

# Departmental Disclosure Statement

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Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill
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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.

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 June 2019

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## Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following legislation:

- KiwiSaver Act 2006
- Student Loan Scheme Act 2011
- Income Tax Act 2007
- Income Tax Act 2004
- Income Tax Act 1994
- Income Tax Act 1976
- Tax Administration Act 1994
- Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019
- Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018
- Taxation (Research and Development Tax Credits) Act 2019
- Accident Compensation Act 2001
- Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995.

Broadly, the policy proposals in this Bill have 3 main objectives:

- to continue the Government's simplifying and modernising of social policy administration
- to further improve the application of our broad-base, low-rate framework, and
- to further encourage research and development expenditure.

The first category relates to proposals aimed at modernising and improving the settings for the administration of social policy by Inland Revenue as part of the Government's programme of transforming the revenue system through business process and technology change. This category includes measures to simplify and modernise the administration of the KiwiSaver and student loan schemes.

The second of these categories comprises proposals aimed at improving current tax settings within a broad-base, low-rate framework. Under this framework, the treatment of alternative forms of income and expenditure is intended to be as even as possible. This treatment ensures that overall tax rates can be kept low, while also minimising the biases that taxation introduces into economic decisions. This framework underpins the Government's revenue strategy and helps maintain confidence that the tax system is broadly fair, which is crucial to encouraging voluntary compliance with tax obligations.

Although New Zealand has relatively strong 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 third objective of this Bill is aimed at extending the refundability of research and development tax credits, to support Government objectives relating to increasing business expenditure on research and development.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). It is a very open and interactive engagement process between the public and private sectors, which helps ensure that tax and social policy changes are well thought through. This process is designed to ensure better, more effective 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.

The final stage of the GTPP is a post-implementation review of new legislation and identification of remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>.

The following is a brief summary of the specific policy measures contained in this Bill. A comprehensive explanation of all the policy items is provided in a commentary on the Bill that is available at <http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslrmbill/overview>.

## **KiwiSaver changes**

The Bill proposes a number of changes to improve the administration of the KiwiSaver scheme. These changes facilitate faster transfers of funds, improve the administrative efficiency and enhance members' experience with the scheme.

### **Payment of employer contributions**

The Bill proposes to allow Inland Revenue to pass KiwiSaver employer contribution amounts (both compulsory and voluntary) to scheme providers, before the contribution amount has been received by Inland Revenue. Employer contributions would be forwarded to providers as soon as practicable after employment income information has been provided to Inland Revenue. This would improve the administrative efficiency of the KiwiSaver scheme and members would receive the benefit of their contributions being invested with scheme providers sooner. The change would align with the existing treatment of employee contributions.

### **Calculating interest on contributions from the employee's payday**

The Bill contains changes to ensure that interest on employer and employee contributions begins to accrue from the employee's payday, until the contributions are forwarded to the KiwiSaver scheme provider. When KiwiSaver was introduced Inland Revenue's systems could not calculate interest from the employee's payday without

imposing compliance costs on employers. The introduction of payday filing overcomes this obstacle.

### **Reducing the KiwiSaver provisional period and holding period**

When automatically enrolled in KiwiSaver, members are provisionally allocated to a default provider. Inland Revenue is not able to transfer contributions to scheme providers until the end of the provisional period. The Bill reduces the provisional period and the initial holding period from 3 months to 2 months.

### **Reducing the timeframe for the transfer of member's information and funds between providers**

When a KiwiSaver member decides to transfer schemes, the old provider must transfer funds and information within 10 working days for default providers and 35 days for non-default providers. The Bill proposes that this period be reduced to 10 working days for all providers.

### **Giving employees more ways to change their contribution rates**

Currently, members can only change their employee contribution rate by giving notice to their employer. The Bill proposes that members would also be able to change their contribution rate by notifying either their scheme provider or Inland Revenue.

### **Removing the 3-month grace period for people who were invalidly enrolled in KiwiSaver to gain residence**

There is currently a 3-month grace period for those who are invalidly enrolled in KiwiSaver to meet the scheme's residence requirement. In practice, members who do not have residence are typically individuals not intending to become residents in the short term (such as individuals on temporary work visas). The Bill proposes the removal of this grace period. This would mean that a person who does not meet the residence requirement would have their account closed immediately. They would be able to open a new KiwiSaver account if they later meet the residence requirement.

### **Requiring employers to provide information to Inland Revenue on the employee's income and ESCT rate**

The Bill proposes that employers would be required to provide Inland Revenue with information on any difference between an employee's income for PAYE and KiwiSaver purposes and information on the employee's employer superannuation contribution tax (ESCT) rate. This would enable Inland Revenue to more easily verify that the correct KiwiSaver contributions have been made and that the correct tax is paid. It would also reduce the likelihood that employers are subject to penalties in the case of any miscalculation.

## **Student loan changes**

The Bill proposes 5 student loan policy changes. These changes seek to improve the administration of the student loan scheme.

### **Limiting changes to a borrower's repayment obligations prior to 1 April 2013**

The Bill proposes that changes to a borrower's repayment obligations will only occur due to changes in residency status, where fraud is involved, or where a tax return has not

been filed and it is cost effective to make changes. The Bill also contains a clause to allow the Commissioner to correct the position of any borrower who is made worse off as a result of this change. The purpose of this section is to limit the reassessment of historical changes beyond this point.

### **Renaming the student loan repayment holiday to temporary repayment suspension**

The Bill proposes that the current repayment holiday be renamed “temporary repayment suspension”. This wording change will better signal to borrowers who receive a repayment suspension that their repayment obligations have been suspended, and that they will have repayment obligations after the end of their repayment suspension.

### **Giving Inland Revenue the ability to write-off student loans taken out before 2000 in cases of fraud**

This will allow Inland Revenue to write-off loans that have been taken out fraudulently, in cases where the correct borrower cannot be identified. Inland Revenue does not currently have the ability to write-off these loans.

### **Allowing employers to be notified of an employee’s loan balance when their student loan is close to being fully repaid**

The Bill proposes that employers would be notified of an employee’s loan balance when their loan balance is close to zero, so that the amount of any final deduction can be reduced, to avoid an over-deduction. This will prevent employers deducting more than the loan balance from an employee’s salary and wages, and then contact between Inland Revenue and the borrower to arrange a refund of the excess.

### **Treating overseas-based borrowers with serious illnesses or disabilities as physically in New Zealand**

The Bill proposes that borrowers who are unable to meet their overseas-based repayment obligation as a result of serious illnesses or disabilities can be treated as physically in New Zealand for the purpose of determining whether they are New Zealand-based or overseas-based. This will mean that their repayment obligations are based on their income, and the borrowers will not be subject to loan interest.

## **Other changes**

### **Granting overseas donee status to additional charities**

The Bill gives overseas donee status to the following charities from the 2019–20 income year:

- Little Brothers and Sisters International
- Partners Relief & Development - New Zealand
- Project Moroto
- UN Women National Committee Aotearoa New Zealand Incorporated.

## **Extending the refundability of research and development tax credits**

The Bill proposes changes to extend the refundability of research and development tax credits (R&D tax credits). These changes are intended to apply from the 2020–21 income year. It is proposed that R&D tax credits be more broadly refundable, with a cap based on the payroll taxes paid by a firm in each year. The proposed cap would not apply to tax credits resulting from eligible expenditure on activities performed by approved research providers and would not apply to R&D tax credits refunded to levy bodies.

## **Excluding tax exempt entities from the research and development tax credit regime**

Refundability would not be available to entities who receive exempt income (other than income that is exempt under section CW 9 or CW 10 of the Income Tax Act 2007). Any surplus credits claimed in the 2019–20 income year by these entities would not be carried forward by these entities and would be extinguished from the 2020–21 income year.

## **Remedial research and development tax credit amendments**

There are a small number of cases where the legislation supporting the new R&D tax credit does not align with the policy intent. The Bill proposes remedial changes for issues related to allocating tax credits to members of joint ventures, the timeframe for businesses to dispute R&D tax credit claims, the R&D certifier regime, the definition of *internal software development*, and taxpayers' ability to challenge decisions of the Commissioner. The Bill proposes that most of these amendments apply from the beginning of the regime (the 2019–20 income year).

## **Allowing the Commissioner to correct the tax rate of PIE investors on the default rate**

Currently, investors in PIE funds are expected to elect a tax rate. If they do not notify the PIE fund of a tax rate to apply, the top 28% PIE tax rate will apply by default. Inland Revenue is currently able to provide a multi-rate PIE with an alternative tax rate for an investor where the investor had provided a tax rate to the PIE that is different from what it should be. However, Inland Revenue cannot use this power where an investor has been defaulted onto the top rate. The Bill proposes an amendment to allow Inland Revenue to correct an investor's tax rate if they have been defaulted onto the top rate.

## **Allowing the Commissioner to withdraw short-process rulings**

An oversight in the drafting of the short-process rulings legislation prevents the Commissioner from being able to withdraw short-process rulings. The Bill proposes an amendment to the Tax Administration Act 1994 to enable the Commissioner to withdraw short-process rulings, which mirrors the existing rule that allows her to withdraw private rulings.

## **Clarifying the date that withdrawal takes effect for binding rulings withdrawn on matters not involving arrangements**

Since 18 March 2019 the Commissioner has been able to issue binding rulings on a broader range of matters without the need for an arrangement (for example, on a person's New Zealand tax residence). The Bill proposes an amendment to ensure that where a binding ruling has been issued for a matter not involving an arrangement and that ruling is subsequently withdrawn, taxpayers can continue to rely on the ruling for the period specified in the ruling.

## **Income attribution rules**

The Bill proposes 2 changes to the income attribution rules. The income attribution rules apply when an individual earns income from providing their own services through an entity that has 1 main source of such income: the entity is disregarded and the income is taxed directly to the person performing the services, to prevent higher income earners from avoiding the top personal rate by paying tax on their income from personal services at the company rate instead.

The Bill proposes to clarify that if the entity provides services to a foreign buyer and pays tax overseas, foreign tax credits are available to the individual.

The Bill also proposes an amendment to ensure that dividends paid by the entity to the person can only be tax exempt if they are paid out of income that has already been attributed to the person.

## **Trusts**

Following an administrative review of the income tax treatment of trusts, a number of technical matters for remedial amendment have been identified. These changes seek to improve the clarity of the law and better reflect the policy intent. The amendments:

- ensure there is consistency within the trust rules on the treatment of distributions when a trustee pays New Zealand tax on worldwide trustee income
- clarify the relationship of the residence rules to trustees and their obligations under the Income Tax Act 2007
- clarify rules relating to the value of a settlement
- ensure there is internal consistency between the treatment of distributions, beneficiary income, taxable distributions, and the ordering rules, and
- address minor matters such as terminology and notice requirements.

## **Disclosure of information about representatives**

The Bill contains an amendment to extend the coverage of the existing rules which allow Inland Revenue to disclose information about tax agents to their professional bodies. The change will extend this to include representatives (including bookkeepers). This follows changes made by the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 which added “representatives” as a new class of intermediary to the Tax Administration Act 1994.

## **Tax treatment of non-resident international aircraft operators**

Tax legislation allows a reciprocal income tax exemption to be granted to non-resident international aircraft operators, but the wording of the current legislation limits the exemption to outbound aircraft only. The Bill proposes an amendment to ensure that exemptions can extend to inbound aircraft. This aligns with Inland Revenue practice.

## **Māori authority tax credits**

An unintended legislative change arising from the rewrite of the rules relating to Māori authority tax credits means that the current law allows these credits to be attached retrospectively to any distribution from a Māori authority. The policy intent is that these



credits can only be attached retrospectively to non-cash distributions occurring under the transfer pricing rules. The Bill proposes an amendment to maintain this treatment. Inland Revenue is not aware of any taxpayer who has retrospectively attached these credits.

### **Main home exclusion for the bright-line test**

The main home exclusion for the bright-line test requires that a person use the land as their main home for most of the time they own the land. However, the period that a person owns land under this general definition can differ from the period that the bright-line test applies to. The Bill proposes an amendment to align the period of ownership for the main home exclusion for the bright-line test with the bright-line period.

### **Consideration for grant of an easement**

The Bill contains a remedial amendment to clarify that a one-off payment for the grant of a permanent easement is not taxable.

### **Inbound thin capitalisation de minimis**

Under the current law a New Zealand taxpayer does not have to make adjustments for being over the thin capitalisation threshold provided they have less than \$1 million of group finance costs. This de minimis was not intended to be available if the New Zealand taxpayer borrowed from a non-resident related party; however, the legislation currently only removes access to the de minimis if the taxpayer has borrowed from an owner who is not a member of the same group. The Bill proposes to align the legislation with the policy intent.

### **Employee share schemes**

The Bill contains 3 amendments to the employee share scheme rules.

The Bill contains a proposal to allow the use of a wider range of methods for determining the “market value” of shares for the purpose of the employee share scheme rules.

Under the exempt employee share scheme rules, shares are required to be held for a “restricted period”, generally 3 years, before they can be released to employees. In the event of a takeover or other corporate reorganisation the restricted period may be breached, making the shares taxable. However, since takeovers and other comparable reorganisations are generally outside the employee’s control, it is proposed that there be an exception to the restricted period for these events.

There is an additional exception to the restricted period to allow for employees leaving employment. Currently, the rules allow employees who leave within the restricted period to retain their shares if they meet 1 of the specified exemptions. Employees who leave for other reasons, such as to work for a competitor, are not allowed to keep their shares. This rule creates difficulties for trans-Tasman companies, as the equivalent Australian rules allow for exempt shares to be retained by all employees leaving a firm. The Bill proposes that companies be able to choose to either continue to follow the current rules or allow all departing employees the option of keeping their shares.

### **Availability of GST credits**

The Bill contains a proposal to move the day that a GST tax credit becomes available from the day after it arises to the day that it arises. This change will align the legislation with current practice.

## **Provisional tax**

The Bill includes a range of remedial amendments to align tax legislation with Inland Revenue's systems. The changes either have no or a positive impact on taxpayers or are necessary to maintain the integrity of the tax system.

## **Remedial amendments**

A number of minor remedial matters are also addressed in the Bill, consisting mainly of correcting minor faults of expression, reader's aids, and incorrect cross-references.

## **Departmental disclosure statement**

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://disclosure.legislation.govt.nz/bill/government/2019/>.

## **Regulatory impact assessment**

The Inland Revenue Department produced regulatory impact assessments on 31 January 2019 and 1 March 2019, and the Inland Revenue Department and the Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 10 May 2019, to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>
- <https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

## 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>
A commentary on the Bill is available at <a href="http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslr-bill/overview">http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslr-bill/overview</a> .	

### 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>NO</b>
As a member of the International Civil Aviation Organisation, New Zealand is obliged to reciprocally provide an income tax exemption to non-resident aircraft carriers. The statutory provision that does this only allows an exemption for outbound aircraft. In practice it has correctly been applied to inbound aircraft as well, and the Bill contains a retrospective amendment to validate this practice. While the Bill does not give effect to an international treaty, this remedial amendment will maintain New Zealand's compliance with its international obligations.	

<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>N/A</b>
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### 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>Three regulatory impact statements were prepared to support decision making on this Bill. These are available at <a href="http://taxpolicy.ird.govt.nz/publications/2019-ria-ksslr-bill/overview">http://taxpolicy.ird.govt.nz/publications/2019-ria-ksslr-bill/overview</a> and <a href="https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a>:</p> <ul style="list-style-type: none"><li>• <i>Business Transformation related KiwiSaver refinements</i>, Inland Revenue, 1 March 2019;</li><li>• <i>Student loans: limiting student loan scheme rules relating to the 2013 and prior years</i>, Inland Revenue, 31 January 2019; and</li><li>• <i>Research and development tax incentive – refundability</i>, Ministry of Business, Innovation and Employment, Inland Revenue, The Treasury, and Callaghan Innovation, 10 May 2019.</li></ul> <p>The remaining policy items in the Bill are exempt from the RIA requirements, as the proposed changes result in little or no changes to the status quo legislative position. These items involve technical revisions that substantially re-enact the current law to improve clarity and understanding (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Other items repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities, or involve a very small number of people in practice.</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>
<p>The regulatory impact assessment prepared for the KiwiSaver changes was reviewed by Inland Revenue and was assessed as meeting the quality criteria.</p> <p>The regulatory impact assessment prepared for the student loan change to limit reassessment was assessed by Inland Revenue's internal assessment panel, who concluded that it partially met the quality standards. The assessment was prepared under time constraints which prevented adequate consultation with stakeholders.</p> <p>The regulatory impact assessment for extending the refundability of research and development tax credits was assessed by the Ministry of Business, Innovation and Employment regulatory impact assessment review panel, who have concluded it meets the criteria necessary for Ministers to make informed decisions.</p>	

<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>NO</b>
<p>No significant further impact analysis has become available for any aspects of the policy to be given effect by the Bill. However, the commentary on the Bill, available at <a href="http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslrn-bill/overview">http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslrn-bill/overview</a>, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a RIA, may provide impact analysis of the proposals.</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>For the policy changes with regulatory impact statements indicated in section 2.3, the statements provide analysis on the size of the potential costs and benefits. For the remaining policy items in the Bill, there is little or no publicly available analysis on the size of potential costs and benefits, as these have been assessed as having no or a very minor impact on businesses, individuals, or organisations.</p> <p>This omnibus taxation Bill contains amendments to the tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses and organisations. Analysis on the potential for any particular group of persons to suffer a substantial unavoidable loss of income or wealth may be available in the RIA listed under 2.3 or, where appropriate, in the commentary on the Bill.</p> <p>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 unavoidable 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>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 may be discussed in more detail in the RIAs listed under 2.3 or, where appropriate, in the commentary on the Bill.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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Unless it has been specifically identified in the development of the policy that there may be relevant 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.

The proposed amendments to the granting of reciprocal income tax exemptions for non-resident aircraft carriers ensure that New Zealand continues to meet its obligations as a member of the International Civil Aviation Organisation, and so deliberate steps have been taken in the drafting of the amendments to ensure this is the case.

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

<b>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?</b>
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Unless it has been identified in the development of the policy that there may be implications for the rights and interests of Māori protected by the Treaty of Waitangi, no 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.

Under the GTPP (described in part one of this statement), there is focus on consultation (both with Māori and non-Māori interested parties) during the development of the relevant policy measures contained in the Bill. This is directly in line with the "duty to consult" principle of the Treaty of Waitangi.

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

<b>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?</b>	<b>TBC</b>
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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 available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-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>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

## 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>
<p>The Bill contains a proposal that would allow Inland Revenue to disclose a borrower's remaining loan balance to their employer when the loan is close to being fully repaid, to prevent over deduction of the loan balance.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted on the proposal to allow Inland Revenue to notify employers of a borrower's remaining loan balance. In the context of the existing notification powers that Inland Revenue has for the repayment of student loans, the Office of the Privacy Commissioner have indicated that "advising a balance to ensure correct final payment seems a reasonable and practical step to ensure loan balances are not over paid".</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>The Financial Markets Authority and KiwiSaver scheme providers were consulted on the KiwiSaver proposals and support them.</p> <p>The refundability proposals for the research and development tax credits were consulted on extensively with stakeholders. Consultation included Chartered Accountants Australia and New Zealand, representatives from PricewaterhouseCoopers, KPMG, Deloitte and Ernst Young, approximately 25 representatives from R&amp;D performing businesses in tax loss or with insufficient taxable income to fully utilise non-refundable R&amp;D tax credits, some large established R&amp;D performers, levy bodies, charities, cooperatives, Federation of Māori Authorities, and Māori business representatives. The views of stakeholders have helped to shape the refundability proposals.</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>
<p>All proposals in the Bill have been reviewed by internal operational subject matter experts under Inland Revenue's standard process for assessing the administrative impacts of any new policy initiatives and ensuring they are workable and complete. This involves assessing whether systems need to be changed and, if so, whether formal testing needs to be carried out. None of the measures in the Bill required formal testing.</p> <p>The proposals in the Bill have been subject to the General Tax Policy Process, the purpose of which is to promote and improve the workability of proposals.</p>	



## 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 pages 50 and 51 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (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 pages 53 and 54 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
There are some changes in the Bill that may have some retrospective effect and, given the nature of tax, the retrospective application may have some impacts on the rights of specific taxpayers. Barring some very minor remedial items with retrospective application dates which are not expected to adversely affect taxpayers, a list of items which are proposed to apply prior to the enactment of this Bill is included in appendix one. More information on the retrospective application of these amendments can be found in the commentary on the Bill, which is available at <a href="http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslr-bill/overview">http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslr-bill/overview</a> .	

### 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>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### 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>NO</b>
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### 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>NO</b>
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<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>NO</b>
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## **Appendix One: Further Information Relating to Part Four**

### **Items affecting rights, freedoms or imposing obligations retrospectively - question 4.3**

The items in this appendix have retrospective effect.

#### **Limiting changes to a borrower's repayment obligations prior to 1 April 2013**

The Bill contains a proposal to limit the reassessment of student loan borrower's repayment obligations prior to 1 April 2013, except for cases of changes to residency, where fraud is involved or where a tax return has not been filed and it is cost effective to make changes. The Bill also contains a provision allowing the Commissioner to reassess borrowers if the borrower has been made worse off because of this change. This should mean that no borrower is negatively affected.

#### **Allowing the Commissioner to withdraw short-process rulings**

The Commissioner of Inland Revenue will be able to issue short-process rulings for small-to-medium sized taxpayers from 1 October 2019. An oversight in the drafting of the legislation which was enacted on 18 March 2019 means that the Commissioner is unable to withdraw short-process rulings. The Bill proposes an amendment to correct this by providing the Commissioner with the ability to withdraw short-process rulings from the date of enactment.

An application provision has been included to enable the Commissioner to, from the date of enactment, withdraw short-process rulings that have been issued on or after 1 October 2019. The Commissioner will not be able to withdraw short-process rulings before the passing of the Bill.

Withdrawals will apply prospectively, meaning that if taxpayers have entered into an arrangement before the ruling is withdrawn the Commissioner is still bound by the ruling.

#### **Allowing taxpayers to rely on withdrawn binding rulings on matters not involving an arrangement for the duration of the ruling**

The Bill contains a provision that would allow taxpayers to rely on a withdrawn binding ruling on a matter that does not involve an arrangement for the duration indicated in the ruling. The application date of 18 March 2019 would make this retrospective. 18 March 2019 is the date from which the Commissioner has been able to issue binding rulings on matters not requiring an arrangement. This amendment will be beneficial to taxpayers who, as a result, would be able to continue to rely on the contents of a binding ruling on a matter not involving an arrangement for the period specified in the ruling.

#### **Remedial research and development tax credit changes**

There are a small number of cases where the legislation does not align with the policy intent. These remedial changes will apply from the 2019/20 income year. The identified issues will not have any practical impact until claims begin to be submitted for this income year, so there should not be any impact if these issues are corrected before 1 April 2020.

#### **Income attribution rules**

The income attribution rules changes are remedial in nature and intended to rectify issues with the legislation. These changes are proposed to apply from 1 April 2008. As

these changes align the law with practice the retrospectivity should not have any negative effects.

### **Tax treatment of non-residential international aircraft operators**

The Bill contains a proposal to correct an oversight in the wording of legislation that could limit reciprocal income tax exemptions to outbound non-resident international aircraft operators. The Bill contains amendments to extend this to inbound aircraft, which is consistent with operational practice. This will correct the legislation back to 1 April 1984, which is the application date of the original legislation.

### **Māori authority tax credits**

The Bill proposes that Māori authority tax credits can only be retrospectively attached to non-cash distributions, with application from 1 April 2008. This aligns with policy intent and departmental practice, and so should not have any impact on any taxpayers.

### **Consideration for grant of an easement**

The Bill proposes clarifying the legislation regarding consideration for the grant of an easement. This will apply retrospectively from 1 April 2015. Inland Revenue is not aware of any specific taxpayers who will be impacted by this change.

### **Employee share schemes**

The Bill contains three changes to the employee share scheme (ESS) rules, with an application date of 29 March 2018. This is the original application date of the ESS reform. The proposed changes are broadly favourable to taxpayers.

### **Availability of GST tax credits**

The Bill contains a minor amendment to the date that GST tax credits become available. This is slightly favourable to taxpayers and will align the legislation with Inland Revenue's systems. The application date is 1 April 2018, to align with the changes to the administration of GST tax credits.

### **Provisional tax**

The Bill includes a number of remedial amendments to align tax legislation with Inland Revenue's systems. This has arisen following the development and design of release three of Inland Revenue's business transformation programme. The changes will have no or a positive impact on taxpayers or are necessary to maintain the integrity of the tax system.

### **Thin capitalisation inbound de minimis**

The Bill contains a proposal to remove the inbound de minimis where the borrower has debt from a related party. It is proposed this provision would apply for income years beginning on or after 1 July 2018 which aligns the initial application of the de minimis to inbound thin capitalisation. This amendment is consistent with the intended policy outcome and the guidance released during and after the application of the original provision.