

Short-Form Supplementary Departmental Disclosure Statement

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill dated 27 July 2016, which can be found at this link:

<http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2016-149.pdf>

This supplementary disclosure statement was prepared by Inland Revenue

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

24 January 2017

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>1(a) The SOP contains two amendments that relate to the new penalty provisions being introduced in the Bill at sections 142H and 142I of the Tax Administration Act 1994 for Automatic Exchange of Information (“AEOI”) non-compliance. The amendments do not change the penalties themselves, but make important clarifications that will ensure the penalties can be applied as intended.</p> <p>The first amendment will (at Clause 13 of the Bill) insert new subsections 142H(6) and 142I(6) of the Tax Administration Act 1994, that expressly authorise the Commissioner of Inland Revenue to set due dates for the penalties. This seems obvious, but will ensure that a taxpayer cannot challenge a penalty on the basis that the Commissioner has no legal basis for requiring payment of the penalty.</p> <p>The second amendment will clarify the challenge rights of a taxpayer who is assessed with the penalties. Clause 11C of the Bill proposed removing the requirement (at section 89P of the Tax Administration Act 1994) for the Commissioner to issue a particular notice prior to the taxpayer initiating Court proceedings. This was because it was considered unnecessary. However, subsequent legal analysis has revealed that the section 89P notice is an important step because it provides the taxpayer with a clear right to initiate proceedings in the Courts. Accordingly, the SOP now proposes deleting clause 11C from the Bill so as to ensure that a taxpayer’s challenge rights are not ambiguous.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>Consultation with the Ministry of Justice was not necessary as the amendments do not change the nature of the penalties. They are “mechanical” in nature, and will ensure that the penalty provisions will operate as intended.</p> <p>The Ministry of Justice were consulted on the AEOI provisions contained in the bill at introduction, and this was noted in the original disclosure statement.</p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The SOP amends the application date of four amendments from the date of Royal assent to 5 February 2017. Based on the expected Royal assent date of the bill, these amendments will apply retrospectively. The amendments will have the following effects:</p> <ul style="list-style-type: none"> • Preventing taxpayers from transferring tax credits to prior periods that exceed the amount in debt and/or dispute in that period. • Credits a taxpayer may have will be offset immediately against the taxpayer's liability arising from a new or increased assessment by the Commissioner. • The grace period concept in relation to late payment penalties will be administered in a way that is more taxpayer friendly. • Alters the cancellation of interest rules for taxes migrated to START which will provide a more transparent calculation of interest for most taxpayers. It may slightly increase the liability to interest where a taxpayer has an increase in underlying tax liability. 	

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments 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?	NO
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Powers to make delegated legislation

9. Do the proposed amendments 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?	NO
10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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