

# Departmental Disclosure Statement

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Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill 2013
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2013 No 176
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue.

Inland Revenue certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Tuesday 12 November

## Contents

Contents	2
Part One: General Policy Statement	3
Part Two: Background Material and Policy Information	16
Part Three: Testing of Legislative Content	19
Part Four: Significant Legislative Features	24
Appendix One: Further Information Relating to Part Two	29
Appendix Two: Further Information Relating to Part Three	33

## Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following Inland Revenue Acts:

- Income Tax Act 2007:
- Tax Administration Act 1994:
- Income Tax Act 2004:
- Goods and Services Tax Act 1985:
- Child Support Act 1991.

Generally speaking, the taxation amendments contained in this Bill are aimed at improving the current tax settings within a broad-base, low rate (**BBLR**) framework. Under a BBLR framework, the tax treatment of alternative forms of income and expenditure is intended to be as even as possible. This ensures that overall tax rates can be kept low, while also minimising the biases that taxation introduces into economic decisions. The BBLR framework is the cornerstone of the Government's Revenue Strategy and helps maintain confidence that the tax system is broadly fair, which is crucial to encouraging voluntary compliance.

Although New Zealand has relatively robust tax settings, it is important to maintain the tax system and ensure that it continues to be fit for purpose. Changes in the economic environment, business practice, or interpretation of the law can mean that the tax system becomes unfair, inefficient, complex, or uncertain. The tax system needs to be responsive to accommodate these concerns.

The policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (**GTPP**). This is a very open and interactive process which helps ensure that tax policy changes are well thought through. A good tax policy process is an essential ingredient for a good tax system. This process is designed to ensure better, more effective tax policy development through early consideration of all aspects – and likely impacts – of proposals, and increased opportunities for public consultation.

The GTPP means that major tax initiatives are 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. Further information on the GTPP can be found at:

- <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>

Below is a summary of the policy measures contained in this Bill. A comprehensive explanation of all the policy items will be included in a Commentary on the Bill, that will be available shortly after this Bill is introduced at:

- <http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview>

### Employee allowances

The Bill proposes to clarify the tax treatment of employer-provided accommodation, accommodation allowances, and other payments provided by employers to employees to reimburse them for expenditure incurred.

Since accommodation, meals, and clothing have an inherent private benefit for an employee, the starting position is that payments by employers to cover expenses for these items should be treated as income of the employee. However, situations arise where the private benefit is minimal or hard to measure, and the benefit is clearly not a substitute for salary or wages. Practical rules are needed in this area to determine where to draw the line between what is taxable and what is not taxable.

The main areas of concern addressed in the Bill are employer-provided accommodation, allowances, and payments, particularly when they are linked to business travel, secondments, and projects.

#### *Accommodation*

Accommodation and accommodation payments provided to employees who are required to work away from their normal work place on secondment or projects will be exempt from income tax:

- for up to 2 years generally, when there is an expectation that the employee will be working away for no more than 2 years;
- this is extended to 3 years when an employee is involved in a capital project; and
- up to 5 years for employees involved in Canterbury earthquake recovery projects.

Accommodation and accommodation payments will also be exempt when there is more than 1 regular workplace.

When an accommodation benefit is taxable, it will generally be valued at market value. However, specific valuation rules are proposed for ministers of religion and New Zealand Defence Force personnel, to reflect existing practice:

- ministers of religion – value of church supplied accommodation will be capped at 10% of remuneration; and
- accommodation provided to Defence Force personnel will continue to be valued at a discount to market value, reflecting the particular nature and restrictions of military life.

#### *Meal payments and distinctive work clothing*

The Bill proposes that the full amount of meal payments will be exempt, if the meal payment is linked to work-related travel (for up to the 3 months). The full amount of meal payments and light refreshments outside of work-related travel (such as conferences) will also be tax exempt.

A specific exemption is proposed for distinctive work clothing, to match the outcome when clothing is provided directly by the employer. Plain clothes allowances will also be exempt if paid to employees who are provided with a uniform but because of the nature of their current duties are required not to wear that uniform.

#### *General rule for other payments*

The general rule covering when other types of payments are not taxable will also be clarified. To provide greater flexibility to handle any future issues, the Commissioner will have the power to issue determinations for other types of payments affecting a wide group of employees when the private benefit is hard to measure and not a salary substitute. These determinations setting out what portion of the payment will be taxable will not be binding on the taxpayer.

#### **Thin capitalisation**

Amendments are proposed to the interest apportionment rules. The rules are intended to affect taxpayers who have a disproportionately high level of debt funding in relation to their worldwide interest expenditure and taxpayers who can control the relative levels of their debt funding and equity funding. Different aspects of the rules relate to situations in which New Zealand residents have investments in non-resident entities (the **outbound rules**) and situations in which non-residents have investments in New Zealand residents (the **inbound rules**). The rules also require taxpayers to determine which related entities are in their New Zealand group and in their worldwide group for the purpose of calculations.

The proposed amendments relate to 5 policy areas:

- extending the inbound rules to cover groups of non-residents who act together when investing in New Zealand (the rules currently apply only when a single non-resident controls the investment):
- changing the calculation, in the inbound rules, of the worldwide group debt for a group of entities so as to exclude debt linked to shareholders of group entities and debt linked to persons associated with shareholders:
- extending the inbound rules to apply to resident trustees if 50% or more of settlements made on the trust were made by a non-resident, by non-residents acting together, or by other entities subject to the interest apportionment rules:
- in the outbound rules, forcing consolidation of interests held by individuals or trustees with interests held by companies in which they have an interest:
- ignoring increases in asset values that are the result of transactions between associated persons, unless the increase would be allowed by accounting standards if there were no sale of the relevant property.

Under the proposed changes, a group of non-resident shareholders in a company are treated as acting together if—

- the group makes up 50% or more of the company's shareholders and the members of the group have debt in the company in proportion to their equity:
- for a company that is not widely held, the group makes up 50% or more of the company's shareholders and the members of the group have an agreement that sets out how the company is to be funded:

- the group holds 50% or more of the company's shares and the members of the group are effectively coordinated by a person, such as a non-resident private equity manager.

Changes are proposed to the rules about New Zealand groups and worldwide groups, following from the introduction of the concept of non-resident shareholders acting together.

### **Black hole expenditure**

Several amendments are proposed relating to business expenditure of a capital nature that is not immediately deductible for tax purposes and does not give rise to a depreciable asset, so cannot be deducted as tax depreciation over time. Such expenditure is commonly referred to as "black hole expenditure".

The 2 broad areas of black hole expenditure focused on are certain company running costs and the costs of applying for patents, resource consents, and plant variety rights.

### **Foreign account information-sharing agreements**

Currently, United States legislation commonly known as the *Foreign Account Tax Compliance Act (FATCA)* is due to take effect on 1 July 2014. Under FATCA, financial institutions, regardless of their location, will be required to report on certain United States account holders directly to the United States' Internal Revenue Service, or face a withholding tax on United States sourced income of 30%.

It is proposed that New Zealand enter into an "intergovernmental agreement" (**IGA**) with the United States, to significantly reduce the compliance costs of FATCA for New Zealand financial institutions. Negotiations for such an agreement are currently underway. The provisions in this Bill will enable financial institutions to comply with the IGA, and any future similar agreements.

### **Charities deregistration**

New rules are proposed which set out the obligations of a deregistered charity when it ceases to derive exempt income as a result of being deregistered. A deregistered charity is an entity which is removed from the register of charitable entities. These new rules set out a method for establishing the initial tax base of the entity at the time it ceases to derive exempt income.

The rules also prescribe how to determine the date from which the entity will no longer be deriving exempt income. Entities which have been compliant with their constitutions and other information supplied at the time of registration will only be liable for tax prospectively. Entities which have not been compliant with these documents will face tax liabilities from the time they ceased to comply with the documents.

The rules also impose new requirements with respect to any assets and income a deregistered charity may have accumulated before it was deregistered. The entity will be taxed on the accumulated assets it still holds 1 year after it ceases to derive exempt income if it has not distributed those assets for charitable purposes during that year. Assets, excluding money, which were gifted to the entity while it was deriving exempt income will not be taxed.

### **Community housing providers**

New rules are proposed which confer tax-exempt status on a small subset of community housing entities. The new rules also set out that gifts of \$5 or more which are made to one of these entities will qualify for charitable donations tax relief.

To qualify for the exemption, the community housing entity must supply housing products and services only to certain classes of recipients, as well as meeting a number of other requirements. These requirements include:

- the business must not be carried out for the private pecuniary profit of any individual;
- all profits of the business must be reinvested back into the business;
- no person with some control over the business may be able to direct or divert an amount derived by the business for their own benefit or advantage; and
- the entity must also be a registered community housing provider under the *Housing Restructuring and Tenancy Matters Act 1992*.

The classes of recipients will be set out by Order in Council. When making such an Order in Council, the Governor-General will take the following factors into account:

- the maximum income of the person or household, adjusting that threshold with respect to the person's geographic location in New Zealand, and the composition of the household that the person lives in; and
- the person's assets.

### **Financial arrangements: Foreign currency agreements for sale and purchase**

This Bill proposes to change the tax treatment of agreements for the sale and purchase of property or services denominated in foreign currency (the **foreign currency agreements**) in order to reduce complexity, minimise volatility, and reflect economic reality.

The changes require taxpayers using international financial reporting standards (**IFRS**) to follow their accounting treatment for foreign currency arrangements. This means the value of the property and services and any interest included in foreign currency arrangements will follow the accounting treatment. Non-IFRS taxpayers will follow similar rules to IFRS taxpayers that are based on spot exchange rates. There will be the ability to use forward exchange rates when these taxpayers elect to follow a prescribed foreign currency hedging tax treatment.

The amendments apply to foreign currency arrangements entered into from the 2014–15 income year. IFRS taxpayers may make a once-and-for-all election to apply the new

tax treatment to foreign currency arrangements entered into from the beginning of an income year commencing with the 2011–12 income year.

In addition, it is proposed to validate tax positions already taken consistently for pre-existing foreign currency arrangements, if they are essentially in agreement with the proposed new rules.

### **Land-related lease payments**

This proposal includes measures taxing and providing deductions for payments made for transfers of certain leases or licences of land. It also proposes 4 technical amendments to tax law relating to leases and licences of land.

Under changes made by the *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013*, provisions were inserted in the *Income Tax Act 2007* that treat lease inducement and lease surrender payments as deductible to the payer and taxable to the recipient over the term of the lease from 1 April 2013.

The changes proposed in this Bill are intended to build on those provisions so as to provide for a consistent and coherent tax treatment of land-related lease payments and remove distortions, thereby improving business efficiency and fairness.

The main amendments proposed will tax lease transfer payments that are substitutable for taxable lease surrender and lease premium payments.

The technical amendments are:

- a payment for a permanent easement will be excluded from being income of a land owner under *section CC 1 of the Income Tax Act 2007*;
- leases that are perpetually renewable (“Glasgow leases”) will be excluded from being depreciable property, since they are more appropriately treated in the same way as fee simple estates in land;
- the definition of *legal life* for a lease will be extended to include extensions, renewals, and further grants to which the lessee or an associated person is entitled when the lessee enters the lease; and
- occupation rights agreements, as defined in the *Retirement Villages Act 2003*, will be excluded from the financial arrangements rules.

### **Annual rates of income tax**

This Bill sets the annual rates of income tax for the 2014–15 tax year, at the same rates that apply for the 2013–14 tax year.

### **Date of acquisition of land**

Whether the proceeds from a disposal of land by a taxpayer are taxed may depend on the intention or purpose of the taxpayer when acquiring the land. The Courts have held



that the relevant intention or purpose should be tested on the date of the acquisition of the land.

Identification of that date is not straightforward, because the definition of *land* in the *Income Tax Act 2007* includes all estates and interests in land. For example, a taxpayer who agrees to buy a fee simple estate in a piece of land acquires different interests and estates, all of which are within the definition of *land*, at different times during the process leading to the settlement of the agreement. The different interests and estates are then merged when the title to the land is registered. Neither the legislation nor common law provides sufficient clarity as to the stage in the process of acquisition that must be reached for land to be regarded as acquired.

The Bill proposes a solution to the problem by defining the date on which a person acquires land as being the date on which the person first has an estate or interest in the land, alone or jointly or in common with another person. The proposal relies on the existing definitions of *estate* and *interest in land*. As a result, the person acquires the land at the stage in the process of acquisition when the person has a right in the land and is entitled to apply to a Court for protection of that right.

### **Substituting debentures**

This Bill proposes the repeal of the substituting debenture rule in the *Income Tax Act 2007*. This rule re-characterises shareholders' debt in a company as equity in that company where the debt is issued by reference to the shareholding. As a consequence, the company is denied a deduction for interest paid on the shareholder debt and the interest payments are treated as dividends for tax purposes.

The rule was enacted in 1940 and is largely redundant. It does not fit within the current policy framework, particularly, the imputation system. The rule is also causing problems in practice, and there are more targeted rules governing the tax treatment of debt and equity. The rule is also imposing unnecessary compliance costs on taxpayers.

### **Withholding tax on inflation-indexed bonds**

This Bill proposes that non-resident withholding tax (**NRWT**) and resident withholding tax (**RWT**) is withheld on account of the coupon (that is the interest payment on the inflation-indexed bond) and on the inflation-indexation uplift at the time when the coupon is paid. This is in accordance with, and confirms, current practice. For RWT, the withholding is limited to the lesser of the coupon amount or the inflation-indexation uplift.

To enable Inland Revenue to administer these proposed legislative changes, additional record-keeping requirements for the bond issuer are required. Therefore amendments to the record-keeping provisions are included to:

- provide that the bond issuer must notify the bond holder of the requirement to file a tax return if there is a remaining tax liability, with a corresponding exclusion from non-return filing requirements; and

- provide that the bond issuer notify the Commissioner of any remaining tax liability.

### **Deductions for underground gas storage**

It is proposed that underground gas storage facilities be removed from the concessionary petroleum mining tax rules and be included in the general depreciation tax rules, with deductions for expenditure being spread over the estimated economic life of the asset. Grandparenting is proposed for some expenditure. A transitional provision is also proposed to apply on disposal of an underground gas storage facility to apportion the sale proceeds to reflect expenditure incurred under the existing rules.

### **Schedule 32 donee status**

It is proposed to give Everyhome Global Concern Incorporated and Namibian Charitable Trust donee status, under *schedule 32 of the Income Tax Act 2007*. Monetary gifts to them may qualify for tax benefits.

### **GST: Definitions of dwelling and commercial dwelling**

The definitions of *dwelling* and *commercial dwelling* in the *Goods and Services Tax Act 1985 (GST Act)* were amended in 2011. Part of the amendment to the definition of *dwelling* was importing the idea of “quiet enjoyment” from *section 38 of the Residential Tenancies Act 1986*. However, the contractual obligations retirement villages and rest homes impose upon their tenants that enable operators to enter the residential units and provide limited services at short or no notice could undermine the tenants’ “quiet enjoyment” of their units. The proposed amendments will clarify that when the consideration paid is for the right to occupy the unit, a residential unit in a retirement village or rest home is a *dwelling* and not a *commercial dwelling*.

A transitional rule was also enacted for registered persons required to treat their accommodation as a commercial dwelling as a result of the changes to the definitions of commercial dwelling and dwelling. The rule allows those affected to claim an input tax deduction in relation to the acquisition of the property. Two additions to the transitional rule are proposed. The first ensures those affected cannot claim an input tax deduction on costs incurred prior to 1986. The second gives those affected the option of either including or not including a commercial dwelling (with supplies less than \$60,000) as part of their broader taxable activity.

### **GST: Apportionment rules**

An amendment to the apportionment rules is proposed in new *section 21FB of the GST Act* which will require taxpayers to perform a wash-up calculation when they change from using an asset for both taxable and non-taxable purposes to 100% taxable or non-taxable use.

When the apportionment rules were changed in 2011, the ability of non-profit bodies to claim all their input deductions was inadvertently affected. A proposed amendment to *section 20(3K) of the GST Act* ensures that non-profit bodies can claim all of their GST input deductions other than on inputs that relate to the making of exempt supplies.

### **GST: Output tax and the disposal of land**

A proposed amendment to *section 5(16) of the GST Act* clarifies the policy relating to subsequent supplies of land or dwellings when input tax has been claimed, requiring a wash-up calculation on the disposal.

### **GST: Directors' fees**

Some uncertainty has arisen when an employee, such as a director, is engaged by a third party and receives a fee for which they must account to their employer. If both the employer and third party are registered persons but the employee is not, the GST effect is not neutral. It is proposed to treat the employer, in these circumstances, as the supplier of the service to the third person.

### **GST: Zero-rating of land**

Amendments are proposed to clarify that:

- an assignment or surrender to which the provision applies is a supply of land;
- a commercial lease for which no contemporaneous or advance payment has been made may be excluded from the zero-rating requirements;
- the procurement of a lease is a supply of land; and
- a purchaser that was already registered for GST when they incorrectly zero-rated a transaction will still be able to claim an input tax credit.

### **GST: Residents and non-residents**

Services supplied to a non-resident who is outside New Zealand at the time the services are performed are zero-rated. A proposed amendment to the meaning of *outside New Zealand* clarifies that, for a natural person, a minor presence in New Zealand that is not directly connected with the supply does not invalidate the rule.

The definition of *resident* is also proposed to be amended, so that the retrospective application of the day count residence tests in *section YD 1(4) and (6) of the Income Tax Act 2007* is switched off, with the result that for GST purposes, the day count rules apply only prospectively.

Minor clarifications of the non-resident registration provisions ensure that the extended period within which to claim refunds applies only to registered non-residents, and the deregistration period for non-compliance is more accurately expressed.

### **Definition of hire purchase agreement**

The definition of *hire purchase agreement* under *section YA 1 of the Income Tax Act 2007* and *section OB 1 of the Income Tax Act 2004* is proposed to be amended to explicitly incorporate contracts under which the person has an option to purchase, but that option is not exercised until a later date.

### **Loss grouping and insolvent loss companies**

The use of tax losses by a profit company within a group of companies is contingent on the loss company in the group of companies fully satisfying its debts for deductible expenditure incurred. This Bill proposes an amendment to reduce the benefit of past grouped tax losses if the loss company is liquidated or the loss company and the profit company grouping status is broken. The reduction in the benefit of past grouped tax losses is achieved by treating the amount of the unpaid debts as income of the profit company.

The amendment allows for consistency with self-assessment and corrects an unintended consequence for group companies arising from a policy change made to the treatment of remitted debts in rewriting provisions of the *Income Tax Act 1994* into the *Income Tax Act 2004*.

### **Bankrupts with remitted debts**

The Rewrite Advisory Panel has reviewed the policy history and practice of the Commissioner of Inland Revenue relating to setting off remission income against a bankrupt's loss balance. Clarification is necessary to ensure that the bankrupt is not saddled with tax debt, but rather, any of the bankrupt's tax losses should be reduced by amounts remitted.

### **Public and local authority tax exemption**

A proposed amendment will clarify that the exempt income rule does not apply to income derived by a local or public authority as a trustee. But if that income is distributed as beneficiary income, the beneficiary may be entitled to the local or public authority exemption, if they qualify.

### **Non-resident oil rig operators**

At present, there is a temporary 5-year exemption from tax on the income of non-resident offshore oil rig and seismic vessel operators. The exemption is due to expire on 31 December 2014. This Bill proposes a further temporary 5-year exemption. It is also proposed that modular drilling rigs will not be covered by the exemption, because the exemption is intended for large rigs that have high mobilisation and demobilisation costs, not modular rigs.

### **Serious hardship**

The Bill proposes to clarify 2 aspects of the financial relief provisions in the *Tax Administration Act 1994*. The Bill clarifies the definition of *serious hardship* and ensures that factors that give rise to the taxpayer not being able to pay the outstanding tax are not taken into account in determining whether the taxpayer is in serious hardship.

The Bill also clarifies that the Commissioner can, in appropriate circumstances, bankrupt a taxpayer who is in serious hardship. In many cases it is appropriate that the outstanding tax is written off, but in some cases if, for example, the Commissioner is concerned that writing off the outstanding tax would have an adverse effect on

taxpayers' perceptions of the integrity of the tax system, the taxpayer could be made bankrupt.

### **Mining permits**

A proposed item clarifies the status in the *Income Tax Act 2007* of permits that grant a right to explore for natural resources. Under the *Crown Minerals Act 1991*, such permits are neither real property nor personal property. Such a status produces problems when some double tax agreements are applied to revenue derived by non-residents from the permits. The proposed amendment treats permits under the *Crown Minerals Act 1991* as real property for the purposes of the *Income Tax Act 2007*.

### **Child support remedial items**

Proposed amendments seek to ensure that the policy objectives of the recent child support reform are achieved by correcting errors, clarifying wording, making additional consequential changes and making minor improvements to simplify the child support scheme. For example, the formula for distributing the minimum amount of child support in *section 98 of the Child Support Act 1991* is aligned with the formula in *section 32* of that Act so that the minimum amount of child support is distributed in the same way under the Act to all receiving carers.

### **Working for Families**

Working for Families tax credits are targeted to families with dependent children who need additional financial assistance because of the level of their household income. Family scheme income is a broader concept than taxable income and includes payments received from other sources. However, the tax credits are income tested and are not asset tested. This bill proposes that various payments that are of a capital nature or are windfall gains are excluded from the definition of *family scheme income* in *section MB 13 of the Income Tax Act 2007*. These include repayments of mistaken or misdirected payments, refunds, a capital payment from a person's ownership in a business, inheritances, and lottery winnings.

### **Rules for income from controlled foreign companies (CFCs) and foreign investment funds (FIFs)**

Offshore investments of New Zealand residents are generally taxed under 1 of 2 regimes: the controlled foreign company (CFC) or the foreign investment fund (FIF) rules. The Bill proposes several remedial amendments to these rules:

- Australian unit trusts that are not taxed as companies under Australian law will be excluded from the exemptions available to Australian resident entities in the CFC and FIF rules.
- *Section DB 55 of the Income Tax Act 2007* will be repealed. The section allows companies to claim deductions for expenses incurred in deriving exempt foreign dividends. The section no longer serves a useful purpose following changes enacted in the *Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009*.
- The rules applying to indirectly held interests in FIFs will be clarified.

- The grouping rules for the active income test in the CFC rules will be relaxed so that wholly-owned groups of companies can form test groups of CFCs including any of the interests held by the group.
- The formula in *section EX 21E(5) of the Income Tax Act 2007* will be amended so a negative numerator no longer disqualifies a CFC from passing the active business test.
- The accounting standards test will be amended to give taxpayers the option of including foreign exchange gains and losses on both financial assets and liabilities.
- The apportioned funding income provision will be moved from *section EX 20C to EX 20B of the Income Tax Act 2007*, as it relates to income rather than deductions. This will allow taxpayers to take the adjustment into account when performing the active business test under *section EX 21D of the Income Tax Act 2007*.

### **Remedial items**

A number of remedial matters are proposed in the Bill, some of which have been identified by the Rewrite Advisory Panel. In addition to fixing minor faults of expression, reader's aids, and incorrect cross-references, the following specific issues are addressed:

- clarifying the spreading of income, from the grant of a lease, derived in anticipation, or from disposing of land to the Crown:
- technical changes to the mixed use asset rules in the *Income Tax Act 2007*, to ensure that the rules are consistent with the policy intent of the legislation as introduced:
- ensuring that under the transitional depreciation recovery rule in the mixed use assets rules, depreciation recovery income is crystallised when the shareholder sells to a third party:
- clarifying the amendment of assessments by the Commissioner on recovery of a dividend from a shareholder:
- remedying the definitions of *direct control interest* and *direct income interest* and the right of a person to receive income of the company or have the income dealt with in their interest or on their behalf:
- clarifying that a new due date is not required if the assessment is made electronically when the taxpayer has defaulted in providing a return, and if an assessment is not made in such circumstances, but replaces an assessment that has been, the replacement assessment must be treated as a new assessment and a new due date must be set for all the tax payable under the replacement assessment:
- clarifying the ability of a company that is part of a wholly-owned group of companies to use a tax loss to pay a shortfall penalty imposed on another company in the group:
- electing to use balance dates used in foreign countries:
- remedying the item costs in the formula for the comparative value method:
- remedying expenditure incurred when land is transferred to close relatives after a person dies:
- clarifying that joint and several liability removed when a company leaves a consolidated group of companies:
- clarifying the effective date for the revocation of directors' elections for qualifying companies.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>A <i>Commentary on the Bill</i> will be available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>. This commentary will provide a comprehensive explanation of the proposed legislative changes in the Bill.</p> <p>In addition, the documents listed in Appendix One have been authored by Inland Revenue and are all publicly available at <a href="http://taxpolicy.ird.govt.nz/publications/">http://taxpolicy.ird.govt.nz/publications/</a>.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<ul style="list-style-type: none"><li>▪ <b>Foreign Account Information Sharing Agreements</b></li></ul> <p>The legislation contemplates an intergovernmental agreement (IGA) between the Government of the United States of America and the Government of New Zealand to improve international tax compliance and to implement FATCA.</p> <p>Although the exact terms of the IGA have yet to be agreed or signed, a model IGA published by the US Government can be viewed at: <a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx">http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx</a> (see “Reciprocal Model 1A Agreement” and associated Annexes). The draft legislation is also intended to cater for other similar agreements being entered into in the future with other jurisdictions.</p>	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
<ul style="list-style-type: none"><li>▪ <b>Foreign Account Information Sharing Agreements</b></li></ul> <p>The IGA has not been signed yet.</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>A number of regulatory impact statements (RISs) have been prepared by Inland Revenue and are all publicly available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a>. These RISs are listed in Appendix One.</p> <p>The remaining policy items in the Bill are exempt from the regulatory impact analysis (RIA) requirements, as the proposed changes result in little or no change to the status quo legislative position. A number of the items, (particularly those of a remedial nature) involve technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Such changes are therefore exempt from the regulatory impact analysis requirements.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Treasury's RIA team did not provide an independent opinion on the quality of any of the above RISs, as none of the policy items discussed in the RISs are likely to have a significant impact or risk that requires RIAT's certification of, or opinion on, the adequacy of the RIA and RIS.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<ul style="list-style-type: none"> <li>▪ <b>Thin capitalisation:</b></li> </ul> <p>The RIS <i>Improving the effectiveness of the thin capitalisation rules</i> (19 March 2013) dealt with the proposed changes to the thin capitalisation rules at a high level. The RIS did not cover the technical details that are required to give effect to the changes, such as the definition of certain terms. The officials' note <i>Thin capitalisation review: technical issues</i> (June 2013) provided further detail on the technical detail and is available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ip-thin-capitalisation-technical-issues/overview">http://taxpolicy.ird.govt.nz/publications/2013-ip-thin-capitalisation-technical-issues/overview</a>.</p> <p>It was decided after further consideration and consultation that one of the proposals discussed in the RIS (capitalised interest) should not proceed. A full explanation of the thin capitalisation changes being given effect by the Bill is available in the <i>Commentary on the Bill</i> available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.</p>	



<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p><b>2.5.(a)</b></p> <p>The RISs listed in Appendix One and available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a> provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are the subject to the RIA requirements. It should be noted that for the remaining policy items in the Bill, there is little or no publicly available analysis on the size and potential costs and benefits, as these items have been assessed as having no or very minor impact on businesses, individuals or organisations.</p> <p>Where appropriate, the <i>Commentary on the Bill</i> (available at: <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>) may provide some additional information on the potential costs and benefits of individual policy items.</p> <p><b>2.5.(b)</b></p> <p>This omnibus Bill contains amendments to tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses, organisations, entities, and the Crown.</p> <p>Analysis on the potential for any particular group or person to suffer a substantial unavoidable loss of income or wealth may be available in the RISs at the page reference listed in Appendix One or, where appropriate, in the <i>Commentary on the Bill</i> (available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>). For the majority of the items in the Bill, there is no analysis available that indicates that any group of persons has the potential to suffer a substantial avoidable loss of income or wealth because of these policy changes.</p>	
<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p><b>2.6.(a) and (b)</b></p> <p>The effectiveness of taxation legislation is, by its nature, reliant on effective and voluntary compliance. The level of effective compliance or non-compliance with specific applicable obligations or standards, and the nature of regulator effort, may have an impact on the potential costs or benefits for some policy items to be given effect by the Bill. For the appropriate policy items, this is discussed in more detail in the documents listed in Appendix One that are available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a> or where appropriate in the <i>Commentary on the Bill</i> (available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>).</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Unless it has been specifically identified in the development of the policy that there may be some impact on New Zealand's international obligations, there have been no formal steps to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations.

Formal steps were taken in regard to the following issues:

- **Thin capitalisation**

We have followed the consideration of thin capitalisation issues at the OECD and have ensured the proposed changes are in line with these.

- **Foreign Account Information Sharing Agreements**

These changes will give effect to any agreement signed between the Governments of the United States and New Zealand and are also intended to be drafted in a way that will readily incorporate other future agreements that cover similar subject-matter. The agreement will be treated as a "double tax agreement" for some tax purposes, but this bill introduces a special set of rules that apply specifically to these agreements. The Ministry of Foreign Affairs and Trade have been informed of the nature of the agreement and progress on negotiations.

- **Oil rigs**

The changes have been considered in light of the rules that apply to non-resident oil rig operators under New Zealand's double tax agreements.

### Consistency with the government's Treaty of Waitangi obligations

#### 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No separate formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi, as no policy measures in this Bill have been identified, as part of the normal policy process, as having significant impact on Maori. However, Inland Revenue policy staff who have expertise in Treaty of Waitangi and Maori matters have been involved in the preparation of this Bill.

As per the GTPP, the inherent focus on consultation (both with Maori and non-Maori interested parties) during the development of the relevant policy measures as contained in this Bill is directly in line with the "duty to consult" principle of the Treaty of Waitangi. If it has been identified in the policy development that there is impact on Maori, consultation with Maori stakeholders is conducted. As noted above, no consultation with Maori stakeholders was conducted for the purposes of this Bill as no significant impacts were identified.

### Consistency with the New Zealand Bill of Rights Act 1990

#### 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>.

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>▪ <b>Foreign Account Information Sharing Agreements</b></p> <p>Clauses 150 and 151 create strict and knowledge offences in respect of registration requirements contemplated in any foreign account information sharing-agreement. Further information on these offences are contained in the <i>Commentary on the Bill</i> (available at: <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>).</p> <p>There are also two remedial items in the Bill that affect penalty legislation. One amends an existing penalty (unacceptable tax position shortfall penalty) and the other repeals an existing penalty in application to loss attributing qualifying companies (LAQCs). These minor amendments are intended to clarify the scope and the original policy intent of the penalties.</p> <p>▪ <b>Unacceptable tax position</b></p> <p>In 2007 an amendment was made to the unacceptable tax position shortfall penalty (section 141B of the Tax Administration Act 1994), limiting the scope of the penalty to tax shortfalls that arise in relation to income tax. The proposed amendment in the Bill makes it clear that the penalty only applies to shortfalls that arise in relation to income tax.</p> <p>▪ <b>LAQC/Look-through company (LTC) remedial items</b></p> <p>The Bill proposes the repeal of section 141FD of the Tax Administration Act 1994. Under section 141FD, if a shortfall penalty would be imposed on a LAQC, the penalty is not imposed on the LAQC, and a penalty may be imposed on the shareholder for the amount of the tax loss attributed to them.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
<p>▪ <b>Foreign Account Information Sharing Agreements</b></p> <p>The offences created are considered consistent with offences that already exist in tax legislation and will have effect in the event that a person is significantly non-compliant with the relevant agreement. The creation of new offences is therefore only intended to fill a gap that New Zealand is required to fill under the terms of the proposed agreement with the United States. Discussions were held with the Ministry of Justice as part of the overall vetting of this Bill, and the Ministry is comfortable with the nature of these offences.</p> <p>▪ <b>Unacceptable tax position and LAQC/LTC remedial items</b></p> <p>Other than the overall vetting of this Bill by the Ministry of Justice, no other consultation with the Ministry of Justice on these two remedial policy issues was undertaken, as they merely clarify the current legislation and repeal an existing penalty.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
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<ul style="list-style-type: none"> <li>▪ <b>Foreign Account Information Sharing Agreements</b></li> </ul> <p>The Bill specifically requires financial institutions to obtain information on relevant persons in accordance with any foreign account information-sharing agreement. This information must then be provided to Inland Revenue for exchange with the relevant foreign government.</p> <p>The information initially covered will be accounts held by US taxpayers with New Zealand financial institutions. This will include accounts held by New Zealand citizens and residents that are also US taxpayers.</p> <ul style="list-style-type: none"> <li>▪ <b>Child support remedial items</b></li> </ul> <p>Clause 188 repeals new section 92(3A) of the Child Support Act 1991. This removes a restriction on the ability of the Commissioner of Inland Revenue to use new information provided by a person who objects to a decision of the Commissioner on the level of shared care for child support calculation purposes.</p>
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES and NO
<ul style="list-style-type: none"> <li>▪ <b>Foreign Account Information Sharing Agreements</b></li> </ul> <p>The Office of the Privacy Commissioner has been kept fully informed of developments in the policy process. This consultation is documented in the RIS <i>Legislation to enable compliance with an intergovernmental agreement between the United States and New Zealand</i>, which is available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a>.</p> <ul style="list-style-type: none"> <li>▪ <b>Child support remedial items</b></li> </ul> <p>The Office of the Privacy Commissioner was not consulted about the development of this particular change. The Child Support Act already provides elsewhere for a person to challenge a Commissioner's decision on shared care which implies that new information is provided that the Commissioner can consider. The amendment enables new information to be considered regardless of whether it is a challenge or an objection.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>There has been extensive external consultation on much of the policy to be given effect by this Bill, as per the GTPP (described in Part One of this statement). Please refer to Appendix Two of this statement and the documents listed in Appendix One (both the consultation documents and the RISs) for further information on the various parties consulted, and the form in which consultation was undertaken for the policy items.</p> <p>Further information on specific policy items is also noted below.</p> <ul style="list-style-type: none"> <li>▪ <b>Black hole expenditure items</b></li> </ul> <p>These policy items were developed as part of Budget 2013 and were not consulted on, but had been originally raised by the private sector. Taxpayers will have the opportunity to make a submission on these items as part of the Select Committee stage of the legislative process.</p> <ul style="list-style-type: none"> <li>▪ <b>Foreign Account Information Sharing Agreements</b></li> </ul> <p>Various financial institutions have been consulted on the draft legislation to ensure that it is workable.</p> <ul style="list-style-type: none"> <li>▪ <b>Financial arrangement rules for agreements for the sale and purchase of property and services</b></li> </ul> <p>The draft legislation for these policy measures has been distributed for targeted consultation with main stakeholders who may be affected or who have an interest in the proposed legislation, including the New Zealand Institute of Chartered Accountants (NZICA), the Corporate Taxpayers' Group (CTG) and the main chartered accounting firms.</p> <ul style="list-style-type: none"> <li>▪ <b>Acquisition date of land</b></li> </ul> <p>The Crown Law Office has been consulted on the draft legislation for this policy item.</p> <ul style="list-style-type: none"> <li>▪ <b>Withholding tax and inflation-indexed bonds</b></li> </ul> <p>The Treasury's Debt Management Office has been consulted on the draft legislation for this policy item.</p> <ul style="list-style-type: none"> <li>▪ <b>Working for Families tax credits remedial items</b></li> </ul> <p>The issues were raised by NZICA in a submission on an earlier tax bill; see <a href="http://taxpolicy.ird.govt.nz/publications/2012-or-arfrm/overview">http://taxpolicy.ird.govt.nz/publications/2012-or-arfrm/overview</a> Volume 1, p28</p> <ul style="list-style-type: none"> <li>▪ <b>CFC and FIF remedial items</b></li> </ul> <p>Of the seven remedial changes included in this Bill, two were not subject to any external consultation:</p> <ul style="list-style-type: none"> <li>• clauses 75 and 76 – CFC and FIF exemptions for Australian unit trusts</li> <li>• clause 43 – Clarification and repeal of DB 55</li> </ul> <p>The remaining five issues were all raised by taxpayers or their representatives and were discussed with the affected parties.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>Yes</b>
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As per the policy statement, tax policy is developed using the GTPP. Therefore, the policy details are tested or assessed by the parties that have been consulted in the development of the specific policy item.

On most occasions, tax policy is jointly developed by Inland Revenue and the Treasury. Where there is no joint policy development, the Treasury is regularly informed or consulted in the development of the policy item.

- **Working for Families remedial items**

Internal subject matter experts have assessed the provisions using their experience with actual cases.

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
Given the nature of tax, this Bill does contain provisions that could result in the compulsory acquisition of private property. However, for the purposes of this statement, the answer is “No” as per the scope of this question explained in page 50 of the <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (June 2013).	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
Given this Bill is amending tax legislation, it does contain provisions that create or amend a power to impose a charge that is a tax. However, for the purposes of this statement, the answer is “No” as per the scope of this question explained in page 53 of the <i>Disclosure Statements for Government Legislation: Technical Guide for Departments</i> (June 2013).	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
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There are a few policy items in the Bill that may have a retrospective effect and, given the nature of tax, the retrospective application may have some impacts on the rights of specific taxpayers. Further information on the retrospective application of these amendments can be found in the *Commentary on the Bill*, available at <http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview>.

- **Employee allowances**

Clause 34 provides that the new rules set out in clause 20 may have a retrospective application date if chosen by the employer. Further analysis on this retrospective application date choice is in paragraph 48 of the RIS *The tax treatment of payments by employers in respect of employee expenditure* (Inland Revenue, 17 October 2013), available at <http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview>.

- **Community housing entities**

Clause 159 permits the Governor General, through an Order in Council, to specify certain people or classes of people who are permitted to be recipients of housing products provided by the entities which may be eligible for the proposed exemption for community housing entities. It is likely that by the time this Bill is enacted the regulation may need to be backdated to the date that a number of proposals in the Social Housing Reform Bill are expected to be enacted, that is, 14 April 2014. Therefore regulations made under this clause are treated as coming into force on a day specified for that purpose in the Order in Council, and that day must not be earlier than 14 April 2014.

- **Unacceptable tax position**

Clause 146 applies retrospectively to tax positions taken on or after 1 April 2008 (which was the application date of the 2007 amendment – the reason for this clarification).

- **Clarification of new due date for payment of tax**

Clause 149 clarifies the due date for payment of tax when the Commissioner makes an assessment and applies retrospectively from 6 October 2009 (which was the application date of the 2009 amendment – the reason for this clarification).

- **GST remedial items**

Clauses 160-171 clarify existing GST policy intentions, and saving provisions are proposed where appropriate.

- **CFC and FIF remedial items**

Clause 81 (value of asset fraction) and clause 43 (repeal of DB 55) have been made with retrospective application, as they fix obvious errors in the regime.

Clauses 72, 73 and 74 (active business test for wholly owned groups, foreign exchange gains and losses on liabilities, and negative passive income and the accounting standards test for CFCs), and clauses 70 and 71 (apportioned funding income), all have a retrospective application date and are taxpayer-friendly.



## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<ul style="list-style-type: none"> <li>▪ <b>Foreign Account Information Sharing Agreements</b></li> </ul> <p>See clauses 150 and 151, which create strict and knowledge offences in respect of registration requirements contemplated in any foreign account information-sharing agreement. This is considered consistent with offences that already exist in tax legislation that will have effect in the event that a person is significantly non-compliant with the relevant agreement. The creation of a new offence is therefore only intended to fill a gap that New Zealand is required to fill under the terms of the proposed agreement with the United States. Further information can be found in the <i>Commentary on the Bill</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<ul style="list-style-type: none"> <li>▪ <b>Foreign Account Information Sharing Agreements</b></li> </ul> <p>Clause 158 allows financial institutions to comply with their obligations under a foreign account information-sharing agreement. It is anticipated that the operation of these provisions will override principles in the Privacy Act 1993. Further information can be found in the <i>Commentary on the Bill</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.</p>	

## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<ul style="list-style-type: none"> <li>▪ <b>Employee allowances</b></li> </ul> <p>The Bill creates a new discretionary power for the Commissioner of Inland Revenue to determine what proportion of a class of payment is non-taxable when the private or capital benefit is hard to measure and/or low in value, is not a salary substitute and the issue arises across a wide group or class of employees. This new decision-making power is discussed further in pages 14 and 31 of the RIS <i>The tax treatment of payments by employers in respect of employee expenditure</i>, (Inland Revenue 17 October 2013), available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a>.</p> <ul style="list-style-type: none"> <li>▪ <b>Community housing entities</b></li> </ul> <p>The effect of clause 159 is that the Governor General will be able to specify certain people or classes or people who are permitted to be recipients of housing products provided by the entities which may be eligible for the proposed exemption for community housing entities. This regulation can be made to apply retrospectively, as discussed in question 4.3 of this statement. Further information can be found in the <i>Commentary on the Bill</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<ul style="list-style-type: none"> <li data-bbox="277 383 962 412"> <b>▪ Foreign Account Information Sharing Agreements</b> </li> <li data-bbox="225 423 1370 607">           Clause 158 clarifies that regulations can be made for the purposes of certain aspects of a foreign account information-sharing agreement. These regulations would be made under the existing authority in section 224 of the Tax Administration Act 1994, so these provisions are not considered to create or amend powers that already exist under that section. Further information can be found in the <i>Commentary on the Bill</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.         </li> <li data-bbox="277 613 687 642"> <b>▪ Community housing entities</b> </li> <li data-bbox="225 654 1370 837">           The effect of new section 225D of the Tax Administration Act 1994 (clause 159) is that the Governor General, through an Order in Council, will be able to specify certain people or classes of people who are permitted to be recipients of housing products provided by the entities which may be eligible for the proposed exemption for community housing entities. Further information can be found in the <i>Commentary on the Bill</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a>.         </li> </ul>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<ul style="list-style-type: none"> <li data-bbox="277 1149 962 1178"> <b>▪ Foreign Account Information Sharing Agreements</b> </li> <li data-bbox="225 1189 1370 1373">           Clause 158 allows a person that is affected by a foreign account information-sharing agreement to have “choices” with regard to how that agreement is adhered to, provided the choice is described or contemplated in the agreement. It also specifically states that some choices are not permitted to be made. These restrictions are designed to protect individuals and entities that might otherwise be subject to reporting not strictly necessary for New Zealand’s compliance with the agreement.         </li> <li data-bbox="225 1379 1370 1503">           For further information on this feature, please refer to the RIS <i>Legislation to enable compliance with an intergovernmental agreement between the United States and New Zealand</i>, available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview</a> and the <i>Commentary on the Bill</i> available at <a href="http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview">http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview</a> </li> </ul>	

## Appendix One: Further Information Relating to Part Two

### Publicly available inquiry, review or evaluation reports question 2.1

#### Review of employee allowances

*Reviewing the tax treatment of employee allowances and other expenditure payments* Officials' issues paper, November 2012, see <http://taxpolicy.ird.govt.nz/publications/2012-ip-employee-allowances/overview>

#### Thin capitalisation

*Review of the thin capitalisation rules* Officials' issues paper, January 2013 see <http://taxpolicy.ird.govt.nz/publications/2013-ip-thin-capitalisation/overview>

#### Deregistration of charities

*Clarifying the tax consequences for deregistered charities* Officials' issues paper, June 2013 see <http://taxpolicy.ird.govt.nz/publications/2013-ip-clarifying-tax-consequences-deregistered-charities/overview>

#### Financial arrangements

*Financial arrangements – the sale and purchase of property or services* Officials' issues paper, July 2012 see <http://taxpolicy.ird.govt.nz/publications/2012-ip-fx-asaps/overview>

#### Land-related lease payments

*The taxation of land-related lease payments* Officials' issues paper, April 2013 see <http://taxpolicy.ird.govt.nz/publications/2013-ip-land-related-lease-payments/overview>

#### Acquisition date of land

*Clarifying the acquisition date of land* Officials' issues paper, May 2013 see <http://taxpolicy.ird.govt.nz/publications/2013-ip-acquisition-date-land/overview>

#### GST - immigration and other services

*The GST treatment of immigration and other services* Officials' issues paper, June 2013 see <http://taxpolicy.ird.govt.nz/publications/2013-ip-gst-treatment-immigration/overview>

#### GST remedial items

*GST remedial issues* Officials' issues paper, December 2012 see <http://taxpolicy.ird.govt.nz/publications/2012-ip-gst-issues/overview>

There are also a number of remedial items that clarify or amend the current law to realign with the original policy intent. The following documents provide analysis on the original policy intent.

#### Serious hardship

*Taxpayer compliance, standards and penalties: a review* Government discussion document, August 2001 see <http://taxpolicy.ird.govt.nz/publications/2001-dd-taxpayer-compliance/overview>

#### Unacceptable tax position

*Tax penalties, tax agents and disclosures* (pages 15-19) Government discussion document, October 2006 see <http://taxpolicy.ird.govt.nz/publications/2006-dd-penalties/overview>

#### LAQC/LTC remedial items

*Qualifying companies: implementation of flow-through tax treatment* Officials' issues paper, May 2010 see <http://taxpolicy.ird.govt.nz/publications/2010-ip-budget2010-laqs/overview>

#### Oil rigs

Further information is available on the Ministry of Business, Innovation and Employment's website: <http://www.med.govt.nz/sectors-industries/natural-resources/>

### Regulatory impact analysis question 2.3

Regulatory impact statements are available at <http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview>.

**Review of employee allowances**

*The tax treatment of payments by employers in respect of employee expenditure* 17 October 2013

**Thin capitalisation**

*Improving the effectiveness of the thin capitalisation rules* 19 March 2013

**Black hole expenditure**

Black hole expenditure items 19 March 2013

**Foreign Account Information Sharing Agreements**

*Legislation to enable compliance with an intergovernmental agreement between the United States and New Zealand*, 13 September 2013

**Deregistration of charities**

*New tax rules for deregistered charities* 17 September 2013

**Community housing entities**

*Tax treatment of community housing providers* 23 October 2013

**Financial arrangements**

*Financial arrangements- agreements for the sale and purchase of property or services*  
5 December 2012

**Land-related lease payments**

*The taxation of land-related lease payments* 24 July 2013

**Substituting debentures**

*Review of the substituting debenture rule* 16 September 2013

**Withholding tax and inflation indexed bonds**

*The withholding tax treatment of inflation-indexed bonds* 16 September 2013

**Underground gas storage facilities**

*Amendment to the tax treatment of underground gas storage facilities* 19 July 2013

**Oil rigs**

*Extending the tax exemption for non-resident oil rig operators* 10 October 2013

**Analysis on size of potential costs and benefits and potential loss for any group of persons question 2.5**

Regulatory impact statements are available at <http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview>

**Review of employee allowances**

*The tax treatment of payments by employers in respect of employee expenditure*, pages 19-31

**Thin capitalisation**

*Improving the effectiveness of the thin capitalisation rules*, pages 5-10

**Black hole expenditure**

*Black hole expenditure items*, pages 67-8, 10, 12, 14 16 and 18

Further information on size of costs and benefits is available at:

<http://www.treasury.govt.nz/downloads/pdfs/b13-info/b13-2578651.pdf>, page 2

**Foreign Account Information Sharing Agreements**

*Legislation to enable compliance with an intergovernmental agreement between the United States and New Zealand*, pages 5-6

**Deregistration of charities**

*New tax rules for deregistered charities*, pages 6-8

**Community housing entities**

*Tax treatment of community housing providers, pages 12-14*

#### **Financial arrangements**

*Financial arrangements- agreements for the sale and purchase of property or services, pages 3-4*

#### **Land-related lease payments**

*The taxation of land-related lease payments, page 6*

#### **Substituting debentures**

*Review of the substituting debenture rule, pages 5-8*

#### **Withholding tax and inflation indexed bonds**

*The withholding tax treatment of inflation-indexed bonds, pages 3-12*

#### **Underground gas storage facilities**

*Amendment to the tax treatment of underground gas storage facilities, pages 4-5*

#### **Oil rigs**

*Extending the tax exemption for non-resident oil rig operators, paragraph 19*

### **Impact of compliance question 2.6**

Regulatory impact statements are available at <http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview>

#### **Review of employee allowances**

RIS: *The tax treatment of payments by employers in respect of employee expenditure, pages 19-31*

#### **Thin capitalisation**

RIS: *Improving the effectiveness of the thin capitalisation rules, page 16*

#### **Black hole expenditure**

RIS: *Black hole expenditure items, pages 7-8, 10, 12, 14, 16 and 18*

#### **Foreign Account Information Sharing Agreements**

RIS: *Legislation to enable compliance with an intergovernmental agreement between the United States and New Zealand, pages 5-6*

#### **Deregistration of charities**

RIS: *New tax rules for deregistered charities, page 13*

#### **Community housing entities**

RIS: *Tax treatment of community housing providers, pages 12-14*

#### **Financial arrangements**

RIS: *Financial arrangements- agreements for the sale and purchase of property or services, pages 3-4, 6*

#### **Land related lease payments**

RIS: *The taxation of land-related lease payments, page 11*

#### **Substituting debentures**

RIS: *Review of the substituting debenture rule, pages 5-8*

#### **Withholding tax and inflation indexed bonds**

RIS: *The withholding tax treatment of inflation-indexed bonds, pages 3-12*

#### **Underground gas storage facilities**

RIS: *Amendment to the tax treatment of underground gas storage facilities, pages 4-5*

#### **Unacceptable tax position**

Discussion document: *Tax penalties, tax agents and disclosures*, pages 15-19 see <http://taxpolicy.ird.govt.nz/publications/2006-dd-penalties/overview>

**Oil rigs**

RIS: *Extending the tax exemption or non-resident oil rig operators*, paragraphs 32-35

## Appendix Two: Further Information Relating to Part Three

### External consultation – question 3.6

External consultation on numerous items contained in this Bill was undertaken in various forms. Information on the consultation, including the form that consultation took place, what was covered, and the nature and the extent of feedback received is available for viewing at:

- The *Commentary on the Bill* available at: <http://taxpolicy.ird.govt.nz/publications/2013-commentary-arearm/overview>
- Public consultation documents on measures contained in the Bill are available at: <http://taxpolicy.ird.govt.nz/publications/>
- Various RISs outlining consultation that was undertaken on measures in the Bill are available at: <http://taxpolicy.ird.govt.nz/publications/2013-ris-arearm-bill/overview>

The following is a list of all the external agencies, representative parties, organisations and groups that have been consulted with in the preparation of this bill.

#### **Government Agencies**

Canterbury Earthquake Recovery Authority

Department of Corrections

Department of Internal Affairs

Department of Prime Minister and Cabinet

Immigration New Zealand

Ministry of Business, Innovation and Employment

Ministry of Education

Ministry of Foreign Affairs and Trade

Ministry of Health

Ministry of Justice

Ministry of Social Development

New Zealand Customs Service

New Zealand Defence Force

New Zealand Police

Te Puni Kokiri

The Crown Law Office

The Treasury (Tax Strategy Team, New Zealand Debt Management Office, Commercial Transactions Unit)

#### **Representative organisations**

Council of Trade Unions

Corporate Taxpayers Group

Inter-church Working Party on Taxation

New Zealand Bankers Association

New Zealand Institute of Chartered Accountants

New Zealand Law Society

Petroleum Exploration and Production Association of New Zealand

Greenpeace Social Development Partners

The Association of Non-Governmental Organisations of Aotearoa  
The Community Housing Association of Aotearoa  
The Fundraising Institute of New Zealand  
Volunteering New Zealand

**Other parties/organisations/entities**

BNZ  
Contact Energy  
Deloitte  
E&Y  
John Laing  
KPMG  
NZX  
Office of the Privacy Commissioner  
PwC  
QIC  
Rewrite Advisory Panel  
Russell McVeagh  
Sky City  
Staples Rodway  
Transpower  
Veda