

# Revised Departmental Disclosure Statement

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Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill
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A revised departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill, dated 25 June 2018, can be found at <http://disclosure.legislation.govt.nz/bill/government/2018/72>.

A revised disclosure statement was prepared by Inland Revenue on 14 August 2018 and can be found at <http://disclosure.legislation.govt.nz/sop/government/2018/>.

This updated revised disclosure statement was prepared by Inland Revenue on 9 October 2018 and can be found at <http://disclosure.legislation.govt.nz/sop/government/2018/>.

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.

9 October 2018

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## The Main Areas of Change to the Original Disclosures

This is a revised disclosure statement for the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill.

A revised disclosure statement incorporates the content of the original disclosure statement for the Bill, but also includes and highlights the changes needing to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The amendments made to the disclosure statement will be highlighted by the use of underlined text (to represent new material) and strikethrough text (to represent any deleted material).

The main areas of change to the original disclosure statement include comment on:

- Clarification of the GST treatment on non-profit bodies for non-income earning assets, with effect from 15 May 2018 including a proposed transitional opt-out option for assets on hand at 15 May 2018 that may reduce the GST payable under the main rule.
- Extension of depreciation roll-over relief provisions for Canterbury earthquakes for a further five years, to the end of the 2023-24 income year.
- Addressing a technical flaw in legislation recently enacted in the Taxation (Neutralising Base Erosion and Profit Shifting) Act, to ensure the legislation meets its policy intent.

The additional changes to the updated revised disclosure statement include comment on:

- Amendments that entitle new investors to claim tax deductions for high quality yearling bloodstock acquired with an intention to breed for profit in the future.

## Part One: General Policy Statement

This taxation omnibus Bill introduces amendments to the following enactments—

- Income Tax Act 2007
- Tax Administration Act 1994
- Income Tax Act 2007
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Child Support Act 1991
- Student Loan Scheme Act 2011
- Taxation (Annual Rates for 2017–18, Employment and Investment Income and Remedial Matters) Act 2018
- Families Package (Income Tax and Benefits) Act 2017
- Income Tax Act 2004
- Accident Compensation Act 2001
- Intelligence and Security Act 2017
- Financial Advisers Act 2008
- Financial Service Providers (Registration and Dispute Resolution) Act 2008
- Income Tax Act 1994
- Taxation Review Authorities Act 1994
- Taxation Review Authorities Regulations 1998
- Tax Administration (Binding Rulings) Regulations 1999.

Broadly, the policy proposals in this Bill fall into 3 categories. The first category sets the annual rates of income tax for the 2018–19 tax year.

The second of these categories relates to proposals aimed at modernising and improving the legislative settings for the administration of the tax system 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 individuals' income tax, modernise aspects of the Tax Administration Act 1994, such as the care and management provisions and the information collection and disclosure provisions. Amendments to methods of error correction of PAYE information in the context of payday reporting, and a number of minor measures relating to provisional tax and the payment allocation rules, are also included.

The third category comprises proposals aimed at improving current tax settings within a broad-base, low rate framework. Under the 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.

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 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 policy measures contained in this Bill. A comprehensive explanation of all the policy items will be provided in a commentary on the Bill that will be available shortly after this Bill is introduced, at <http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview>.

### **Confirmation of annual rates of income tax for the 2018–19 tax year**

The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act. The Bill sets the annual rates of income tax for the 2018–19 tax year at the same rates that apply for the 2017–18 tax year.

### **Better administration of individuals' income tax**

The Bill proposes to reform the administration of individuals' income tax, in particular the way in which individuals are required to report their income for a tax year. The new rules are part of the Government's plans to modernise the revenue system through business process and technology change. They simplify individuals' year-end income tax obligations, remove unnecessary compliance costs for individuals and ensure that rates of withholding and tax codes that are applied to individuals' income during the year are more appropriate.

#### **Proactive actions**

The new rules would enable Inland Revenue to use the income information received during the year to proactively help people to move to appropriate tax rates. By recommending more appropriate tax rates during the year Inland Revenue would help people to receive the right amount of income when they need it and would help to reduce the size of tax refunds or amount of tax payable by individuals at the end of the year.

#### **Tailored tax codes**

Inland Revenue would make it easier for individuals to apply for tailored tax codes that suit their income earning circumstances, and would provide an online process for

applications. Also Inland Revenue would monitor changes in a person's earnings to identify where they may be using an incorrect or less appropriate tax rate, so identifying where they might benefit from the use of a tailored tax code or a secondary tax rate. The Bill proposes that Inland Revenue would contact the individuals who could benefit from using a tailored tax code and recommend that they change their tax rate.

### **Year-end income tax filing obligations for individuals**

The Bill proposes that individuals who earn only income that must be reported to Inland Revenue by third parties during or shortly after the end of the income tax year (*reportable income*) would not have an obligation to provide information about that income to Inland Revenue.

An individual earning up to \$200 of income other than reportable income in a tax year would not be required to provide that information to Inland Revenue.

Those individuals who derive more than \$200 of non-reportable income, are non-resident, have tax losses, are subject to the financial arrangements rules, or pay provisional tax, would still need to provide income information to Inland Revenue.

### **Refunds of tax and amounts of tax to pay**

Inland Revenue would calculate whether people who are not required to provide income information are entitled to a refund or had tax to pay. If they have a tax refund, it will automatically be paid out to them and Inland Revenue will contact them if they have tax to pay (subject to the de minimis rules discussed below).

If tax on an individual's income has been withheld at an appropriate withholding tax rate or tax code, they will not be required to pay additional tax on any income that has been under-taxed.

The Bill also proposes that if amounts of tax to pay arise in relation to income that is subject to withholding rules when less than \$200 of income is not taxed correctly, those amounts of tax would not have to be paid.

All individuals' income tax refunds would be paid out by direct credit unless refunding by direct credit would result in undue hardship or was not practicable.

### **The administration of donations tax credits**

The Bill proposes that donation receipts could be submitted electronically during the year and the donations tax credits could be claimed as part of the year-end income tax process. When donation receipts have been submitted electronically during the year, they would be taken into account without requiring a separate claim form to be completed. However, people would be able to continue to complete a separate donation tax credit claim form should they wish to.

### **Modernising core aspects of the Tax Administration Act 1994**

The Bill proposes to modernise key aspects of the Tax Administration Act 1994. These aspects form part of the modernisation of the tax system being implemented by Inland Revenue's business transformation programme to modernise the revenue system through business process and technology change. They cover 4 areas: information collection, use, and disclosure; helping taxpayers get it right from the start; the role of tax intermediaries; and the role of the Commissioner.

## **Information collection, use, and disclosure**

Two amendments are proposed to the information collection, use, and disclosure rules—

- introducing a regulation-making power to govern the repeat collection of large third-party datasets, providing a more efficient and transparent process for this type of collection, as distinct from the ad hoc collection of such information using existing powers:
- clarifying explicitly in the legislation that information collected for 1 Inland Revenue purpose can be used for the department's other functions.

The Bill also proposes the rewriting of the information collection provisions to modernise the rules and to improve the navigability of these provisions.

The modernisation of the rules regarding the confidentiality of Inland Revenue's information is intended to make them clearer, more cohesive, and better aligned with the underlying rationale of protecting taxpayer information. It also proposes 2 amendments to the way Inland Revenue shares information, specifically—

- providing more flexibility for Inland Revenue to share information within a regulatory framework, building on existing legislative provisions:
- allowing Inland Revenue to enter into agreements to share information with other agencies without the need for regulation where customer consent for sharing is obtained.

Other minor amendments are also proposed allowing Inland Revenue to disclose information to ensure taxpayer compliance with the Anti-Money Laundering and Countering Financing Terrorism Act 2009 and the Customs and Excise Act 2018. This information sharing is authorised under existing legislation and these amendments insert parallel authorisations into the Tax Administration Act 1994.

## **Rulings and amending assessments**

The Bill proposes changes to the binding rulings regime to provide earlier certainty and thus reduce compliance and administrative costs for a greater number of business taxpayers. Currently, rulings are in practice only available to large taxpayers due to their cost, and there are issues which cannot be ruled on. Changes are proposed to expand access to binding rulings—

- creating a simplified process for small and medium-sized taxpayers to obtain a binding ruling at a reduced cost compared with the current process:
- extending the scope of the regime so that rulings can be provided on a broader range of issues.

To align the error-correction process with taxpayers' processes it is proposed to increase the current \$1,000 threshold for taxpayers to include an error in a subsequent return (rather than having to reopen the original assessment). The new threshold would be where the error is equal or less than both \$10,000 and 2% of the taxpayer's taxable income or GST output tax liability.

## **Third party providers and intermediaries**

The Bill proposes amendments that will clarify Inland Revenue's ability to provide more services to tax preparers who are not tax agents (such as intermediaries who prepare PAYE and GST returns for other taxpayers) while safeguarding the integrity of the tax

system. An example of such a service is being able to order a report on a clients' filing performance online.

The Bill also proposes to provide the Commissioner of Inland Revenue would have a discretion to refuse to recognise a person acting on behalf of another for a fee as a nominated person. This refusal would occur if the person has been removed from the list of tax agents for tax integrity reasons, or if allowing them to act for others would otherwise adversely impact on the integrity of the tax system.

### **The Commissioner of Inland Revenue's care and management role**

The Bill proposes amendments to introduce a more flexible approach to dealing with situations when the legislation does not align with the intended policy (that is, when there is a legislative anomaly).

The Commissioner's care and management role would be extended by having more tools for addressing gaps or inconsistencies in the legislation that do not reflect the clear policy intent of a provision. These are—

- an Order in Council on the recommendation of the Minister of Revenue:
- a binding determination of the Commissioner of the treatment to be applied:
- an administrative action of the Commissioner either notifying a class of persons of a proposed treatment, an exemption for a class of persons to remove a compliance burden or a declaration of the validity of an established administrative practice.

The application period of the regulation, determination, or administrative action would be limited to 3 years, and their application would be optional for taxpayers.

### **PAYE error correction rules**

Amendments to the Income Tax Act 2007 are proposed to clarify 2 issues relating to error correction in the context of payday reporting of employment income information. The amendments provide that—

- PAYE-related overpayments that are not repaid remain taxable as PAYE income:
- fringe benefit tax (FBT) on an interest-free loan does not arise where an employer allows an employee time to repay an overpayment.

### **Mid-year entry to the accounting income method**

Currently, taxpayers who are eligible to use the accounting income method (AIM) to pay provisional tax may only commence using AIM prior to the first AIM instalment for the tax year of that taxpayer. For existing businesses, this rule means that they can join only at the beginning of the income year. The Bill proposes to allow taxpayers who are eligible to use AIM to switch from another provisional tax method (excluding the estimation method) to AIM during the income year, as long as all their payments under the other method have been made.

### **Amending the payment allocation rules**

At present, payments received from taxpayers are allocated to use of money interest before being allocated to core tax debt. Inland Revenue has moved to multiple billing items within a period, as part of the transition to Inland Revenue's new START system. The current payment allocation rule can create some issues where there are multiple bill



items within a period and, as such, an amendment to that rule is proposed to accommodate the change. The proposal continues to have a general rule of use of money interest first, but allows some flexibility to apply payments to core tax on older debt before use of money interest on newer debt within a taxable period.

### **Correction of unintended change in the provisional tax use of money interest rules**

In 2007, amendments were made to align the payment dates for GST and income tax. At that time, a change was made to the wording in the use of money interest rules which made an unintended change to the way in which interest was charged to certain taxpayers. These taxpayers, because of certain circumstances, were required to make only 1 or 2 provisional tax payments rather than the usual 3 payments. The unintended change meant that arguably those taxpayers should be charged use of money interest only from the date of those instalments rather than over the standard 3 instalments. The Bill proposes to restore the correct policy position for those taxpayers from the date of the unintended change with a savings provision for a person who has previously challenged that position and received a cancellation of use of money interest.

### **KiwiSaver enhancements**

Based on recommendations made in the Retirement Commissioner's December 2016 review of retirement income policies, the Bill proposes to amend the KiwiSaver Act 2006 to improve the effectiveness of KiwiSaver in helping New Zealanders save for their retirement. The proposed amendments—

- introduce additional KiwiSaver employee contribution rate options of 6% and 10%:
- reduce the maximum contributions holiday period from 5 years to 1 year:
- change the name of the *contributions holiday* to *savings suspension*:
- allow over 65 year olds to opt-in to KiwiSaver:
- remove the 5 year lock in period (which currently affects members who join KiwiSaver between the ages of 60 and 65 years old).

### **Tax status of public purpose Crown-controlled companies and public authorities**

The Bill proposes to give certain Crown-controlled companies listed in schedule 4A of the Public Finance Act 1989 their own income tax exemption, and a goods and services (GST) provision comparable to that of public authorities to help ensure that they can claim back GST input credits.

The qualifying *public purpose Crown-controlled companies* will be listed in a new schedule to the Income Tax Act 2007, and an Order in Council mechanism is inserted into the Act to facilitate amendments to this schedule.

The Bill also proposes to extend the definitions of *public authority* in the Income Tax Act 2007 and Goods and Service Act 1985 by specifically including a number of additional Crown/Parliamentary entities.

## Schedule 32 overseas donee status

The Bill proposes to amend the Income Tax Act 2007 by adding 13 charities to the list of donee organisations in schedule 32. New Zealand charities that support activities overseas must be listed in schedule 32 in order for their donors to be eligible for tax benefits (in particular, the donations tax credit). The new additions to schedule 32 are—

- Books for Cambodia Trust
- Children of the Light
- Effective Altruism NZ Charitable Trust
- Flame Cambodia
- Forgotten Sherpas of Nepal
- Global Development Group Limited
- Good Trust
- INF Humanitarian Aid Trust
- NVADER
- Nyingje Trust
- Rwenzori Special Needs Foundation (NZ)
- St Columban's Mission Society Trust Board
- Talkingtech Foundation Trust.

## Fringe benefit tax: market interest rate for employment related loans

Banks and other employers in the business of lending money are required to pay FBT if they provide a loan to an employee at a rate below the market interest rate. However, the legislative definition of the *market interest rate* is out-dated and no longer reflects the lending practices of banks and other money lenders. This approach can result in the over-taxation of loans made by banks and other money lenders to their employees. To address this problem, the Bill proposes to add a new definition of *market interest rate* to the Income Tax Act 2007. Under this new definition, the market rate for a given employee and loan type will be the lowest rate given around the same time in the ordinary course of business to a customer with a similar profile to the employee.

## Corporate securitisations

A securitisation is a funding mechanism that involves a special purpose vehicle (SPV) issuing securities that are backed by the expected cash flows from specific assets. Securitisations can have a number of commercial benefits compared with other funding mechanisms, including providing access to a lower cost of financing.

An important commercial objective of a securitisation is maintaining tax neutrality while ensuring the vehicle is bankruptcy-remote. The current tax rules may not achieve tax neutrality, so may discourage securitisations. The securitisation rules for financial institutions in the Income Tax Act 2007 were introduced as a result of the Reserve Bank's response to the global financial crisis. The rules ensure there are no tax consequences arising from the securitisation transactions between the financial institution and the SPV.

This Bill extends the current securitisation rules beyond financial institutions to other corporate securitisations, with appropriate modifications.

## **Land tainting and Housing New Zealand Corporation**

The land-tainting rules impose tax on certain disposals of land by an associate of a person who deals in, develops, subdivides, or improves land. The rules were introduced to prevent the land sale rules from being undermined, but are leading to an incorrect policy result for the Housing New Zealand Group (HNZ) by imposing tax on sales that are not a policy concern, impeding HNZ's ability to implement the Government's building programme, as well as distorting the decision-making of the group and imposing excessive compliance costs. The Bill proposes an exclusion from the land tainting rules for HNZ.

## **Bank account requirement for IRD numbers: change of application date**

Amendments were made by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 giving the Commissioner a discretion to issue IRD numbers to offshore persons without New Zealand bank accounts if satisfied with their identity and background. This amendment was primarily made to assist taxpayers with meeting their New Zealand tax obligations. The Bill proposes to change the application date of this amendment to 15 October 2015, the date of the original requirement that offshore persons need to provide the Commissioner with their New Zealand bank accounts to obtain an IRD number.

## **Noise mitigation expenditure**

The Bill proposes to amend the Income Tax Act 2007 to ensure that businesses incurring expenditure to mitigate noise can deduct such expenditure under the relevant pollution remediation provisions. The amendment applies to expenditure incurred for the 2018–19 and later income years.

## **Repeal of the adverse event scheme**

The Bill proposes the repeal of the adverse event scheme, which is, in practice, not used much, because a different scheme, the main income equalisation scheme, offers more flexibility. The Bill proposes the transfer of existing balances in the adverse event scheme to the main income equalisation scheme.

## **Wind-up of a listed PIE**

A transitional provision allows a company to become a listed PIE before they become listed on a recognised exchange on the expectation they will eventually do so. The Bill proposes a remedial amendment introducing an equivalent transitional provision for a listed PIE that delists as part of the wind-up process so that the PIE rules will continue to apply to distributions after de-listing as part of the wind-up.

## **Notional single person concession for public unit trusts**

An existing concession for public unit trusts allows them to choose to be treated as owned by a notional single person. This option is equivalent to the same concession for widely-held companies and allows an entity partly or wholly-owned by a public unit trust to calculate their shareholder continuity more efficiently. However, the concession applies only when the public unit trust chooses to apply it and some may not have done so (for example, when they are non-resident and have no New Zealand tax liability). The Bill proposes a remedial amendment to allow an entity partially- or wholly-owned by a

public unit trust to treat the public unit trust as being owned by a notional single person, even where the public unit trust has not chosen to do so.

### **Schedule 29: Northland Regional Council**

The Bill proposes adding Northland Regional Council to schedule 29 of the Income Tax Act 2007 to allow it to hold more than 20% of a PIE and for the minimum 20 investor requirement to not apply on the basis Northland Regional Council is acting on behalf of ratepayers and is effectively widely-held.

### **Remedial amendments following the recently enacted Families Package**

The Bill proposes 3 amendments that arose during the design implementation of the Families Package.

#### **Working for Families abatement rates and thresholds**

The Families Package made changes to the Working for Families tax credit from 1 July 2018. As the changes are made part way through the tax year, the legislation sets out an average abatement rate, threshold, and family tax credit rates for that year. The Bill proposes that instead of average annual rates, the actual income earned before 1 July be squared up using the old abatement rate and threshold and the income earned from 1 July be squared up using the new rate and threshold.

#### **Interaction between Best Start and paid parental leave**

The Families Package legislation includes the introduction of the new Best Start tax credit. It was intended that a person could receive paid parental leave and once it ceases to be payable, Best Start payments can be made for the rest of the eligible period. The Bill proposes that the legislation be amended to clarify this policy intent.

#### **Parental tax credit clarification**

The Families Package legislation repeals the parental tax credit for children born on or after 1 July 2018, but is still available for children born before that date. The Bill proposes a minor retrospective technical amendment to enable the parental tax credit to be paid on a pro-rata basis to qualifying persons to reinstate the original policy intent.

### **GST on assets sold by non-profit bodies**

The Bill clarifies the GST treatment on non-profit bodies for non-income earning assets, with effect from 15 May 2018. The Bill also proposes a transitional opt-out option for assets on hand at 15 May 2018 that may reduce the GST payable under the main rule.

These changes will ensure that non-profit bodies are required to return GST on supplies of goods and services if they have received GST deductions in respect of those goods and services.

### **GST remedial amendments**

The Bill proposes a number of remedial amendments to the Goods and Services Tax Act 1985. These amendments are primarily intended to correct a number of cross-referencing errors or improve the drafting of a number of sections. One amendment proposes to remove the requirement for registered persons to notify the Commissioner

of a change in their company constitution as it is of little relevance to the Commissioner and few companies comply.

### **Financial arrangement rules: treatment of foreign currency agreements for the supply of goods and services**

Amendments are proposed for a foreign exchange denominated agreement for the sale and purchase of goods and services (ASAP) with a contingent amount (an amount payable or receivable depending on a future event, for example, future performance). Accounting practice treats adjustments to these as being on revenue account in the financial arrangement rules. As a result, contingent payments are automatically treated as *interest* under the Income Tax Act 2007 (and assessable or deductible). This outcome is inconsistent with the policy intent and the amendment ensures that these adjustments have regard to the underlying transaction. The Bill proposes that a savings provision is given for this amendment.

### **Resettlements by foreign trusts with at least 1 resident trustee**

The Bill would correct unintended outcomes for resettlements by trustees of a trust that has no settlor resident in New Zealand at the time of resettlement. This amendment is intended to ensure that income derived from that resettled property is taxed only if it is derived from New Zealand (providing the settlor of the new trust remains non-resident), beneficiaries are not exposed to a 45% tax rate on distributions, the resettled trust is able to register under the foreign trust disclosure rules, and the resettlement is fully counted as corpus of the new trust. The Bill also clarifies the relationship between the trust rules for foreign trusts and the rules that treat resettlements of trust property as a sale and purchase of the property at market value.

### **Binding rulings on tax record-keeping requirements**

The Bill proposes to provide the Commissioner with a general power to issue a binding ruling on the record-keeping requirements under a tax law. At present, this power exists only for GST record-keeping.

### **Technical amendments to the trust rules**

Technical amendments are proposed to the trust rules to ensure internal consistency in the Income Tax Act 2007 in relation to the test for tax residence, transitional residence, and certain trustee administrative elections, to correct some minor unintended changes arising from the rewrite of the trust rules, to correct some cross-references, and to improve relationships of some trust provisions with other parts of that Act. The proposals arise from an administrative review of the income tax treatment of trusts and respond to stakeholder feedback on the review.

### **Remedial changes to the tax rules regarding not-for-profit entities**

The Bill contains a number of remedial changes to address unintended gaps in the current law governing the tax treatment of not-for-profit entities. These proposed changes are intended to ensure greater transparency from entities that receive not-for-profit tax treatment, and improve the overall integrity and coherency of the rules. Changes are proposed to ensure—

- the charitable business income tax exemption applies only to charities registered under the Charities Act 2005:

- organisations seeking donee status must obtain donee status approval by the Commissioner of Inland Revenue:
- organisations with charitable purposes must be registered charities in order to obtain donee status:
- refinements are made to the tax rules for deregistered charities:
- relevant penalty, interest, and avoidance provisions apply to donation tax credits:
- the deemed disposal provision for depreciation recovery income applies when a taxable entity becomes a registered charity:
- the disclosure requirements which apply to foreign trusts also apply to foreign trusts that are registered charities.

### Calculation of average tax rate for an extra pay

A retrospective amendment to the beginning of the 2008–09 income year is proposed to correct an unintended change in the amounts taken into account in calculating the PAYE payable on an extra pay (that is, an amount paid over and above normal regular wages).

### Pre-consolidation imputation credits for consolidated groups of companies

Amendments were made in section 174 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 to the way in which pre-consolidation imputation credits can be transferred from an individual company's imputation credit account to the consolidated group's account. The Bill proposes that a savings provision is given for this amendment.

### Extending Canterbury earthquake roll-over relief

The Bill proposes changes to extend the depreciation roll-over relief provisions for Canterbury earthquakes for a further five years, to the end of the 2023–24 income year.

### Bloodstock initiative

The Bill proposes changes to the tax treatment of investment in high quality yearlings acquired with an intention to breed for profit in the future. The amendments entitle new investors to claim tax deductions, as if they had a bloodstock breeding business, where they notify the Commissioner of Inland Revenue of their intention to breed from the horse for profit in the future and provide certain information supporting their intention. The amendments apply from 1 January 2019.

### Remedial amendments

A number of remedial matters are addressed in the Bill. In addition to correcting minor faults of expression, reader's aids, and incorrect cross-references, the following specific issues are dealt with by—

- amending a technical flaw in legislation recently enacted in the Taxation (Neutralising Base Erosion and Profit Shifting) Act, in relation to the disregarded hybrid payment rule, to ensure the legislation meets its policy intent;
- amending the residential and main home exclusions under the rules that tax sales of land, to ensure those exclusions work as intended:

- amending 1 of the income calculation methods in the foreign investment fund rules in the Income Tax Act 2007 to ensure the law works as intended:
- clarifying the rule that applies to disposals of land to an associated person to ensure that the disposal is neither over- nor under-taxed retrospective to the beginning 2008–09 income year:
- correcting an unintended legislative change arising in the rewrite of the trust rules relating to services provided to the trust for less than market value:
- correcting a rewrite change to the relationship between an individual and their in-laws to restore the correct policy intent in relation to the definition of *associated person*:
- clarifying that incidental services provided by a trustee (such as bookkeeping and trustee services) for less than market value are not a transfer of value, which aligns the general meaning of settlement with current practice.

### Departmental disclosure statement

Inland Revenue 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/2018/>.

A copy of the revised statement can be found at

<http://disclosure.legislation.govt.nz/sop/government/2018/>.

A copy of the updated revised disclosure statement can be found at

<http://disclosure.legislation.govt.nz/sop/government/2018/>.

### Regulatory impact assessments

Inland Revenue produced regulatory impact assessments on 26 July 2017, 7 February 2018, 15 February 2018, 1 March 2018, 14 March 2018, 19 March 2018, and 3 May 2018 and 11 September 2018 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/ris>
- <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>
<p>A Commentary on the Bill is available at <a href="http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview</a>. The commentary provides a more detailed explanation of the main proposed legislative changes in the Bill.</p> <p>In addition, the documents listed in appendix one are all publicly available at the locations indicated.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</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><del>Eight</del> Ten regulatory impact assessments (RIAs) were prepared by Inland Revenue and are available at <a href="http://taxpolicy.ird.govt.nz/publications/2018-ria-armtarm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2018-ria-armtarm-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>. These RIAs are listed in appendix one.</p> <p>The remaining policy items in the Bill are exempt from Cabinet's 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.</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 RIAs for this Bill did not meet the threshold for requiring an independent opinion on their quality from the Treasury's Regulatory Quality Team.</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. Therefore, for the purposes of this statement, the answer is “No” as per the scope of this question explained in page 29 of the Disclosure Statements for Government Legislation: Technical Guide for Departments (June 2013).</p> <p>However, the Commentary on the Bill, available at <a href="http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-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><b>2.5.(a) Size of potential costs and benefits</b></p> <p>The RIAs listed in appendix one provide analysis on the size of the potential costs and benefits for the policy items included in the Bill that are subject to Cabinet’s 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.</p> <p><b>2.5.(b) Potential for any group of persons to suffer a substantial unavoidable loss of income or wealth</b></p> <p>This omnibus Bill contains amendments to tax legislation which, by its nature and to varying degrees, will have an impact on resident and non-resident individuals, businesses and organisations.</p> <p>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 RIAs listed in appendix one 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 policy changes.</p> <p>The changes to the income tax year-end processes for most individuals mean a significant number of clients will no longer need to use a personal tax summary intermediary to file a tax return or personal tax summary on their behalf.</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 RIAs listed in appendix one or, where appropriate, in the Commentary on the Bill.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

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

Unless it has been specifically identified in the development of the policy that there may be 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 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

#### 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://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

### 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

#### **Remedial changes to the tax rules regarding not-for-profit entities**

Clauses 5(58) and 157 propose to make donation tax credits subject to late payment penalties, penalties relating to unacceptable and abusive tax positions and evasion, and anti-avoidance provisions, to provide an incentive not to overstate donation tax credit entitlements.

#### **Modernising core aspects of the Tax Administration Act**

Clause 96 proposes a rewrite of the secrecy penalty provisions. However, this does not involve a policy change, but is merely a modernisation of the relevant sections.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
The amendments are of a technical nature and are consistent with the original policy intent.	

## 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>
The provisions in this Bill that create, amend or remove provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information are identified and explained in appendix two.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The nature and extent of consultation undertaken with the Office of the Privacy Commissioner for the provisions in this Bill that create, amend or remove provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information, and the nature of any action taken to address issues raised, is outlined in appendix two.	

## 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>
There has been extensive external consultation on much of the policy to be given effect by this Bill, as per the GTPP (described in part one of this statement). Refer to appendix two of this statement and the documents listed in appendix one (questions 2.1 and 2.3) for further information on the various parties consulted and the form in which consultation was undertaken for the policy items.	

## 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>Preliminary (high level) testing of the proposals regarding the administration of individuals' income tax and aspects of modernising the Tax Administration Act with internal subject matter experts and solution architects has been undertaken, and no issues with the workability or completeness of the proposals were identified. Detailed design work and business process modelling has commenced. This will, at a later stage of the process, include unit and scaled business simulation testing to test end-to-end processes.</p> <p>All other 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. Other than the individuals' income tax and aspects of the Tax Administration Act proposals, none of the measures in the Bill have required formal testing.</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 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. A list of all items which are proposed to apply prior to the enactment of this Bill is included in appendix three. Further information on the retrospective application of these amendments can be found in the Commentary on the Bill, available at <a href="http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview">http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-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>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
Clause 93 amends section 143 which deals with absolute liability offences as a consequence of a terminology change from “income statement” to “individual’s final account”.	
Clause 96 relating to new proposed section 143EB concerns the disclosure of certain information by employers and directors. The new provision restates existing penalties for employers or directors and is a modernisation of current rules to ensure they continue to clearly apply to persons given access to sensitive Inland Revenue Information, and does not represent a policy change.	

## Civil or criminal immunity

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

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
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### *Individuals' income tax*

Clause 21, which introduces new subpart 3B, allows the Commissioner of Inland Revenue to notify a person that the Commissioner is satisfied that their income information is correct and complete. This will cause an assessment of the individual's income tax liability to arise. Subpart 3B also deals with correcting incorrect information and amending assessments.

### *The Commissioner's care and management role*

A key aspect of the Commissioner's care and management role is applying and explaining the law to taxpayers. Generally, tax law can be interpreted in a way that is consistent with the policy intent. Sometimes when tax law cannot be interpreted consistently with the policy intent, this can tie up Commissioner and taxpayer resources in cases and outcomes that are inconsistent with both parties' practices and outcomes. This situation is also inconsistent with the objective of helping taxpayers to get it right from the start.

Clause 9 proposes a toolbox approach, giving a range of options for the Commissioner's discretion to deal with legislative anomalies with a number of safeguards. The options and safeguards are further set out in appendix three.

### *Remedial changes to the tax rules regarding not-for-profit entities*

Clauses 176 and 42(5) propose that the entities seeking to qualify for donee status for the purposes of section LD 3(2))a), (ab), (b), (c) or (d) of the Income Tax Act 2007 must have details, such as their name, published on the Inland Revenue's donee list. For the large majority of organisations already on Inland Revenue's donee list there will be no change, Under this proposed change, organisations that have self-assessed their donee status, but have not informed the Commissioner will be required to inform the Commissioner and be included on the Inland Revenue's donee list in order to qualify. Currently, the Commissioner exercises a similar power when a donor applies for a donation tax credit. Under section 41A(10) of the Tax Administration Act he Commissioner must notify the person of the amount of the tax credit under sections LD 1 to LD 3 of the Income Tax Act 2007 and of the amount of refund allowed. This involves deciding whether an organisation has charitable, benevolent, philanthropic or cultural purposes and whether it meets the wholly or mainly test. The proposed amendment makes the existing power more transparent and moves it upfront in the process for certainty.

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
The Bill contains provisions creating a power for delegated legislation (OICs) to be made to amend an Act. The Bill also contains provisions that allow the Commissioner of Inland Revenue to vary particular legislative requirements for groups or classes of persons. Further information on these provisions is set out in appendix three.	
<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
This Bill creates several other powers to make delegated legislation. Information on the empowering clauses is set out in appendix three. Some of these delegated legislation making powers are subject to consultation requirements, as noted in appendix three. Any regulations will be drafted by the Parliamentary Counsel Office, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. The regulations will be subject to the Acts and Regulations Publication Act 1989, disallowance under the Regulations Disallowance Act 1989, and subject to review by the Regulations Review Committee under Standing Order 314.	

## 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 Two

### Published reviews or evaluations – question 2.1

#### **Inland Revenue's business transformation programme**

*Programme Update and Detailed Business Case: Business Transformation Programme*, Inland Revenue, November 2015, available at <http://www.ird.govt.nz/transformation/bt-programme/publications/business-transformation-reports.html>

#### **Better administration of individuals' income tax**

*Making Tax Simpler – Better administration of individuals' income tax*, A Government discussion document, June 2017, available at <http://taxpolicy.ird.govt.nz/publications/2017-dd-mts-8-individuals/overview>

#### **Modernising core aspects of the Tax Administration Act**

*Making Tax Simpler – Towards a new Tax Administration Act*, A Government discussion document, November 2015, available at <http://taxpolicy.ird.govt.nz/publications/2015-dd-mts-3-tax-administration/overview>

*Making Tax Simpler – Proposals for modernising the Tax Administration Act*, A Government discussion document, December 2016, available at <http://taxpolicy.ird.govt.nz/publications/2016-dd-mts-7-tax-administration/overview>

#### **Error correction of employment income information**

*PAYE error correction and adjustment*, An officials' issues paper, Inland Revenue and the Treasury, August 2017, available at <http://taxpolicy.ird.govt.nz/publications/2017-ip-paye-error-correction/overview>

#### **KiwiSaver enhancements**

*2016 Review of Retirement Income Policies*, Commission for Financial Capability, 19 December 2016, available at <https://www.cffc.org.nz/assets/Uploads/2016-Review-of-Retirement-Income-Policies-Tabled-Report-19.12.06.pdf>

#### **GST on assets sold by non-profit bodies**

*GST on assets sold by non-profit bodies*, An officials' issues paper, Inland Revenue, May 2018, available at <http://taxpolicy.ird.govt.nz/publications/2018-ip-gst-non-profit-bodies/overview>

### Regulatory impact analysis – question 2.3

Regulatory impact assessments prepared by Inland Revenue, available at <http://taxpolicy.ird.govt.nz/publications/2018-ria-armtarm-bill/overview>.

- *Making Tax Simpler – Improvements to the administration of tax for individuals*, Inland Revenue, 27 March 2018



- *Making Tax Simpler: Proposals for modernising the Tax Administration Act – collection, use and disclosure of information*, Inland Revenue, 15 February 2018
- *Making Tax Simpler: Proposals for modernising the Tax Administration Act – flexibility for dealing with legislative anomalies*, Inland Revenue, 15 February 2018
- *Making Tax Simpler: Proposals for modernising the Tax Administration Act – rulings, amendments and tax intermediaries*, Inland Revenue, 15 February 2018
- *Modernising the correction of errors in PAYE information*, Inland Revenue, 7 February 2018
- *KiwiSaver enhancements resulting from the Retirement Commissioner’s review*, Inland Revenue, 1 March 2018
- *Fringe benefit tax on employment related loans – Market interest rate*, Inland Revenue, 27 March 2018
- *Taxation of non-bank securitisation vehicles*, Inland Revenue, 26 July 2017
- *GST on assets sold by non-profit bodies*, Inland Revenue, 3 May 2018
- *Proposed changes to bloodstock tax rules*, Inland Revenue, 11 September 2018

## Appendix Two: Further Information Relating to Part Three

### Privacy issues – question 3.5

#### **Better administration of individuals' income tax**

Clause 21 inserts a new subpart 3B into the Tax Administration Act. This new subpart sets out the requirements for the reporting of income information by individuals and introduces the concept of a pre-populated account. Proposed section 22E requires the Commissioner of Inland Revenue to include all relevant information held by the Commissioner in an individual's pre-populated account. The individual will then be able to access their pre-populated account to view their information and add any further relevant information.

Clause 28 allows the Commissioner to recommend a potentially more suitable or accurate tax rate or code to an individual for use in relation to employment income or schedular payments. With the consent of the employee or payee, the Commissioner would be allowed to notify the employer or payer of the tax rate or code.

Clause 30 allows the Commissioner to recommend a potentially more suitable or accurate RWT rate to an individual for use in relation to interest income. The Commissioner would be allowed to notify the interest payer of the change to the RWT rate if the recipient of the interest consented or on the expiry of 20 working days after the date of making the recommendation if the recipient has not objected.

#### **Modernising the Tax Administration Act**

Clause 15 inserts a new subpart 3A into the Tax Administration Act. This new subpart:

- Contains a rewrite of the information collection provisions currently contained in sections 16 to 19, and 21 of the Tax Administration Act. There is no policy change in relation to these provisions and a transitional provision is included at clause 99 to confirm that these are rewritten provisions that are intended to have the same effect.
- Sets out a new regulation-making power in relation to collection of large datasets. This information can currently be collected under existing powers however where the collection is to be sought on a regular, repeating basis regulations provide a more transparent process.
- Clarifies expressly that information collected for one revenue purpose can be used for other revenue purposes.
- Narrows the coverage of the confidentiality rule to information that relates to the affairs of, or would identify, a taxpayer while retaining a discretion for the Commissioner to withhold certain non-taxpayer specific information in order to protect revenue collection.
- Sets out a new legislative framework for the existing confidentiality rules, grouping them into a clearer more cohesive structure. Other than as specifically identified there are no changes to these exceptions. The detail of the exceptions is set out in clause 102 (new schedule 7).
- Provides a more flexible, cohesive and transparent regulatory framework governing the sharing of Inland Revenue information for the provision of public services.

- Allows Inland Revenue to enter into agreements for information to be shared for the delivery of public services where the taxpayer has consented, without the need for regulations.

### Privacy issues – question 3.5.1

#### **Better administration of individuals' income tax**

Inland Revenue engaged with the Office of the Privacy Commissioner prior to the release of the discussion document and in the preparation for reporting on final policy proposals. The Office acknowledged the consultation and did not raise any concerns at either stage.

#### **Modernising the Tax Administration Act**

Inland Revenue engaged with the Office of the Privacy Commissioner prior to the release of both discussion documents and in the preparation for reporting on final policy proposals. The Office made a formal submission on the second discussion document (Proposals for Modernising the Tax Administration Act) and a comment was included in the Cabinet paper seeking final policy decisions. In that comment one area of concern was raised, in relation to the proposed regulation-making power for repeat collection of datasets in clause 15 (proposed new section 17L).

The Office expressed concern about the potential to accumulate large amounts of information and for this information to then be shared with other agencies. Inland Revenue considers there are sufficient protections in place to mitigate the concerns – for example, as with all information collected by Inland Revenue, the datasets must be necessary or relevant to Inland Revenue's functions, and the proposed regulation-making power includes a requirement to consult with the Privacy Commissioner prior to any new collection regulation being made. In relation to the sharing of information, a key criterion for the proposed updated information sharing provision is that agencies are only able to access information necessary to carry out their functions. It is very unlikely that an external dataset would ever meet the criteria for sharing with another agency. There may be cases where, for example, income data of a person is created or amended as a result of data obtained in this way, and on occasion that income data might be shared with another agency, where that agency is entitled to access that data, for example to determine access to entitlements.

### External consultation – question 3.6

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

- The Commentary on the Bill, available at <http://taxpolicy.ird.govt.nz/publications/2018-commentary-armtarm-bill/overview>
- Public consultation documents on measures in the Bill, available at <http://taxpolicy.ird.govt.nz/publications/type/consultation-document>
- Online consultation on the proposed changes to the administration of individuals' income tax, available at <http://taxpolicy.ird.govt.nz/archived-websites#mts> (*Better administration of individuals' income tax* (2017))
- A summary of feedback on the June 2017 discussion document *Making Tax Simpler – Better administration of individuals' income tax*, available at

<http://taxpolicy.ird.govt.nz/publications/2018-other-mts-feedback-individuals/overview>

- Online consultation on the proposals for modernising the Tax Administration Act, available at <http://taxpolicy.ird.govt.nz/archived-websites#mts> (*Towards a new Tax Administration Act (2015–16)*); and <http://taxpolicy.ird.govt.nz/archived-websites#mts> (*Proposals for modernising the Tax Administration Act (2016–17)*)
- A summary of feedback on the November 2015 discussion document *Making Tax Simpler – Towards a new Tax Administration Act*, available at <http://taxpolicy.ird.govt.nz/publications/2018-other-mts-feedback-taa-1-new/overview>
- A summary of feedback on the December 2016 discussion document *Making Tax Simpler – Proposals for modernising the Tax Administration Act*, available at <http://taxpolicy.ird.govt.nz/publications/2018-other-mts-feedback-taa-2-proposals/overview>
- A summary of feedback on the August 2017 officials' issues paper *PAYE error correction and adjustment*, available at <http://taxpolicy.ird.govt.nz/publications/2018-other-mts-cabinet-papers/overview>
- Regulatory impact assessments outlining the consultation undertaken on measures in the Bill, available at <http://taxpolicy.ird.govt.nz/publications/2018-ria-armtarm-bill/overview>

The following is a list of the main government bodies (excluding New Zealand government departments), representative organisations, and other groups, organisations and entities that have been consulted in the preparation of this Bill.

#### **Government bodies**

- Accident Compensation Corporation
- Department of Internal Affairs
- Office of the Privacy Commissioner
- Housing New Zealand

#### **Representative organisations**

- Accountants and Tax Agents Institute of New Zealand
- BusinessNZ
- Chartered Accountants Australia and New Zealand
- Corporate Taxpayers Group
- Federated Farmers of New Zealand
- Financial Services Council of New Zealand
- Financial Services Federation
- New Zealand Bankers' Association
- New Zealand Law Society
- Online Tax Association of New Zealand

#### **Other parties/organisations/entities**

- AMP Services (NZ) Limited

- Anglican Church Pension Board (Koinonia scheme)
- ANZ Bank New Zealand
- ANZ Investments (NZ) Limited
- Aon New Zealand Limited
- Arotahi Trust Limited (Brethren Community Fund KiwiSaver scheme)
- ASB Group Investments Limited
- Ascender Pay Tax Working Group
- Bell Gully
- BNZ Investment Services Limited
- Booster Investment Management Limited
- Chapman Tripp
- Craigs Investment Partners
- Crystal Payroll
- Datacom Payroll
- Deloitte
- Deloitte on behalf of Māori organisations
- Ernst & Young
- Fisher Funds Management Limited
- Forsyth Barr
- Funds Administration New Zealand Limited (Lifestages scheme)
- Generate Investment Management Limited
- Kiwi Wealth Limited
- KPMG
- Link Market Services Limited
- MMC Limited
- Maritime KiwiSaver Scheme
- Medical Assurance Society KiwiSaver
- Mercer New Zealand
- Milford Funds Limited
- New Zealand Guardian Trust
- New Zealand Racing Board
- NZ Funds Management Limited
- Olivershaw
- PricewaterhouseCoopers
- Russell McVeagh
- RSM
- SAP
- Simplicity (NZ) Limited
- Spark
- Sue Barker Charities Law
- SuperLife Limited
- The Interchurch Bureau
- The New Zealand Standardbred Breeders Association
- The New Zealand Thoroughbred Breeders Association
- Thoroughbred Racing New Zealand
- Trustee Executors Limited
- Westpac (NZ) Limited

## **Appendix Three: Further Information Relating to Part Four**

### **Retrospective effect - question 4.3**

Items shown below include application dates that are proposed to apply before the enactment of this Bill.

#### **Provisional tax and use of money interest**

Clause 76 corrects an unintended legislative change made in 2007 which arguably altered the way use of money interest applies to taxpayers who pay provisional tax in one or two instalments instead of the standard three instalments. The Bill proposes to clarify the legislation and restore the correct policy position for those taxpayers from the date of the unintended change with a savings provision for any person who has previously challenged that position and received a cancellation of use of money interest based on that alternative interpretation. If this measure applied from the date of enactment it would continue to leave uncertainty for taxpayers in the application of the rules to previous income years.

#### **Payment allocation rules**

Clause 75 amends the current payment allocation rules. The result of the provision is that, generally, most taxpayers will receive the same use of money interest charge as they do currently, however, some taxpayers will receive less use of money interest charge than under the current rule. This change is beneficial to taxpayers as in no cases would a taxpayer receive a higher charge for use of money interest than under the current payment allocation rules. This measure will apply from 17 April 2018 to match the date administration around the allocation commenced.

#### **Notional single person concession for public unit trusts**

Clause 214, which extends the notional single person concession for public unit trusts to taxpayers that the public unit trust has an ownership interest in without the public unit trust having to make a separate choice, applies for the 2008-09 and later income years to align with the start of the Income Tax Act 2007. This measure is taxpayer favourable and consistent with the policy intent of the concession.

#### **Housing New Zealand – land tainting**

Clause 109, which excludes the Housing New Zealand Group (HNZ) from the land tainting rules, applies from 1 July 2017 – the beginning of HNZ's income year. HNZ is set to undertake building activities before their 1 July 2017 – 30 June 2018 income year is complete. This has implications under the land tainting rules. Ensuring the amendment applies from the beginning of HNZ's income year is for ease of compliance and because the exact date HNZ will begin building is uncertain.

#### **Remedial amendments to the land sale rules**

The remedial amendments to the residential exclusions from the land sale rules in clauses 111 to 113 will apply from the start of the 2008–09 income year, the first year to which the Income Tax Act 2007 applies.

The remedial amendment to the main home exclusion from the bright-line test in clause 110 will apply from 1 October 2015, when the bright-line test came into force.

## **Remedial amendment to the foreign investment fund rules**

The remedial amendment to one of the calculation methods in the foreign investment fund rules in clause 151 will apply from 1 April 2008, when the Income Tax Act 2007 came into force.

## **GST remedial amendments**

Clause 228, which removes outdated references to the former principal purpose test in section 55(7) of the Goods and Services Tax Act 1985, applies from 1 April 2011. The apportionment rules were significantly reformed in 2011 and the principal purpose test was removed. This clause therefore applies from the date that the principal purpose test was removed.

Clause 225, which creates a cross-reference in section 10(3C) and (3D) of the Goods and Services Tax Act 1985 to section 20(3JC), applies from 1 October 2016. Section 10(3C) and (3D) link to services treated as being made in New Zealand by section 8(4B). Services treated as being made in New Zealand by section 8(4B) are subject to a reverse charge under section 5B. However, since the GST on remote services rules were introduced some services have instead been subject to a reverse charge under section 20(3JC). This amendment therefore applies from the date the remote services rules were introduced.

## **Remedial amendments following the recently enacted Families Package**

The parental tax credit amendments in clauses 180 to 182, 263, 264 and 269 are retrospective to 2002. The amendments correct an unintended consequence of an amendment made at that time.

The Working for Families tax credit part year payments, clauses 179, 183, 260 and 261, and the interaction between Best Start and paid parental leave in clause 178 will be retrospective (as they will apply from 1 July 2018).

## **Bank account requirement for IRD numbers: change of application date**

Amendments were made by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 giving the Commissioner a discretion to issue IRD numbers to offshore persons without New Zealand bank accounts if she is satisfied with their identity and background. This amendment was primarily made to assist taxpayers with meeting their New Zealand tax obligations. Clause 46 proposes to change the application date of this amendment to 15 October 2015, the date of the original requirement that offshore persons need to provide the Commissioner with their New Zealand bank accounts to obtain an IRD number, to provide certainty.

## **Monetary gifts made within one year of deregistration**

Under current law, a deregistered charity that is a company or Māori authority may make a monetary donation to another charity within 12 months of deregistration and this donation will both reduce its deregistration tax liability and be eligible for a gift deduction under the charitable giving rules. This is contrary to the policy intent. Clauses 129 and 132 proposes to clarify that assets transferred in accordance with the deregistration rules do not also qualify for a gift deduction. This is proposed to apply from 14 April 2014, when the deregistration tax rules were first enacted, as it is addressing an unintended gap in the law.

## **Applying deemed disposal for depreciation recovery income**

The depreciation rules treat a change in the use of an asset as if there has been a disposal of that asset for consideration equal to market value (despite there being no change in the actual ownership of the asset), if the change of use results in the asset exiting the income tax base. One of the events which could trigger this deemed disposal occurs when a business changes its constitution or rules in order to become registered as a charity. Clause 134 proposes to change the date of this deemed disposal to immediately before the entity leaves the tax base, in order to ensure that any depreciation recovery income that arises is subject to tax before the entity becomes exempt. It is proposed that this applies from the date of introduction of this bill in order to prevent taxpayers from taking advantage of this unintended gap in the law.

## **Carve-out for marae assets from deregistration tax**

Generally, a deregistered charity can reduce the amount of tax payable under the deregistration rules by disposing of or transferring their assets within one year of the day they were deregistered. However, "reservation land" upon which marae are built is unable to be disposed of or transferred to pay the resulting tax bill due to restrictions on alienation of reservation land under the Te Ture Whenua Māori Act 1993. This means that marae that are registered as charities are unable to reduce their deregistration tax liabilities, unlike other deregistered charities. Clause 174(7) proposes amendments to ensure that for marae built on reservation land established under the Te Ture Whenua Māori Act, the value of the land and improvements on the land will be excluded from the net asset calculation. This is proposed to apply from 14 April 2014, when the deregistration tax rules were first enacted.

## **GST on assets sold by non-profit bodies**

Clause 2(19B) is proposed to apply from 15 May 2018 clarifying that from that date assets sold by non-profit bodies for which GST input tax credits had been claimed would be subject to GST. The 15 May 2018 is the date the Minister of Revenue announced the proposed change and the related officials' issues paper was released.

To address the retrospectivity of the proposed clarification, clause 2(19B) also proposes a transitional opt-out option for assets on hand at 15 May 2018. Within 24 months after enactment a non-profit body can elect to remove from the GST base an asset which is not part of a taxable activity by paying GST on all costs directly attributable to the asset for which GST input tax deductions have been claimed within the last 7 years. In addition, within 24 months after enactment any non-profit body which at the date of enactment was no longer carrying on a taxable activity can deregister from GST based on the amount determined under the same basis, instead of the current deregistration rules in the GST Act.

## **BEPS remedial modifying exclusion to the disregarded hybrid payment rule**

Clause 153B addresses a technical flaw in legislation recently enacted in the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018, to ensure the legislation meets its policy intent. The changes are proposed to apply retrospectively to income years starting on or after 1 July 2018, which is the date the recently enacted changes apply from.



## **Bloodstock initiative**

Clauses 98B, 119B, 133B–133D, 151AB, 213, and 214B will be retrospective as they come into force on 1 January 2019. This application date ensures that amendments apply to the premier yearling sales that begin in January 2019.

## **Miscellaneous amendments**

A number of minor faults of expression, readers' aids and incorrect cross-references are corrected, sometimes with various retrospective application dates. These amendments will not affect the interpretation or application of the existing legislation.

## **Significant decision-making powers - question 4.6**

### **The Commissioner's care and management role**

Clause 9 contains expanded powers to give the Commissioner greater discretion to deal with legislative anomalies. A key aspect of the Commissioner's care and management role is applying and explaining the law to taxpayers. Generally, tax law can be interpreted in a way that is consistent with the policy intent. Sometimes when tax law cannot be interpreted consistently with the policy intent, this can tie up Commissioner and taxpayer resources in cases and outcomes that are inconsistent with both parties' practices and outcomes. This situation is also inconsistent with the objective of helping taxpayers to get it right from the start.

The Bill proposes a toolbox approach, giving a range of options by which the discretion could be exercised, specifically by a determination, or administrative action. The Bill also proposes the Commissioner could seek an Order in Council where the issue is sensitive or has fiscal implications. The proposed discretion and regulation-making power would not be able to modify the application of a tax law for a particular taxpayer, but rather is limited to groups or classes of taxpayers to ensure it is used only to remedy objectively determined legislative anomalies.

There are a number of safeguards proposed, specifically that application of the discretion is optional for taxpayers, time-limited to no more than three years, and not able to override a court decision. Consultation would be required before the exercise of the discretion, and any exercise of the discretion would be required to be published.

## **Powers to make delegated legislation - question 4.7**

### **The Commissioner's care and management role**

As detailed at question 4.6, clause 9 contains a proposed toolbox of options to give the Commissioner greater discretion to deal with legislative anomalies. This includes an option whereby in less sensitive cases with no fiscal implications, the Commissioner may exercise her discretion to fix the legislative anomaly via a determination or administrative action.

The proposed regulation-making power or discretion would not be able to modify the application of a tax law for a particular taxpayer, but rather is limited to groups or classes of taxpayers to ensure it is used only to remedy objectively determined legislative anomalies. Examples of when it could be used include: when a drafting error means that the provision is inconsistent with the intended policy; and when a gap in legislation is discovered that means there is uncertainty as to whether the legislation is consistent with the policy intent. In these situations, the regulation or discretion would provide a

temporary bridge to allow taxpayers to adopt an approach that is consistent with the intended policy. This would avoid the Commissioner and taxpayers having to commit resources to the unintended outcomes.

There are a number of safeguards proposed, specifically that application of the regulation or discretion is optional for taxpayers, time-limited to no more than three years, and not able to override a court decision. Consultation would be required before the exercise of the discretion, and any exercise of the discretion would be required to be published.

## **Rulings**

Proposed section 91EL of the Tax Administration Act 1994, clause 61, adds an Order in Council mechanism into that Act to vary the thresholds for eligibility to apply for a short-process ruling.

## **Tax status of public purpose Crown-controlled companies**

Clause 124 [s CW 38B] proposes adding an Order in Council mechanism into the Income Tax Act 2007 to expedite future amendments to the proposed new schedule 35. That schedule lists the public purpose Crown-controlled companies that will be exempt from income tax.

## **Powers to make delegated legislation- question 4.8**

### **Information collection, use and disclosure**

In addition to the proposed new power detailed above, there are two provisions that enable delegated legislation. Both are contained in clause 15, specifically proposed new sections 17L and 18F.

#### ***Proposed section 17L***

Proposed new section 17L empowers the making of regulations by Order in Council governing the repeat collection of bulk data. Inland Revenue is currently able to collect such information using existing powers, however where the collection is to be regular and repeating, a regulation was considered a more transparent process. The collection must be necessary or relevant for revenue purposes. A regulation would specify:

- the type of information to be collected;
- the person, or class of persons from whom it would be collected;
- the frequency of collection; and
- the form and specifications for the collection of the information.

The proposed provision has a number of safeguards built in. Prior to recommending regulations, the Minister of Revenue must be satisfied:

- the regulations are necessary for the administration or enforcement of any of the Inland Revenue Acts or any other function lawfully conferred on the Commissioner;
- the proposed use of the information is consistent with the Inland Revenue Acts; and

- a consultation process has been undertaken with those the Commissioner of Inland Revenue considers it is reasonable to consult, including consultation with the Privacy Commissioner. Consultation would include provision of draft regulations and an explanation of why they are considered necessary and how the proposed use of the information is consistent with the Inland Revenue Acts.

The proposed provision also contains a statutory review requirement. This would require the Commissioner to conduct a review of the operation of the proposed provision, in consultation with the Privacy Commissioner. This review would be required to be carried out five years after the proposed provision comes into force.

### ***Proposed section 18F***

Proposed new section 18F sets out a regulation-making power authorising information-sharing for the provision of public services. This proposed section is an updated and amended version of the regulation-making power currently set out in section 81BA of the Tax Administration Act. It would allow regulations to be made by Order in Council authorising the sharing of Inland Revenue information to facilitate the provision of public services. This provision would generally be used in situations where the information to be shared was primarily non-personal (entity) information or the Privacy Act Part 9A rules (approved information sharing agreements or AISAs) were otherwise not considered suitable.

The proposed provision enables sharing when:

- the sharing is for public service provision, rather than the current limit to sharing with “government agencies” (new);
- the sharing is intended to improve the ability of the Government to deliver efficient or effective services or to enforce the law (new criteria);
- the information is more easily or more efficiently obtained from or verified by Inland Revenue (existing criteria);
- it is not unreasonable or impractical to require the Commissioner to deliver the information (existing criteria);
- the nature of the sharing is proportionate, taking into account the purpose for which the information is proposed to be shared (new criteria);
- the person, entity, or agency receiving the information has adequate protection for the information (modified existing criteria); and
- the sharing of the information will not unduly inhibit the future provision of information to the Commissioner (existing criteria).

Regulations under the proposed new section would prescribe the classes or types of information to be shared, how it would be provided, accessed, stored, secured, disposed of, and used. They would also specify whether any further disclosure of the information was permitted, and whether the agreement was subject to review requirements, including where any breaches occur.

Before recommending any regulations under this proposed provision, the Minister of Revenue must be satisfied that the regulations are necessary for their proposed purpose and that a consultation process has been undertaken. This process must include distribution of draft regulations and an explanation of the way in which the proposed information sharing is necessary to achieve its stated purpose. Consultation must include the Privacy Commissioner and other persons or organisations with whom the

Commissioner of Inland Revenue considers it reasonable to consult, and must run for a period of at least four weeks.

**Proposed section 225AB**

Proposed new section 225AB provides a power to amend by Order in Council the list of sales of bloodstock yearlings that meet the definition of a premier yearling sale. The Bill contains a list of the current premier yearling sales. The regulation-making power allows the list of premier sales to be updated to take account of market developments in a timely fashion.