New Zealand Bill of Rights Act 1990 by the Ministry of Justice as part of its usual vetting process.

Consultation

41 The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). It is a very open and interactive engagement process between the public and private sectors. This process helps to ensure that tax and social policy changes are well thought through. The GTPP is designed to ensure better, more effective policy development through the early consideration of all aspects, and likely impacts, of proposals. The GTPP increases opportunities for public consultation.

42 The GTPP means that major tax initiatives are normally subject to public scrutiny at all stages of their development. As a result, Inland Revenue and Treasury officials have the opportunity to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected.

Relevant government departments or other public bodies

43 In developing the proposals set out in the Bill, Inland Revenue consulted with: Department of Internal Affairs (Charities Services), Department of the Prime Minister and Cabinet, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry for Primary Industries, Ministry of Social Development, National Emergency Management Agency, Parliamentary Counsel

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Office, Reserve Bank of New Zealand, Financial Markets Authority, Office of the Privacy Commissioner, the Treasury and Veterans' Affairs New Zealand.

Relevant private sector organisations and public consultation processes

44 Targeted consultation was undertaken during the policy process with relevant external stakeholders. The feedback provided by these stakeholders was taken into account when finalising policy proposals. The attached draft departmental 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

45 The government caucus will be consulted on this Bill before its proposed introduction.

Binding on the Crown

46 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.

Allocation of decision-making powers

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

Associated regulations

48 No regulations are required to bring the proposed Bill into force.

Other instruments

49 The Bill proposes a new Order in Council mechanism to switch on any of the generic emergency event provisions that will be contained in the Income Tax Act 2007. In the event of a future emergency, this Order in Council process would enable the listing and activation of the generic tax relief measures relevant for that event. In this context, Ministerial discretion over which of the measures to activate would be maintained, and the Governor-General would also need to agree to any Order in Council.

50 The Bill also proposes altering the remission of use of money interest power from an Order in Council mechanism to a Commissioner of Inland Revenue discretion. The purpose of the proposed change is to expedite the process. The Commissioner would still be constrained by other legislative criteria, such as maintaining the integrity of the tax system, and would not be obligated to exercise the power.

51 The Bill proposes a regulation-making power to allow for the cancellation, reversal or non-application of changes to the CARF by way of Order in Council. The default position is that any changes made at the OECD level to the CARF will automatically flow into New Zealand law. However, the purpose of this regulation-making power is it allows New Zealand to block any potential future changes to the CARF if they are not appropriate for New Zealand. This regulation-making power provides greater legislative flexibility than if changes were required to be made to primary legislation.

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52 The explanatory note to the Bill sets out the reasons why these regulations are required.

Definition of Minister/department

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

Commencement of legislation

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

Parliamentary process

55 The Bill should be introduced on 26 August 2024, referred to the Finance and Expenditure Committee and reported back to the House in February 2025.

56 As the Bill sets the annual income tax rates for the 2024–25 tax year and a number of the proposals in the Bill have an application date of 1 April 2025, the Bill should be enacted by the end of March 2025.

Communications

57 The Minister of Revenue 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

58 The Minister of Revenue proposes to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Recommendations

The Ministers of Finance and Revenue recommend that the Cabinet Legislation Committee:

1 **Agree** that the changes previously agreed by Cabinet [CBC-24-MIN-0065 & CAB-24-MIN-0248] that increase the thresholds relating to exempt employee share schemes to recognise the effect of inflation, should not proceed.

2 **Agree** to increase the thresholds relating to exempt employee share schemes to recognise past inflation, and provide a buffer against future inflation, by increasing the:

   2.1 maximum value of shares that can be offered from $5,000 to $7,500, and

   2.2 maximum discount an employer can provide from $2,000 to $3,000.

3 **Agree** that this applies to offers of shares made under exempt employee share schemes on and after 1 April 2025.

4 **Note** the following changes to tax revenue as a result of recommendations 2 and 3, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.017)	(0.070)	(0.070)	(0.070)
Total Operating	**0.000**	**0.017**	**0.070**	**0.070**	**0.070**

5 **Note** the reduction in tax revenue in recommendation 4 above will be charged against the Tax Policy Scorecard as agreed by Joint Ministers (IR2024/306 refers).

6 **Note** that the Bill sets the annual income tax rates for the 2024–25 tax year.

7 **Note** that the Bill makes substantive, remedial, and technical amendments to the:

7.1 Income Tax Act 2007

7.2 Income Tax Act 2004

7.3 Tax Administration Act 1994

7.4 Goods and Services Tax Act 1985

7.5 KiwiSaver Act 2006

7.6 Stamp and Cheque Duties Act 1971

7.7 Gaming Duties Act 1971

7.8 Child Support Act 1991

7.9 Local Government Act 2002, and

7.10 Taxation (Annual Rates for 2022−23, Platform Economy, and Remedial Matters) Act 2023.

8 **Approve** the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill for introduction, subject to sufficient support in the House of Representatives.

9 **Agree** that the Bill be introduced on 26 August 2024.

10 **Agree** that the government propose that the Bill be:

10.1 referred to the Finance and Expenditure Committee for consideration

10.2 reported back to the House in February 2025

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10.3 enacted by 31 March 2025.

Authorised for lodgement

Hon Nicola Willis
Minister of Finance

Hon Simon Watts
Minister of Revenue

LEG-24-MIN-0166

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 2024-2025, Emergency Response, and Remedial Measures) Bill: Approval for Introduction

Portfolio **Finance, Revenue**

On 22 August 2024, the Cabinet Legislation Committee:

1 **agreed** to rescind previous decisions set out in CBC-24-MIN-0065 and CAB-24-MIN-0248 to increase the thresholds relating to exempt employee share schemes to recognise the effect of inflation;

2 **agreed** to increase the thresholds relating to exempt employee share schemes to recognise past inflation, and provide a buffer against future inflation, by increasing the:

 2.1 maximum value of shares that can be offered from $5,000 to $7,500;

 2.2 maximum discount an employer can provide from $2,000 to $3,000;

3 **agreed** that the change in paragraph 2 applies to offers of shares made under exempt employee share schemes on and after 1 April 2025;

4 **noted** the following changes to tax revenue as a result of the decisions in paragraphs 2 and 3 above, with a corresponding impact on the on the operating balance and/or net core Crown debt:

	$ million – increase/(decrease)				
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.017)	(0.070)	(0.070)	(0.070)
Total Operating	**0.000**	**0.017**	**0.070**	**0.070**	**0.070**

5 **noted** the reduction in tax revenue in paragraph 4 above will be charged against the Tax Policy Scorecard as agreed by Joint Ministers;

6 **noted** that the Bill sets the annual income tax rates for the 2024–25 tax year;

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7 **noted** that the Bill makes substantive, remedial, and technical amendments to the:

7.1 Income Tax Act 2007;

7.2 Income Tax Act 2004;

7.3 Tax Administration Act 1994;

7.4 Goods and Services Tax Act 1985;

7.5 KiwiSaver Act 2006;

7.6 Stamp and Cheque Duties Act 1971;

7.7 Gaming Duties Act 1971;

7.8 Child Support Act 1991;

7.9 Local Government Act 2002; and

7.10 Taxation (Annual Rates for 2022−23, Platform Economy, and Remedial Matters) Act 2023;

8 **approved** the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill [IRD 26203/7.0] for introduction, subject to sufficient support in the House of Representatives;

9 **agreed** that the Bill be introduced on 26 August 2024;

10 **agreed** that the government propose that the Bill be:

10.1 referred to the Finance and Expenditure Committee for consideration;

10.2 reported back to the House in February 2025;

10.3 enacted by 31 March 2025.

Tom Kelly
Committee Secretary

Present:
Rt Hon Winston Peters
Hon Chris Bishop (Chair)
Hon Dr Shane Reti
Hon Judith Collins KC
Hon Mark Mitchell
Hon Brooke van Velden
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Matt Doocey
Hon Simon Watts
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP

Officials present from:
Official's Committee for LEG
Prime Minister's Office

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