Departmental Disclosure Statement

Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) 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.

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.

25 August 2022.

Contents

Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following Acts:

- *Goods and Services Tax Act 1985*;
- *Income Tax Act 2007*;
- *Tax Administration Act 1994*;
- *Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022*;
- *Income Tax Act 2004*;
- *Companies Act 1993*; and
- *Insolvency Act 2006*.

Broadly, the policy proposals in this Bill fall into three categories. The first category sets the annual rates of income tax for the 2022–23 tax year.

The second of these categories contains proposals aimed at improving current settings within a broad-base, low-rate framework. This framework helps to ensure that taxes are fair and efficient and impede economic growth as little as possible. It also helps to keep compliance costs low and minimises opportunities for avoidance and evasion. The framework underpins the Government's revenue strategy and helps to maintain confidence that the tax system is fair, which is crucial in encouraging voluntary compliance.

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 these concerns.

The third category relates to proposals aimed at improving the settings for tax administration, the goods and services tax (GST) regime, KiwiSaver and social policy rules administered by Inland Revenue.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). It is a very open and interactive engagement process between the public and private sectors. This process helps to ensure that tax and social policy changes are well thought through. The GTPP is designed to ensure better, more effective policy development through the early consideration of all aspects, and likely impacts, of proposals. The GTPP increases opportunities for public consultation.

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 https://taxpolicy.ird.govt.nz/about-us/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 https://taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm-bill

Setting annual rates of income tax for the 2022–23 tax year

The Income Tax Act 2007 requires the rates of income tax to be set each year by an annual taxing Act. The Bill proposes that the annual rates of income tax for the 2022–23 tax year be set at the rates currently specified in schedule 1, part A of the Income Tax Act 2007.

Platform Economy

Implementing an information reporting and exchange framework developed by the Organisation for Economic Co-operation and Development on digital platforms

The Bill proposes to implement rules designed by the Organisation for Economic Co-operation and Development (OECD) that were developed in response to the rapid growth of the digital economy and calls for a global reporting framework in respect of activities being facilitated by digital platforms in the sharing and gig economy.

The rules were developed because activities facilitated by digital platforms may not always be visible to tax authorities or self-reported by taxpayers. The rules also recognise that the platform economy permits increased access to information by tax administrations globally, as it brings activities previously carried out in the informal cash economy onto digital platforms. The rules are supported by a range of multinational digital platforms that have been involved in their development.

The rules would require digital platform operators that are based in New Zealand to provide the Commissioner of Inland Revenue with information about people who earn income on that platform if the income is earned from providing accommodation, personal services, vehicle rentals, or the sale of goods. To the extent that the information relates to a non-resident taxpayer, the Commissioner is required to exchange this information with the non-resident taxpayer's tax authority, provided these rules have been implemented in that jurisdiction. The Commissioner of Inland Revenue would also receive information about New Zealand tax resident sellers on offshore digital platforms from other tax authorities where the OECD's rules are in force.

The information collected and exchanged could be used by Inland Revenue and other tax authorities to support persons who earn income through digital platforms in complying with their tax obligations.

To support the implementation of these rules, the Bill proposes new civil penalties that could apply to operators of digital platforms with reporting obligations in New Zealand and taxpayers who earn income on these digital platforms. The Bill also proposes that further changes made to the OECD rules in the future would automatically be incorporated and could be subject to exclusion by way of a proposed Order in Council process.

Collecting GST on accommodation and transportation services provided through electronic marketplaces

GST is a broad-based consumption tax that applies to most supplies of goods and services made in New Zealand by a registered person in the course or furtherance of their taxable activity. This keeps the GST system fair, simple, and efficient.

In 2016, New Zealand's GST rules were amended to require operators of electronic marketplaces to collect GST on cross-border services purchased by New Zealand-resident consumers. The rules for electronic marketplaces were subsequently extended in 2019 to apply to certain imported goods received in New Zealand. These rules have been successful in promoting the fairness, sustainability, and efficiency of the GST system.

The proposals in the Bill follow a report by the OECD on *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration*, and public consultation in New Zealand in a discussion document released by the Government in March 2022, *The role of digital platforms in the taxation of the gig and sharing economy*.

The Bill proposes to extend the electronic marketplace rules to taxable accommodation and certain transportation services provided in New Zealand from 1 April 2024. The effect of this extension is that operators of electronic marketplaces – whether based offshore or in New Zealand – would need to start collecting GST on these types of services where they are provided through an electronic marketplace. When provided through electronic marketplaces, the recipient of these services generally does not pay GST. This puts services supplied through electronic marketplaces at an advantage over substitutable services supplied through other means (such as traditional taxi rides or short-stay accommodation in hotels and motels). Consequential amendments are proposed to ensure that existing rules for operators of electronic marketplaces would apply to the new services subject to the electronic marketplace rules.

The Bill also proposes a flat-rate credit scheme that is intended to recognise that GST is unrecoverable on costs incurred in making supplies of the taxable accommodation and transportation services that would be subject to GST through electronic marketplaces by sellers who are not required to be registered for GST (because their supplies are below the registration threshold of $60,000 per 12-month period). It also contains amendments that would allow large commercial enterprises that provide accommodation services through electronic marketplaces to enter into agreements with the operators of those electronic marketplaces to opt out of the rules, which would ensure they remain responsible for collecting GST themselves.

Taxable accommodation and certain transportation services provided in New Zealand

The Bill proposes amendments to the Goods and Services Tax Act 1985 that would require operators of electronic marketplaces to collect GST on supplies of "listed services". These services include accommodation that is taxable in New Zealand (including short-stay accommodation) and certain transportation services (which are defined as "ride-sharing" and beverage and food delivery services). Other services that are closely connected with these services would also be subject to GST when provided through an electronic marketplace. Under the proposals in the Bill, listed services would always be subject to GST at 15% where the services are performed, provided, or received in New Zealand.

Flat-rate credit scheme

The Bill proposes that operators of electronic marketplaces would be required to take a deduction of the GST payable to Inland Revenue on supplies of accommodation and transportation services that are made through electronic marketplaces by persons who are not registered for GST. This deduction, which is proposed to be 8.5% of the value of the supply of the services, would then be required to be passed on by the operator of the electronic marketplace to the underlying supplier of the services where the underlying supplier of the services was not registered for GST.

This deduction recognises that the underlying supplier of the services, not being a GST-registered person, is not able to recover GST on the costs they incur in making supplies of taxable accommodation and transportation services through electronic marketplaces. It provides these underlying suppliers with a credit that recognises the otherwise unrecoverable GST on their costs.

The flat-rate credit scheme would be available to underlying suppliers who are not required to be registered for GST, or who choose not to be, if their supplies are below the $60,000 GST registration threshold. Suppliers of these services who are registered

for GST will continue to take deductions for the GST on their costs in making these supplies in the usual way.

Opt-out agreements for large commercial enterprises providing accommodation

The Bill proposes to enable large commercial enterprises that provide accommodation through electronic marketplaces (for example, hotels) to enter into written agreements with the operators of those electronic marketplaces that the large commercial enterprise, and not the operator of the electronic marketplace, will remain responsible for collecting and returning GST on accommodation they provide. This is intended to minimise compliance costs for large commercial enterprises that supply accommodation through electronic marketplaces by avoiding disruptive changes to their existing accounting systems and practices.

A large commercial accommodation enterprise would be a person that lists at least 2,000 nights of accommodation available on an electronic marketplace a year. The Bill also proposes that the Commissioner of Inland Revenue would be responsible for determining other circumstances where a person meets the criteria to be a "large commercial enterprise" for these purposes following a period of public consultation.

GST on fees charged to managed funds

The current GST rules for manager and investment manager services supplied to managed funds and retirement schemes are complex and have proven difficult to apply. This has led to inconsistent tax outcomes for managers and investment managers. The proposal in the Bill follows public consultation on potential policy options in an officials' issues paper released in February 2020.

The Bill proposes that services supplied by managers and investment managers to managed funds and retirement schemes would be subject to 15% GST. The proposed amendments include repealing the existing exemption for management services supplied to retirement schemes and would ensure consistent GST treatment for management services supplied to both managed funds and retirement schemes. To provide time for the industry to transition to the new rules, these amendments would apply from 1 April 2026. However, managers and investment managers that supply services to managed funds would be required to continue with their existing GST treatment until 1 April 2026, unless they choose to transition to the new rules before 1 April 2026.

GST treatment of legislative charges

The Bill proposes amendments to clarify the GST treatment of charges, including fees and levies, payable under New Zealand Acts and regulations ("legislative charges"). The proposed amendments are intended to address the current inconsistent approach to GST on legislative charges and are consistent with New Zealand's broad-based GST framework under which GST applies to a broad range of goods and services supplied in New Zealand.

The Bill proposes to amend the Goods and Services Tax Act 1985 to introduce a rule that would treat all legislative charges as consideration for a supply of goods and services. This is to remove the doubt that can exist in determining whether legislative charges are "in respect of, in response to, or for the inducement of" a supply of goods and services. The proposed approach also ensures that the other provisions of the Goods and Services Tax Act 1985 to determine whether a supply of goods and services is exempt or zero-rated would continue to apply.

The proposed rule for legislative charges also provides that charges in the nature of fines, penalties, interest, and general taxes are not treated as consideration for a

supply of goods and services as these types of charges are not generally for the supply of goods or services.

The Bill also proposes a schedule of non-taxable legislative charges that could be amended in the future to include a reference to specific charges, or classes of charges, that would not be subject to the proposed rule. The schedule would require legislation to be updated, and a temporary transitional regulation-making power is proposed that would enable the Governor-General to make Orders in Council on the recommendation of the Minister of Revenue to add specific, or classes of, charges to this proposed schedule until 30 June 2026. This is to recognise that there may be good tax policy reasons why GST should not apply to particular charges that have not been identified at the time of the introduction of the Bill.

The proposed amendments would take effect from 1 July 2023 for legislative charges that come into force after this date, and from 1 July 2026 for all other legislative charges. This three-year transitional period is intended to provide time for government agencies with administrative responsibility for legislative charges to make any necessary changes to their charges.

GST apportionment and adjustment rules

A GST-registered person can deduct GST paid on purchases of assets, such as buildings and vehicles, that they use in their business. Where the asset is used both for business and private purposes (or to make exempt supplies), then the GST-registered person must apportion the deduction by only claiming a deduction for the percentage of business use. The current GST apportionment and adjustment rules are complex and impose high compliance costs.

The Bill includes a proposed reform package that is designed to reduce compliance costs, improve fairness in tax outcomes between different types of ownership structures and arrangements, and better align the rules with current taxpayer practices.

The main elements of the proposed reform package are to:

- Allow GST-registered businesses to elect to treat certain assets that have mainly private or exempt use, such as dwellings, as if they only had private or exempt use.
- Introduce a simple principal purpose test for assets acquired for $10,000 or less. If these assets are principally acquired for business purposes, the GST-registered business would be able to claim a full GST input tax deduction, rather than applying the apportionment rules.
- Introduce new integrity measures to improve Inland Revenue's ability to collect GST owing on the sale of assets by a GST-registered business that claimed business use of the asset when they originally acquired the asset.
- Make various improvements to the current GST apportionment and adjustment rules to reduce compliance costs.

Cross-border workers reform

There are obligations on persons who make payments subject to pay-as-you-earn (PAYE) withholding tax, fringe benefit tax (FBT), employer's superannuation contribution tax (ESCT) or non-resident contractors' tax (NRCT). Concerns were raised with Inland Revenue that these rules are not sufficiently clear or flexible when applied to cross-border work arrangements.

This Bill proposes to modernise and clarify the application of those rules to employers and payers of cross-border workers. The overall policy package aims to reduce the

cost of compliance and to enable greater flexibility in the rules. A package of improvements is proposed that is intended to:

- Improve the flexibility of, and/or clarify, the PAYE, FBT, and ESCT rules. A broad framework is proposed to enable additional flexibility in the rules where they apply to identified cross-border workers. In particular, employers would be able to make a payment of underpaid tax within 60 days of the breach of an exemption or where the employee has received an extra pay.
- Support the integrity of the PAYE, FBT, and ESCT rules. The changes would make a safe harbour available to employers who wrongly assess their liability to discharge New Zealand employment-related tax obligations where the safe harbour conditions are met. The rules would also ensure that where the employer does not have a tax obligation and has made no other arrangements, the employee would be responsible for meeting the relevant obligations.
- Improve the flexibility of, and broaden, the NRCT rules. These changes would simplify the approach to the schedular payment withholding thresholds and introduce a 60-day grace period, similar to that proposed for PAYE, FBT, and ESCT. NRCT exemptions would be broadened, including permitting a 92-day retroactive period. Finally, the proposals would allow a non-resident contractor to nominate a New Zealand resident taxpayer to establish a good compliance history for exemption purposes.

Dual resident companies

The Bill proposes amendments relating to companies that are both tax resident in New Zealand and another jurisdiction ("dual resident companies"). The first series of amendments seek to resolve uncertainty created by Australia's recent changes to the application of its corporate residency tax rules, which may result in more New Zealand companies being tax resident in Australia. The proposed amendments would ensure affected New Zealand companies have uninterrupted access to New Zealand's loss grouping, consolidation and imputation credit regimes. The second series of amendments seek to resolve integrity issues with the application of the domestic dividend exemption and corporate migration rules to dual resident companies. The proposed amendments to the domestic dividend exemption and the corporate migration rules are targeted towards arrangements that have a tax integrity risk, while limiting potential overreach and compliance costs.

Granting nine charities overseas donee status

The Bill proposes nine New Zealand charities with overseas charitable purposes be granted overseas donee status and listed in schedule 32 of the Income Tax Act 2007. The status would mostly have effect from 1 April 2022, with a few exceptions where it proposes charities be granted an earlier application date in response to their fundraising for disaster relief in Tonga and the humanitarian crisis in Ukraine. The Bill also proposes to change the name of an already listed charity as the result of a restructure.

Fringe benefit tax exemption for public transport

The Bill proposes a fringe benefit tax exemption for public transport. The exemption would cover fares on bus, train, ferry, tram, or cable car services subsidised by an employer mainly for the purpose of their employee travelling between their home and place of work.

Build-to-rent exemption from interest limitation

The Bill proposes that build-to-rent (BTR) assets be exempt from the interest limitation rules in perpetuity. This would allow investors to continue to deduct interest on loans relating to BTR assets for as long as they meet the asset class definition. To qualify for the exemption, the Chief Executive of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development would have to be satisfied that the development meets the definition of BTR land. This exemption would ensure the interest limitation rules do not disincentivise investment in BTR developments so that such developments continue to contribute to quality rental supply in Aotearoa New Zealand.

Remedial amendments

A number of remedial matters are also addressed in the Bill. These include:

- Ensuring distribution networks consistently apply the component items approach for depreciation and repairs and maintenance;
- Providing that student loan scheme repayment obligations for salary and wage income cannot be altered after a period of four years;
- Clarifications and technical amendments to the rules for GST and taxable supply information;
- Allowing a refundable credit for a specific situation for petroleum miners that was unintentionally disallowed;
- Amendments to the interest limitation rules for residential property;
- Ensuring that the allocation of subdivided properties among the original co-owners of the undivided land is not a disposal for the land sales provisions;
- Amendments to the application of the foreign investment fund and controlled foreign company rules;
- Amendments to the foreign trust disclosure rules;
- Allowing multi-rate portfolio investment entities to choose to use Method C in Determination G27 to spread income and deductions from interest rate swaps if they meet the requirements for the method;
- Updating references and terms from the existing IFRS 4 accounting standard for general and life insurance contracts due to its replacement by the IFRS 17 accounting standard;
- Clarifying the income tax treatment of grants paid by public purpose Crown-controlled companies;
- Amendments to the financial arrangements rules;
- Applying the GST insolvency rules to voluntary administrations;
- Clarifying the provisional tax standard uplift method for calculation;
- Allowing a deceased person's tax return to include reportable income received up to 28 days after their date of death;
- Ensuring all impacted taxpayers have access to early payment discount and tax pooling;
- Clarifying the rules for non-active trusts and ensuring that smaller trusts and estates are not burdened with excessive compliance costs;
- Amendments to the GST rules for grants and subsidies paid to public authorities;
- Associating members of a joint venture with the joint venture for GST purposes;
- Allowing input tax deductions for goods and services not yet available for use in making taxable supplies; and
- Clarifications to the GST compulsory zero-rating of land rules.

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.

Detail of further remedial amendments is included in the Commentary to the Bill.

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
A commentary on the Bill is available at https://taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm-bill. The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill. In addition, the document listed in Appendix One is publicly available at the location indicated.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
OECD model reporting standards for digital platforms (Platform Economy) The exchange of information with other jurisdictions would primarily be conducted under the Multilateral Convention for Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). The OECD model reporting standards for digital platforms utilises the mechanism in Article 6 of the Multilateral Convention. New Zealand signed the Multilateral Convention in 2012, and it currently extends to 146 jurisdictions. Article 6 of the Multilateral Convention authorises automatic programmes of exchange of information at a high level, leaving the specific details of such exchanges to be set out in a subsidiary instrument. The subsidiary instrument developed by the OECD for the platform economy is the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms (the DPI MCAA). New Zealand has not yet signed the DPI MCAA.	

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?	YES
Multilateral Convention on Mutual Administrative Assistance in Tax Matters, National interest Analysis, Inland Revenue, August 2012 see http://taxpolicy.ird.govt.nz/tax-treaties/convention-mutual-administrative-assistance-tax-matters	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**

These regulatory impact assessments and statements were prepared and are available at https://taxpolicy.ird.govt.nz/publications/2022/2022-ris-perm-bill and https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments:

- Taxation of the gig and sharing economy: GST, Inland Revenue, 25 May 2022;
- Taxation of the gig and sharing economy: Information reporting and exchange, Inland Revenue, 25 May 2022;
- GST status of statutory and regulatory charges, Inland Revenue, 2 June 2022;
- GST on management services supplied to managed funds, Inland Revenue, 25 May 2022;
- GST apportionment and adjustment rules, Inland Revenue, 26 May 2022;
- Comparing options to support build-to-rent, Inland Revenue, 29 June 2022;
- Cross-border workers tax reform, Inland Revenue, 25 May 2022; and
- Fringe benefit tax exemption for public transport, Inland Revenue, 31 May 2022.

The remaining policy items in the Bill are exempt from the regulatory impact analysis 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 to improve legislative 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.

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**

The regulatory impact statements for this Bill did not meet the threshold for requiring an independent opinion on their quality from the Treasury's Regulatory Quality Team.

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**

No significant further impact analysis has become available for any aspects of the policy to be given effect by the Bill. Therefore, for the purposes of this statement, the answer is “No” as per the scope of this question explained in page 29 of *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013).

However, the commentary on the Bill, available at https://taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm-bill, contains analysis of the proposals included in the Bill. This may supplement existing published analysis, or, for proposals that did not require a regulatory impact assessments and statements, may provide impact analysis of the proposal.

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**

(a) The regulatory impact assessments and statements listed under 2.3 provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are subject to the regulatory impact analysis 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 of potential costs and benefits, as these items have been assessed as having no or a very minor impact on businesses, individuals, or organisations.

(b) This omnibus taxation 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 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 regulatory impact assessments and statements listed under 2.3 or, where appropriate, in the commentary on the Bill.

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 changes.

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**

The effectiveness of tax 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 regulatory impact assessments and statements listed under 2.3 or, where appropriate in the commentary on the Bill.

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 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.

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?
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 Generic Tax Policy Process (described in part one of this statement), there is a 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

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 available on the Ministry's website at https://justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights	

Offences, penalties and court jurisdictions

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

Platform Economy

The Bill proposes to introduce new penalties which may apply to operators of digital platforms and for sellers on those digital platforms, where they fail to comply with their obligations under the OECD model reporting standards for digital platforms. These are detailed further in Appendix two.

Foreign trust disclosure rules

One of the proposed amendments would create a new civil pecuniary penalty of up to $1,000 for failures to comply with the foreign trust disclosure rules.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES

The Ministry of Justice was consulted on the penalties proposed for operators of digital platforms in the gig and sharing economy and the proposed foreign trust disclosure penalty. They did not have any concerns with the proposals.

In addition, a copy of the Bill was provided to the Ministry of Justice for New Zealand Bill of Rights Act 1990 vetting on 11 July 2022.

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

Platform Economy

Changes are proposed to enable Inland Revenue to share information with overseas tax authorities about non-resident sellers' income earned on New Zealand tax resident digital platforms. This gives effect to the implementation of the OECD's Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy and the extended module that covers the sale of goods and vehicle rentals.

Foreign trust disclosure rules

There are a number of proposed remedial amendments to the foreign trust disclosure rules which have a minor impact on the collection and use of foreign trust information by the Commissioner of Inland Revenue.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

Platform Economy

The Office of the Privacy Commissioner was informed about the proposals and did not consider any further consultation with them necessary.

Foreign trust disclosure rules

The Privacy Commissioner made a submission on one of the foreign trust remedial items during the public consultation process in March 2021. The submission was taken into account by limiting the information required to be disclosed for final beneficiaries of a trust. The Office of the Privacy Commissioner confirmed they were satisfied with that amended proposal in March 2022.

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**
There has been extensive consultation on much of the policy to be given effect by this Bill, as per the Generic Tax Policy Process (described in part one of this statement). Refer to Appendix Two of this statement and the document listed in Appendix One for further information on the various parties consulted and the form in which consultation was undertaken for the policy items.	

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**
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 have required formal testing. The proposals in the Bill have been subject to the Generic Tax Policy Process, the purpose of which is to promote and improve the workability of proposals.	

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**
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

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**NO**
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 *Disclosure Statements for Government Legislation: Technical Guide for Departments* (June 2013).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**YES**
There are 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. There are some minor remedial items with retrospective application dates (the retrospectivity of which is 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 Three. More information on the retrospective application of these amendments can be found in the commentary on the Bill, which is available at https://taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm-bill	

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

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

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Platform Economy The Bill proposes a regulation-making power that would enable the Governor-General to make Orders in Council that provide for the effect of changes to the OECD model reporting standards for digital platforms in New Zealand. Further information on this power is included in Appendix three. **GST treatment of legislative charges** The Bill proposes a transitional regulation-making power that enables the Governor-General to make Orders in Council on the recommendation of the Minister of Revenue that would add charges to the proposed schedule of non-taxable legislative charges in the Goods and Services Tax Act 1985. This power would expire on 30 June 2026. Further information on this power is included in Appendix three.	

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

Appendix One: Further Information Relating to Part Two

Publicly available inquiry – question 2.1

Government Inquiry into Foreign Trust Disclosure Rules, 27 June 2016, available at https://treasury.govt.nz/publications/information-release/government-inquiry-foreign-trust-disclosure-rules

Appendix Two: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4(a)

Platform Economy

The OECD's model reporting standards for digital platforms require jurisdictions that implement the standards to introduce effective enforcement provisions to address non-compliance. This includes appropriate anti-avoidance rules, documentation retention requirements, auditing programmes, and sanctions to deal with identified non-compliance.

To ensure New Zealand's full compliance with these requirements, the Bill proposes a comprehensive suite of enforcement rules and penalties. These penalties are modelled on existing penalties in the Tax Administration Act 1994 that apply to account holders and financial institutions other another OECD information reporting and exchange framework (the Common Reporting Standard).

The Bill proposes that the following penalties could apply to platform operators:

- A civil penalty of $300 for each occasion in which the operator does not meet the requirements prescribed by the applicable OECD model reporting standards for digital platforms. The amount of this penalty is capped at $10,000 per calendar year.
- A civil penalty of $20,000 for each occasion in which the platform operator does not take reasonable care to meet requirements under the OECD model reporting standards for digital platforms. For subsequent failures, a further penalty of $40,000 is proposed. The maximum amount of penalty that could apply in respect of a calendar year is $100,000.

The Bill also proposes a civil penalty of $1,000 that may apply when a seller on a digital platform does not provide the platform operator with information about themselves that they are required to provide under the OECD model reporting standards for digital platforms.

External consultation – question 3.6

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

- The commentary on the Bill, available at https://taxpolicy.ird.govt.nz/publications/2022/2022-commentary-perm-bill
- Public consultation documents on specific measures contained in the Bill, which are available at https://taxpolicy.ird.govt.nz/publications/type/consultation-document
- Regulatory impact assessments and statements outlining consultation that was undertaken on the various measures contained in the Bill, available at https://taxpolicy.ird.govt.nz/publications/2022/2022-ris-perm-bill

Consulted parties

Government bodies

- Callaghan Innovation
- Department of Internal Affairs – Charity Services
- Financial Markets Authority
- Ministry of Business, Innovation and Employment

- Ministry of Foreign Affairs and Trade
- Ministry of Transport
- Office of the Privacy Commissioner
- Parliamentary Counsel Office
- Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
- The Treasury

Representative organisations

- Auckland District Law Society
- BusinessNZ
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- CPA Australia
- Electricity Networks Association
- Energy Resources Aotearoa
- Financial Services Council
- Insurance Council of New Zealand
- New Zealand Law Society
- Retirement Villages Association

Other parties, organisations, and entities

- Airbnb
- Amicorp New Zealand
- Asia Internet Coalition
- Auckland Transport
- Baker McKenzie
- Booking.com
- Cedar Pacific and McConnell Property
- Delivereasy
- Deloitte
- Dentons Kensington Swan
- Eastland Network
- Electra
- EY
- Fisher Funds
- Greater Wellington Strategy Group
- Implemented Investment Solutions
- KPMG
- Mayne Wetherell
- Trustees of the MISS
- New Zealand Super Fund
- Ockham Residential
- OMV
- Orion New Zealand
- Pathfinder and Alvarium
- PowerCo
- PowerNet
- Public Trust
- PwC
- The Salvation Army
- Spark
- Trade Me

- Trustee Corporations Association of New Zealand Inc
- Uber NZ
- UniSaver
- Vector

Appendix Three: Further Information Relating to Part Four

Retrospective amendments – question 4.3

Items below include application dates that would take effect before the enactment of the Bill.

GST treatment of legislative charges

The Bill proposes to prevent taxpayers and the Commissioner of Inland Revenue from amending GST assessments in a way that would be inconsistent with the proposed rules that ensure that GST applies to legislative charges that correspond with the supply of goods and services. This is considered necessary to prevent refund claims for GST paid on legislative charges where GST was appropriate (because the charges corresponded with the supply of goods and services) and to mitigate a potentially significant fiscal risk.

GST on fees charged to managed funds

The Bill proposes services supplied by managers and investment managers to managed funds and retirement schemes would be taxable supplies (15% GST), applying from 1 April 2026. Included in these amendments is a transitional rule that requires managers and investment managers to consistently apply their interpretation of the current rules in taxable periods beginning on or after 1 April 2018 to 1 April 2026, unless they choose to transition to the new rules prior to 1 April 2026. The proposed transitional rule is taxpayer favourable as it would provide certainty to managers and investment managers until the new rules become compulsory on 1 April 2026.

GST apportionment and adjustment rules

The Bill would allow GST-registered businesses to elect to treat certain assets, with mainly private or exempt use, as if they only had private or exempt use. The Bill proposes that this election could be applied on a retrospective basis from 1 April 2011 to qualifying assets which were purchased and sold prior to the Bill being enacted, as this would align with the historical GST positions taken on the qualifying assets (which ensures these businesses do not incur additional GST and compliance costs). Submissions on the issues paper supported this proposed election applying retrospectively.

A clarification to a definition used in a wash-up calculation would apply from 30 June 2014 (the date the calculation was originally enacted) to ensure it provides the same, correct result for registered persons who acquired a zero-rated supply as it does for registered persons who acquired standard-rated supplies.

Dual resident companies

The Bill proposes amendments to the loss grouping, consolidation and imputation credit rules to resolve eligibility issues brought about by changes to Australia's corporate residency rules. These amendments would apply from 15 March 2017, to ensure New Zealand companies affected have uninterrupted access to these beneficial regimes.

The Bill seeks to resolve issues with the domestic dividend exemption and corporate migration rules to minimise the opportunity for untaxed income to be paid offshore through a dual resident company. Because of the potential risk of publicising the integrity issues before the amendments come into force, the proposed amendments would apply from the date of introduction of the Bill.

Build-to-rent exemption from interest limitation

The Bill proposes to exempt build-to-rent assets from the interest limitation rules from 1 October 2021 to align with the introduction of the limitation rules. This retrospective application is taxpayer friendly as it allows taxpayers to continue to deduct interest expenses relating to build-to-rent assets.

Distribution networks

The Bill proposes requiring distribution networks who have applied the component items approach to do so from 1 April 2008 to align with the start of the Income Tax Act 2007. This treatment would validate the treatment these distribution networks have already applied.

Petroleum decommissioning

The Bill proposes allowing a refundable credit to petroleum miners in a specific situation where it was unintentionally disallowed. This would apply from 30 March 2022 to align with the application date of the amendment that created this disallowance.

Updating references to insurance accounting standard

The Bill proposes amendments to update existing references to IFRS 4 and components of IFRS 4 in the Income Tax Act 2007 to IFRS 17 for income years commencing on or after 1 January 2023 to align with the introduction of IFRS 17.

OECD transfer pricing guidelines

The Bill proposes to update the definition of “OECD transfer pricing guidelines” with retrospective effect to 20 January 2022, when the relevant guidelines were published. However, a savings provision for the 2022–23 and earlier income years is proposed to ensure that taxpayers have sufficient time to familiarise themselves with the new guidelines.

Income tax treatment of grants paid by public purpose Crown-controlled companies

These changes would apply from 18 March 2019 to align with the introduction of the tax exemption for public purpose Crown-controlled companies. The changes are taxpayer friendly.

Financial arrangements – impaired credit adjustments

This change would apply from 1 April 2007 and would clarify an unintended outcome. The change is taxpayer friendly; it would align the legislation with existing practice and would legitimise tax positions taken by taxpayers.

R&D Tax Incentive notification of changes in activities

The Bill proposes removing a notification requirement in the R&D Tax Incentive regime from the 2020–21 income year, which would flow through to approvals covering the 2021–22 income year. Therefore, application from the 2020–21 income year ensures that tax credits can be paid out for the 2021–22 income year even if businesses have not made the requisite notification for the latter year.

Meaning of highly effective hedging

The Bill proposes to clarify the meaning of highly effective hedging for non-ordinary shares. This would apply from 26 June 2019 to align with the introduction of IFRS 9 and is consistent with the pre-IFRS 9 approach that taxpayers have continued to apply.

Input tax deduction for goods and services not yet ‘available for use’

This proposed amendment would apply retrospectively from 1 April 2011. A retrospective application date is necessary to align the law with existing practices taken by taxpayers, which are consistent with established GST policy principles.

Early payment discount and tax pooling

This proposal would bring forward amendments made in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022. Those amendments were introduced to ensure taxpayers received the same treatment through Inland Revenue’s transition to new tax software. The original change applies from the 2019–20 income year, and the amendment in this Bill proposes it apply from 2017–18 income year to ensure the benefit is available to all taxpayers impacted.

Associating members of an unincorporated joint venture with the joint venture

This proposed amendment would apply to tax positions taken on or after the date of introduction of this Bill. This application date is necessary to prevent a fiscal risk that could arise from the proposed amendment highlighting that members and joint ventures are not currently associated with each other for GST purposes.

Provisional tax standard uplift method for calculation

The proposed amendment corrects a drafting error in the rewrite of the Income Tax Act 2007. It is proposed that the change be backdated to the 2017–18 income year as the change clarifies existing operational practice. Because this clarifies existing operational practice it would not affect any taxpayers.

Trust disclosure rules

The proposed amendment corrects and unintended overreach in the new trust disclosure rules. It is proposed this amendment be backdated to the year the new trust disclosure rules applied to ensure that smaller trusts do not have to incur expenses complying with the rules. This amendment is taxpayer friendly.

Housing

The majority of the housing remedials relate to the recent introduction of the interest limitation rules for residential property from 1 October 2021, or to the bright-line test for residential land, which was extended from five to ten years for residential land acquired on or after 27 March 2021. The proposed remedial amendments in this Bill relating to those regimes would generally be retrospective to those dates but are taxpayer friendly.

The proposed amendment to section 177C of the Tax Administration Act 1994 would apply prospectively in relation to tax debts written off on or after 1 April 2023 but could impact ring-fenced residential rental losses accrued since 2019–20. This element of retrospectivity is necessary to ensure that all taxpayers who have debts written off on a certain date are subject to the same rules.

One further remedial amendment relating to the allocation of subdivided properties among the co-owners of the original undivided land is also retrospective to 27 March 2021. This proposed amendment is also retrospective on the basis it is taxpayer friendly.

Look-through companies

One amendment to the look-through company rules would have retrospective effect from 1 April 2011 on the basis that it clarifies the existing legislation with no expected impact on taxpayers. The provision would clarify that when a company elects to become a look-through company, the look-through company has the same acquisition date for its assets as the superseded company.

Foreign investment fund rules

The Bill proposes that certain amendments to the foreign investment fund (FIF) rules apply retrospectively from 1 July 2014. This is necessary to bring in consequential amendments to allow the fair dividend rate method to be applied to Australian unit trusts that became subject to the FIF rules from 1 July 2014. This amendment is taxpayer friendly and would affect a small number of taxpayers.

Foreign trust disclosure rules

One of the proposed amendments, which allows a will to be treated as a trust deed for the purposes of the foreign trust disclosure rules, has retrospective effect. This proposed amendment is taxpayer friendly.

Powers to make delegated legislation- question 4.8

OECD's model reporting standards for digital platforms

The Bill proposes to implement an information reporting and exchange framework developed by the OECD in relation to sellers on digital platforms. The Bill also includes a regulation-making power that would enable the Governor-General to make Orders in Council that provide for the effect of any subsequent changes made by the OECD to these standards.

The proposed regulation-making power is based on an existing regulation-making power in the Tax Administration Act 1994 that applies in the context of changes to the Common Reporting Standard which is another OECD information reporting and exchange framework.

Changes to the OECD's model reporting standards for digital platforms would not have retrospective effect on reporting platform operators that are required to provide Inland Revenue with information about sellers on their platform.

GST treatment of legislative charges

The Bill proposes to introduce a transitional regulation-making power that would enable the Governor-General, on the recommendation of the Minister of Revenue, to add specific charges (or a class of charges) to the proposed schedule of non-taxable legislative charges.

This transitional regulation-making power was considered desirable to facilitate an orderly transition to the proposed new rules, which would ensure GST applied consistently to all legislative charges in New Zealand's Acts and regulations (except those that resembled fines, penalties, interest, and taxes themselves). It is possible that legislative charges are identified during the transitional period (which ends on 30 June 2026) where there may be good tax policy reasons why they should not be subject to the legislative charges rule.

The Bill proposes that this transitional regulation making power would expire on 30 June 2026.