

Departmental Disclosure Statement

Taxation (Transformation: First Phase Simplification and Other Measures) Bill

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

The 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.

17 June 2015.

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Part One: General Policy Statement

Explanatory note

General policy statement

This taxation omnibus Bill introduces amendments to the following enactments:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Child Support Act 1991
- Student Loan Scheme Act 2011
- Gaming Duties Act 1971
- Accident Compensation Act 2001.

Generally speaking, the taxation amendments contained in this Bill are aimed at simplifying and improving the settings for the administration of the tax system. The proposed measures go some way to indicate the direction of the reforms to be made under the Government's programme of transforming Inland Revenue's business practices.

Many of the proposed amendments in this Bill reflect the first steps in building a future in which Inland Revenue interacts with New Zealanders more openly and in a wider range of ways.

Although New Zealand has relatively strong tax policy settings, it is vital to invest in the tax administration that supports those policies. Changes in the economic environment, business practices, and technology have brought about a tax system that is not as low cost, as administratively fast, or as certain as New Zealanders may desire. The tax system needs to be responsive to accommodate these concerns in order to avoid becoming an impediment to growth.

The main policy measures in this Bill have been developed from a consideration of the reforms necessary to complete the Government's business transformation programme. The proposals in the Bill, as the first phase of simplification measures, show the progress being made on these reforms.

Progress on more substantive reforms is being made under the Government's tax policy work programme, as set out in the recently released *Making Tax Simpler: Green Paper on Tax Administration*. Proposals arising out of that consultation will be included in future tax bills. The first in a series of consultation documents has been released, *Better Digital Services*, and further releases are planned for 2015.

The following is a brief 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/commentary>.

Communications framework

The Bill proposes to clarify the options available in communications undertaken by the Commissioner and taxpayers. The proposed rules accommodate various methods ranging from the informal (including oral communication) to electronic (whether by electronic filing through Inland Revenue's website or email or by other means) to more formal methods requiring written or original documents. The proposal sets out a 3-tiered approach signalled by the use of the following verbs — ask, request, or inform, apply or notify, and formally notify.

The proposed changes support Inland Revenue's aim of moving away from paper towards digital services. The changes would remove outdated references to communications, for example, the requirement for certain communications to be "in writing" or delivered "by post". The proposals are also intended to clarify any uncertainty arising from the interaction between the application of the Electronic Transactions Act 2002, which previously enabled electronic communication as a substitute for written communication, and the outdated requirements of the tax legislation. Finally, the amendments are designed to future-proof the tax legislation, as much as possible, to allow for developments in communication technology without the need to revisit individual provisions in the principal tax legislation.

The proposed amendments create a framework for facilitating the information flow between the Commissioner and a person. And as part of the proposed framework, general rules set out what is meant when a person asks or applies for something, or informs or notifies another person about something, or formally notifies a person of something. General overrides are provided for specific provisions when a particular form or format is prescribed in the legislation, and for double tax treaties and tax recovery agreements. The proposals also contain new rules to govern delivery mechanisms for electronic communications between persons that put them on the same footing as post and paper communications.

Electronic signatures

An amendment is proposed to provide for documents such as tax returns to be filed under an electronic signature which inextricably links a particular version of the document to the sender and can be used to indicate any alterations to the document. As part of the business transformation project's focus on improving the use of digital services, this amendment would allow tax agents, and ultimately taxpayers, to submit electronically signed documents to Inland Revenue. The Commissioner would prescribe both the criteria and technical specifications that electronic signatures must meet and state the circumstances in which Inland Revenue would accept documents signed electronically.

Secrecy in a co-location environment

To increase efficiency and improve services, Inland Revenue is co-locating with other Government agencies in some offices and call centres in New Zealand. An amendment is proposed to Inland Revenue's secrecy provisions to ensure that an Inland Revenue employee working in a co-located environment is not exposed to the risk of sanctions from inadvertently disclosing tax secret information to other Government employees.

Withholding tax on benefits under share purchase agreements

The benefits provided to employees under share purchase agreements are employment income but are not subject to tax at source under the PAYE rules or FBT rules. At present the employee receiving the benefit must file a tax return to account for its value. After public consultation on the issue, the amendments proposed in the Bill would treat the amount of the benefit as an extra pay, allow employers to choose to withhold tax on the value, and would require the employer, whether choosing to withhold or not, to disclose the value received via the employer monthly schedule. These changes would improve the collection of income tax on the benefits that employees receive under share purchase agreements.

Information sharing

General information release

An exception to the secrecy rules is provided for statistical data or general information. The release of the information must be approved by the Minister of Finance if satisfied that it is in the public interest to communicate the information, that it is readily available, and that it is reasonable and practicable to release it. The Bill proposes an amendment to replace ministerial approval with approval by the Commissioner.

Enforcement of employment standards

An amendment is proposed to Inland Revenue's secrecy rules to allow Inland Revenue to share information collected and held for tax purposes with the Ministry of Business, Innovation, and Employment and with WorkSafe where the information can assist in identifying breaches of workplace legislation, which sets out minimum employment standards and health and safety in the workplace. The process would be formalised in a memorandum of understanding between Inland Revenue and the Ministry.

Biometric validation

Biometric validation allows the recording of voice patterns enabling the record to be matched against a person's voice when they call to discuss their affairs. Inland Revenue and the Ministry for Social Development have similar voice biometric services and a shared customer base. The Bill proposes an amendment to allow a pilot project to investigate whether the voice recordings could be matched.

KiwiSaver membership

Fund transfers

An amendment is proposed to the KiwiSaver Act 2006 to allow Inland Revenue, which is in the position of knowing each member's transfer history and having a relationship with all scheme providers, to supply a scheme provider with the names and details of members who have transferred out of their schemes and the name of the members' new providers.

Contact details of members

A proposal to amend the KiwiSaver Act 2006 to expand the current information sharing provisions to allow for a broader definition of contact details to encompass phone number, email address, and other future modes of communication that emerge as technologies develop.

Minors opting out

Minors are unable to join a KiwiSaver scheme through their employers but must join directly with a provider on providing evidence of parental consent. The Bill proposes an amendment to allow minors who have been incorrectly enrolled in a scheme to opt out of KiwiSaver at any time before their 19th birthday. Members who choose to opt out would receive their employee contributions but not their member tax credits, kick-start amount, or their employer's compulsory contributions.

Special tax codes

The Bill proposes an amendment to allow the Commissioner to provide special tax codes directly to the Ministry of Social Development in order to help those receiving New Zealand Superannuation or veteran's pension meet their income tax obligations. Special tax codes are personalised PAYE deduction rates that a taxpayer can provide to their employer to help the taxpayer avoid an under- or over-payment of tax at the end of the year.

Notices of deduction from salary or wages

An amendment is proposed to certain provisions in tax legislation that require the Commissioner to issue a notice when the Commissioner requires an employer to make deductions from the salary or wages of a person who has defaulted on their obligations. The notice is issued to the employer and a copy sent to the defaulting employee. The provisions are contained in the Tax Administration Act 1994 (for taxpayers), the Goods and Services Tax Act 1985 (for registered persons), the Student Loan Scheme Act 2011 (for student loan borrowers), the Gaming Duties Act 1971 (for gaming machine operators), and the Child Support Act 1999 (for liable parents). The proposed amendment allows the Commissioner to dispense with the requirement to send a copy of the notice to the person concerned if the Commissioner can find no address for the person.

Child support application exemptions

The Bill proposes an amendment to remove a misalignment between the Child Support Act 1991 and the Social Security Act 1964 relating to applications for child support by certain social security beneficiaries. The amendment would ensure that beneficiaries who meet compelling exemptions, which reflect those in the Social Security Act, will be exempt from having to apply for child support. The amendment would also clarify the information that the 2 Government agencies can exchange to enforce penalties imposed under the Social Security Act.

ASX exemption for FIF rules

The ASX exemption operates to exclude certain share investments from attribution under the foreign investment fund rules. An amendment is proposed to reduce uncertainty for investors by replacing the requirement that shares must be listed on an approved index under the ASX Operating Rules with a requirement that the shares must be in a company listed on the ASX.

Refinements to personal tax summaries

When a salary or wage earner needs an end-of-year assessment, they can ask the Commissioner for a personal tax summary and confirm any amount of tax refund. The Bill proposes an amendment to reduce the time within which an automatic refund of less than \$200 on an unconfirmed summary is released, reducing it from 30 days to 15 days. A further amendment is proposed to increase the automatic refund threshold from \$200 to \$600.

Changes to binding rulings provisions

Some minor restrictions in the binding rulings provisions operate to make the regime less than efficient. The Bill proposes 4 minor amendments to enhance efficiency. The changes relate to the withdrawal and reissue of signed financial arrangements determinations to correct minor errors, to the provision of rulings when a notice of proposed adjustment has been issued, to clarify when a ruling ceases to apply because an assumption listed subsequently proves to be incorrect, and to make the notification requirements for status rulings more flexible.

Repeal of special home ownership savings accounts

The Bill proposes to repeal the provisions related to special home ownership accounts. The scheme closed in 1986. It provided tax credits for 5 years from the date the account was opened. While accounts still exist, it is likely that many of them have not been operated for 25 years. The proposed amendment will allow the relevant financial institutions to close the accounts without having to pay back the tax credits, as is currently the case.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	Yes
<p>A <i>Commentary on the Bill</i> will be made available at http://taxpolicy.ird.govt.nz/bills shortly after the Bill is introduced. The commentary will provide a more detailed explanation of the main proposed legislative changes in the Bill.</p> <p>Taxation of employee share schemes <i>Simplifying the collection of tax on employee share schemes</i>, Inland Revenue discussion document, April 2015, see http://taxpolicy.ird.govt.nz/publications/2015-ip-employee-share-schemes/overview</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A number of regulatory impact statements (RISs) have been prepared by Inland Revenue and are all publicly available at [URL TO BE UPDATED]. These RISs are:</p> <ul style="list-style-type: none">• Allowing additional deductions to be made from salary or wages, Inland Revenue, 3 June• KiwiSaver opt-out for minors, Inland Revenue, 3 June• Co-location and secrecy, Inland Revenue, 3 June• Simplifying the collection of tax on employee share schemes, Inland Revenue, 3 June <p>Two RISs have been prepared by the Ministry of Business, Innovation and Employment (MBIE). These RISs are:</p> <ul style="list-style-type: none">• Improving New Zealand's Workplace Health and Safety System, MBIE,<ul style="list-style-type: none">◦ http://www.mbie.govt.nz/about-us/publications/ris/ris-improving-nzs-workplace-health-and-safety-system.pdf• Strengthening Enforcement of Employment Standards, MBIE<ul style="list-style-type: none">◦ http://www.dol.govt.nz/er/services/law/legislationreviews/ris-2015-employment-standards-review.pdf <p>Some portions have been withheld from the RISs under the Official Information Act 1982.</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.</p>	

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?	NO
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No independent opinion was given as the RISs did not meet the threshold for RIA Team assessment.

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?

NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?

NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:

(a) the size of the potential costs and benefits?

YES

(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?

YES

The RISs listed in 2.3 and available at [\[URL TO BE UPDATED\]](#) 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.

Where appropriate, the *Commentary on the Bill* (available shortly after the Bill is introduced at: <http://taxpolicy.ird.govt.nz/bills>) may provide some additional information on the potential costs and benefits of individual policy items.

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:

(a) the level of effective compliance or non-compliance with applicable obligations or standards?

YES

(b) the nature and level of regulator effort put into encouraging or securing compliance?

YES

2.6.(a) and (b)

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 RISs listed in 2.3 that are available at <http://taxpolicy.ird.govt.nz/publications> or where appropriate in the *Commentary on the Bill* (available at <http://taxpolicy.ird.govt.nz/bills> shortly after the Bill is introduced).

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?
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As there has been no specifically identified impact on New Zealand's international obligations in the development of the policy, there have been no formal steps to determine whether the policy to be given effect is consistent with New Zealand's international obligations.

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.

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
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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

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	No
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	No
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Privacy issues

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?	Yes
<p>KiwiSaver - The bill expands the definition of member contact details that Inland Revenue can share with KiwiSaver providers to include phone numbers. When members transfer between KiwiSaver providers the old provider can be told who the new provider is and vice versa.</p> <p>Special tax codes for super-annuitants - The bill allows Inland Revenue to provide the Ministry of Social Development with a taxpayer's special tax code if the code is in relation to superannuation or veterans' pension.</p> <p>Biometric validation - The bill allows Inland Revenue and the Ministry of Social Development to match voice recording data to investigate whether a shared biometric validation service could be offered.</p> <p>Enforcement of employment standards - The bill allows Inland Revenue to share information with MBIE and WorkSafe New Zealand to assist in identifying breaches of workplace legislation.</p> <p>Simplifying the collection of tax on employee share schemes - The bill provides for the disclosure to Inland Revenue of employment income for an employee that arises from an employee share scheme.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted on all of the items listed in 3.5 except for the employee share schemes. That item represents only a slight extension of the existing information collected through the PAYE system. They advised that they were comfortable with the proposals.</p>	

External consultation

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?	YES
<p>Taxation of employee share schemes</p> <p>A discussion document was released - <i>Simplifying the collection of tax on employee share schemes</i>, Inland Revenue discussion document, April 2015, see http://taxpolicy.ird.govt.nz/publications/2015-ip-employee-share-schemes/overview</p> <p>Submissions generally supported the idea of shifting the obligation to collect tax on ESS benefits to the employer, while two were strongly opposed. Support was on the basis that:</p> <ul style="list-style-type: none">• The employer's obligation to collect tax applied at the election of the employer; or in the alternative,• If the employer did not have any choice, existing schemes be outside the scope of any change (that is, employers with existing schemes would be outside the scope of any obligation to collect tax unless they chose to opt in). <p>If source taxation applied to ESS benefits, submissions expressed a strong preference that the PAYE system be used.</p> <p>Submissions recognised that if the employer had the choice to collect tax, it was reasonable for the employer to provide information to Inland Revenue about the employees who received an ESS benefit in cases where tax was not collected at source. Submissions varied on what information should be disclosed, however.</p> <p>KiwiSaver changes</p> <p>Workplace Savings NZ were briefed on the changes being made to the KiwiSaver Act – exchange of contact details; opt-outs for minors; exchange of transfer information. They were supportive of the changes.</p>	

Other testing of proposals

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?	YES
<p>As the bill predominantly focuses on tax administration the proposals have been reviewed by operational subject matter experts who have confirmed that they can be implemented with confidence.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill 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

4.2. Does this Bill 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

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	No
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	No
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	No

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	No
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Significant decision-making powers

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?	No
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Powers to make delegated legislation

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?	No
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	No
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	No
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