Hon David Parker, Minister of Revenue

Information Release

Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill

July 2023

Availability

This information release is available on Inland Revenue's tax policy website at https://taxpolicy.ird.govt.nz/publications/2023/2023-ir-cab-multinational-tax-bill

Documents in this information release

#	Reference	Type	Title	Date
1	IR2022/450	Policy report	Overseas donee status: Additions and removals for the next available taxation Bill	28 September 2022
2	IR2022/425	Policy report	Extending tax exemption for non-resident offshore oil rig and seismic vessel operators	3 October 2022
3	IR2022/436	Policy report	Taxation of backdated ACC and MSD lump sum payments – final proposal	20 October 2022
4	IR2022/481	Policy report	Extending tax exemption for non-resident offshore oil rig and seismic vessel operators – Cabinet approval	20 October 2022
5	IR2022/448	Policy report	Non-fiscal remedial items for the March 2023 omnibus taxation Bill	3 November 2022
6	IR2022/449	Policy report	Cabinet paper – omnibus policy measures for inclusion in the March 2023 taxation Bill	10 November 2022
7	CBC-22-SUB-0053	Cabinet paper	Extending tax exemption for non-resident offshore oil rig and seismic vessel operators	28 November 2022
8	CBC-22-MIN-0053	Minute	Extending tax exemption for non-resident offshore oil rig and seismic vessel operators	28 November 2022
9	IR2023/002	Policy report	Cabinet paper: measures for inclusion in the 2023 omnibus taxation Bill	8 February 2023
10	IR2023/042	Policy report	Brightline test – main home exclusion and construction delays	23 February 2023

#	Reference	Type	Title	Date
11	DEV-23-SUB-0017	Cabinet paper	Measures for inclusion in the 2023 Omnibus Taxation Bill	8 March 2023
12	DEV-23-MIN-0017	Minute	Measures for inclusion in the 2023 Omnibus Taxation Bill	8 March 2023
13	IR2023/123	Policy report	North Island Flood Events and Taxation Rollover Relief	6 April 2023
14	IR2023/083	Policy report	Draft Cabinet paper – Taxation (Annual Rates for 2023–2024 and Other Measures): Approval for introduction	18 April 2023
15	EWR-23-SUB-0036	Cabinet paper.	North island flood events and taxation rollover relief	3 May 2023
16	EWR-23-MIN-0036	Minute	North island flood events and taxation rollover relief	3 May 2023
17	LEG-23-SUB-0056	Cabinet paper	Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill: approval for introduction	11 May 2023
18	LEG-23-MIN-0056	Minute	Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill: approval for introduction	11 May 2023

Additional information

The Cabinet paper *Extending tax exemption for non-resident offshore oil rig and seismic vessel operators* was considered by the Cabinet Business Committee on 28 November 2022 and confirmed by Cabinet on 5 December 2022.

The Cabinet paper *Measures for inclusion in the 2023 Omnibus Taxation Bill* was considered by the Cabinet Economic Development Committee on 8 March 2023 and confirmed by Cabinet on 13 March 2023.

The regulatory impact statements attached to the above two Cabinet papers are published online: RIA pack - Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill (ird.govt.nz).

The Cabinet paper *North Island Flood Events and Taxation Rollover Relief* was considered by the Cabinet Extreme Weather Recovery Committee on 3 May 2023 and confirmed by Cabinet on 8 May 2023.

The Cabinet paper *Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill: approval for introduction* was considered by the Cabinet Legislation Committee on 11 May 2023 and confirmed by Cabinet on 15 May 2023. One attachment to the Cabinet paper is published online: Departmental Disclosure Statement

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

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9(2)(h) to maintain legal professional privilege

18(c)(i) that the making available of the information requested would be contrary to the provisions of a specified enactment

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Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Overseas donee status: Additions and removals for the next available taxation bill**

Date:	28 September 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/450

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Agree** to recommendations	18 October 2022

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Brandon Sloan	Principal Policy Advisor	s 9(2)(a)
Peter Frawley	Policy Lead	s 9(2)(a)

28 September 2022

Minister of Revenue

Overseas donee status: Additions and removals for the next available taxation bill

Executive summary

Purpose

1. This report deals with two aspects of the framework that supports the granting of overseas donee status to certain New Zealand charities that have purposes and activities outside New Zealand. This report seeks your agreement to:

   1.1 The addition of three New Zealand charities to the list of overseas donee organisations in the Income Tax Act 2007.

   1.2 The removal of two charities on the list as they are now either inactive or wound up.

2. We will also report to you shortly seeking your direction on two other requests that are under active consideration. The purposes of these two charities are arguably outside the scope of Cabinet's established approval criteria (paragraph 23).

Additions to schedule 32 of the Income Tax Act

3. We recommend three New Zealand charities be granted overseas donee status by adding them to schedule 32 of the Income Tax Act in the next taxation bill scheduled for introduction in the first quarter of 2023. "Overseas donee status" is used to describe certain New Zealand charities with overseas purposes to which donors are eligible for tax benefits, including:

   3.1 the donation tax credit, and

   3.2 tax deductions if the monetary donation is from a company or Māori authority.

4. Overseas donee status is an exception to the policy framework that generally limits tax benefits to donations to charities with New Zealand purposes.

5. The charities we recommend be granted overseas donee status are:

   5.1 Butterfly Trust

   5.2 Ekal Vidyalaya Foundation of New Zealand (for a limited time ending on 31 March 2028)

   5.3 Pasifika Safe Shelter Trust

6. Descriptions of the charities, their purposes and activities, are provided in paragraphs 29 to 31 of this report. Requests for overseas donee status are assessed against long-established Cabinet criteria (see paragraph 23). The approval criteria are directed at purposes that provide relief from poverty, sickness, or the ravages of war or natural disaster; or assist with improving economic or education outcomes in developing countries.

7. The three charities we recommend be given overseas donee status meet Cabinet's criteria. They are largely involved in the relief of poverty, the relief of sickness, or improving education outcomes in developing countries. All are registered under the Charities Act 2005, and have adequate procedures for the accountability of funds applied to projects outside New Zealand.

8. We recommend that these charities receive overseas donee status from 1 April 2023.

9. We are also recommending that Ekal Vidyalaya Foundation New Zealand's donee status be time limited and end on 31 March 2028 (5 years). s 18(c)(i) [redacted] We would like to assess the durability of these new arrangements at a later date and consider limiting the period of the Foundation's donee status is appropriate.

Removals from schedule 32

10. We also recommend the removal of two charities who have ceased operations.

    10.1 The Bougainville Library Trust: This charity was granted overseas donee status for the 2011–12 to 2018–19 tax years, and has since wound up with effect on 8 December 2017.

    10.2 The Mutima Charitable Trust: This charity was granted overseas donee status for the 2011–12 to 2016–17 tax years for a specific 5-year project, and its operations are now inactive. s 18(c)(i) [redacted]

11. We recommend the charities' names be removed on the enactment of the proposed taxation bill.

Financial implications

12. The revenue effect of giving overseas donee status to the three charities recommended in this report is estimated to be $0.100 million over the forecast period. The revenue effect is recognised as a forecasting change because it reflects an increase in the cost of the decision to allow donations to New Zealand-based charities with overseas purposes to be eligible for tax benefits. No adjustment is made for the two charities we recommend be removed from schedule 32. The recommendations in this report have no impact of the Tax Policy Scorecard.[1]

Consultation

13. The Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Division) and the Department of Internal Affairs – Charities Services were consulted as part of our analysis of the charities discussed in this report.

14. The Treasury has been consulted in preparing this report and agrees with its recommendations.

[1] The Tax Policy Scorecard is a memorandum account that records the fiscal effect of approved tax policy decisions that improve the tax system outside of the Budget process.

Next steps

15. If you agree to the recommendations in this report, we will prepare a paper to the Cabinet Economic Development Committee seeking its approval to the additions to the list of overseas donee organisations in the Income Tax Act for inclusion in the omnibus taxation bill schedule for introduction in the first quarter of 2023.

16. Cabinet approval is not required for the charities we recommend be removed from schedule 32.

17. A copy of this report should be referred to the Minister of Finance for his information.

Recommended action

1. **Agree** that the following charities be added to the list of organisations with overseas donee status in the Income Tax Act 2007:

(i)	Butterfly Trust	Agreed/ Not agreed
(ii)	Ekal Vidyalaya Foundation of New Zealand	Agreed/ Not agreed
(iii)	Pasifika Safe Shelter Trust	Agreed/ Not agreed

2. **Agree** that the charities in recommendation 1 that you have approved are given overseas donee status from the following dates;

(i)	Ekal Vidyalaya Foundation NZ from 1 April 2023 until 31 March 2028	Agreed/ Not agreed
(ii)	The rest from 1 April 2023.	Agreed/ Not agreed

3. **Note** that agreeing recommendations 1 and 2 will result in the following adjustments to revenue forecasts:

Vote Revenue **Minister of Revenue**	**2022–23**	**2023–24**	**2024–25**	**2025-2026**	**2026–27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.027)	(0.022)	(0.024)	(0.027)

4. **Agree** to remove the following charities from the list of donee organisations in the Income Tax Act, from the date of enactment of the proposed taxation bill to be introduced in the first quarter of 2023;

(i)	Bougainville Library Trust	Agreed/ Not agreed
(ii)	Mutima Charitable Trust	Agreed/ Not agreed

5. **Agree** that amendments giving effect to recommendations 1 to 4 be included in the omnibus taxation bill scheduled for introduction in the first quarter of 2023.

   Agreed/ Not agreed

6. **Direct** officials to prepare a paper to Cabinet seeking its approval for the changes in recommendations 1, 2, and 5 in this report.

   Directed/Not directed

7. **Refer** a copy of this report to the Minister of Finance for his information.

   Referred/Not referred

s 9(2)(a)

Brandon Sloan
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2022

Purpose

18. This report seeks your approval to give overseas donee status to three registered charities and include the required amendments in the omnibus taxation bill scheduled for introduction in the first quarter of 2023. We also recommend, in the same bill, the removal of two charities whose activities have ceased.

Background

19. Since 1962, the Income Tax Act has provided tax benefits for monetary donations to New Zealand charities (including benevolent, philanthropic, or cultural organisations) whose purposes are largely limited to New Zealand. The Income Tax Act imposes certain statutory limitations on the entity's purposes and its application of funds, which must relate "wholly or mainly" to purposes in New Zealand. At the time, three charities with overseas purposes were made specific exceptions to the rule. The government also acknowledged that charities could be added to the list of names from time to time as comparable cases arise. In 1978, Cabinet developed criteria to support consideration about future additions of New Zealand-based overseas aid organisations to the legislative list (see paragraph 23).

20. Supporting New Zealand charities through granting overseas donee status is intended to assist the New Zealand Government's overseas development efforts, where aid objectives are better achieved by charitable non-government organisations (NGOs). The assistance is open-ended and less discretionary than other forms of government assistance[2] because it is delivered through the tax system using the benefits attached to monetary donations made to the listed charities.

21. Broadly, governments may seek to promote charitable giving:

    21.1 to further social objectives – in this particular case, overseas development aid,

    21.2 for the wider benefits to society (externalities), which may be over and above the value of the benefit provided via the tax system, and

    21.3 because donations can be effective indicators of when extra goods and services should be provided in market conditions that might otherwise not exist – this is particularly the case in developing countries, or when assisting individuals suffering from the effects of poverty or sickness, or a natural disaster.

22. The trade-off for these benefits is the open-ended revenue cost that applies for as long as the charity is on the list of approved donee organisations.

Cabinet's consideration of requests for overseas donee status

23. Since 1978, Cabinet has applied the following criteria to assess applications for overseas donee status.

    The basic criteria for adding an organisation to the list of approved "overseas" charities:

    (i) the funds of the charity should be principally applied towards:

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[2] For example, the Ministry of Foreign Affairs and Trade's New Zealand aid programmes: the New Zealand Partnerships for International Development Fund (Partnerships Fund), the Sustainable Development Fund, the New Zealand Disaster Response Partnership (NZDRP), and the Pacific Island Countries Participation Fund (PIC Fund).

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;

[CM 78/14/7 refers]

24. The eligible purposes set out in the criteria are aligned with the Government's overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of "charitable purpose" and the legislative framework in the Charities Act. Determination of donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits that attach to monetary donations. The process does not overlap with the work of the Department of Internal Affairs – Charities Services.

25. Irrespective of whether a charity's founding documents and activities are charitable, approval for inclusion on schedule 32 of the Income Tax Act (conferring overseas donee status) is not automatic, and requests are considered on a case-by-case basis.

26. An overarching consideration is that any charity approved for overseas donee status is credible, transparent, and accountable.[3] Fiscal impacts and the integrity of the tax system are also relevant considerations. Annex A sets out the factors that we consider and analyse in respect of each charity that seeks overseas donee status.

27. Overseas donee status is an exception to the policy that tax benefits for donations should be limited to charities with New Zealand purposes and requires amending the Income Tax Act. In 2016, the Legislation Design and Advisory Committee provided advice to Inland Revenue confirming that the use of legislation to grant overseas donee status is appropriate.

Charities recommended for overseas donee status

28. The three charities discussed below have purposes that come within the criteria provided in paragraph 23, and we recommend that they be granted overseas donee status. They all have adequate procedures for the accountability of funds applied to projects and, s 18(c)(i) [redacted]

Butterfly Trust

29. The Butterfly Trust works primarily in Vanuatu. It supports indigenous initiatives in health and education throughout the archipelago. It was established in 2008 and works with local and central government agencies in Vanuatu to improve health and education outcomes.

[3] *Guidelines for using the Cabinet criteria for overseas donee status*, endorsed by Cabinet in 2009 – CBC Min (09) 12/2 refers.

Ekal Vidyalaya Foundation of New Zealand

30. Ekal Vidyalaya Foundation of New Zealand raises funds to support Ekal Vidyalaya Foundation of India (India), an organisation that works to bring literacy, digital literacy, health services, and skills training to remote rural villages in India. Using in-country networks in India and Nepal, the main activity is to run one-teacher schools (known as Ekal Vidyalayas) that provide free education to children in over 80,000 remote rural villages.

Pasifika Safe Shelter Trust

31. Pasifika Safe Shelter Trust was established to collect non-perishable food and material items to distribute to people in the Pacific region as they live through the effects of a natural disaster. Most recently, they collected farming equipment and tractors to be sent to Tonga to assist in rebuilding the agricultural industry, in response to the damage the volcanic eruption and subsequent tsunami caused on food production.

Specific comments about the recommended charities

32. As part of our analysis of the charities discussed in this report, we have not identified any significant risks or concerns with their activities and governance. The charities recommended in this report have adequate donor support to carry out their purposes. However, we note:

One of the charity's has had periods of dormant activity	Ekal Vidyalaya Foundation of New Zealand has been in operation for over a decade. s 18(c)(i) [redacted] We want to review the Foundation's work again at a later date to ensure the new governance arrangements are robust, and therefore consider an initial finite (or probationary) period for the Foundation to have overseas donee status is appropriate. We note the New Zealand foundation is connected with existing (and well-established) sister Ekal Vidyalaya charities in Australia, Canada and the United Kingdom.
All the charities are small-scale	All the charities recommended in this report are small in scale and service a specialised need in the various countries/communities in which they either operate directly, or in partnership with in-country partners. We have not identified any specific matters or concerns with the scale of the charities' operations.

Overseas donee status: Removals from Income Tax Act

33. We recommend the charities below be removed from schedule 32 of the Income Tax Act. The charities discussed below had timebound overseas donee status, however the respective amendments were imperfect in terms of removing the charity when their status ended.

Charity name	Reason for removal
The Bougainville Library Trust	This charity was given overseas donee status for the 2011–12 to 2018–19 tax years to support the development of a community library in Bougainville following the conclusion of the Civil War. The charity has deregistered under the Charities Act 2005 and has been wound up.
The Mutima Charitable Trust	This charity was given overseas donee status for the 2011-12 to 2016-17 tax years to support a 5-year project that involved Auckland Hospital sending a heart surgery team to Zambia. s 18(c)(i) It remains a registered charity.

Charities under active consideration

34. We are working on requests from seven other charities not discussed in this report. For the most part, we are waiting for additional information from the trustees and, subject to the timing of the future taxation bill for 2024, will report to you in 2023 about our recommendations.

35. Of the seven requests under consideration, we plan to report to you shortly about two charities whose purposes do not sit easily with Cabinet's approval criteria. The report will seek your direction on how to respond to these requests.

Legislative vehicle and application date

36. Amendments adding the three organisations, and the two removals, recommended in this report to the list of overseas donee organisations in schedule 32 of the Income Tax Act 2007 should be included in the next omnibus taxation bill, scheduled for introduction in the first quarter of 2023.

37. The additions should apply from 1 April 2023. Monetary donations received from that date will be eligible for tax benefits. The recommended application date gives the charities certainty for marketing and fund-raising purposes.

38. Inland Revenue's systems can work with an application date of 1 April 2023, as individuals will be able to claim the donations tax credit for receipted monetary donations as part of Inland Revenue's 2023–24 return cycle, starting on 1 April 2024. Companies and Māori authorities will be allowed deductions for monetary donations made during the 2023–24 income year.

39. The charities we recommend be removed from the list should apply from the date the relevant amendment bill is enacted.

Financial implications

40. The estimated financial implications of adding the three charities recommended in this report are shown in Annex B. Over the forecast period 2023-24 to 2026-27, the expected financial impact is $0.100 million. The financial implications will be treated as a forecasting change and reflect the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations. The revenue estimates are based on projections made by the charities about the monetary donations they expect to receive for the forecast period. There is no impact on the Tax Policy Scorecard.

	$m – increase/(decrease)				
Vote Revenue	**2022–23**	**2023–24**	**2024–25**	**2025–26**	**2026–27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.027)	(0.022)	(0.024)	(0.027)
Total change in Revenue	**0.000**	**0.027**	**0.022**	**0.024**	**0.027**

Consultation

41. The Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Division) and the Department of Internal Affairs – Charities Services have been consulted in the preparation of this report. The New Zealand Police's vetting service was also used in connection with the trustees/officers of the charities recommended in this report.

42. The Treasury has also been consulted in preparing this report and agrees with its recommendations.

Next steps

43. If you agree to the recommendations in this report, we will prepare a paper to the Cabinet Economic Development Committee seeking its approval to the additions to the list of overseas donee organisations in the Income Tax Act for inclusion in the omnibus taxation bill scheduled for introduction in the first quarter of 2023.

44. A copy of this report should be referred to the Minister of Finance for his information.

Annex A: Analysis of requests for overseas donee status

45. Officials look at a number of factors when considering a charity's request to be added to the list of donee organisations in the Income Tax Act. We look to establish whether the charity is capable of meeting its purposes and is accountable for the funds it collects by:

45.1 reviewing the charity's governing document (constitution and trust deed) to ensure the activities and purposes are consistent with Cabinet's criteria;

45.2 requiring the purposes stated in the charity's governing document to be entirely within the scope of paragraph (i) of the Cabinet criteria and that no personal pecuniary profit can be derived;

45.3 looking at the clauses governing the nature and extent of the trustees' discretionary powers, the winding-up clause, and the trustees' ability to amend the governing document;

45.4 looking at the charity's past, current, and proposed activities;

45.5 requesting that the trustees provide us with the charity's financial statements;

45.6 considering the trustees' degree of control over the application of the charity's funds overseas, and procedures in place to ensure accountability for funds;

45.7 considering the planning, monitoring, and evaluation processes used by the trustees regarding the application of the charity's funds, including how recipients use the funds, as well as the processes used to select beneficiaries and/or projects to support;

45.8 asking whether the charity has a legal presence in New Zealand and if it has registered under the Charities Act;

45.9 considering each request on the basis of other generic tax policy objectives, such as fiscal implications (including risk to the New Zealand tax base), consistency with other current government policy objectives, and the precedent effect; and

45.10 consulting with other government agencies such as the Ministry of Foreign Affairs and Trade, and the Department of Internal Affairs – Charities Services, to identify any concerns with the organisation or sensitivities with the countries in which the organisation operates. We also use the New Zealand Police's vetting service in connection with the charity's trustees or directors.

Annex B: Financial implications by charity

	Effect on tax revenue ($millions)				
	2022–23	**2023–24**	**2024–25**	**2025–26**	**2026–27 & outyears**
Butterfly Trust	(0.000)	(0.010)	(0.008)	(0.008)	(0.008)
Ekal Vidyalaya Foundation of NZ	(0.000)	(0.007)	(0.008)	(0.010)	(0.013)
Pasifika Safe Shelter Trust	(0.000)	(0.010)	(0.006)	(0.006)	(0.006)
Total	**(0.000)**	**(0.027)**	**(0.022)**	**(0.024)**	**(0.027)**

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Extending tax exemption for non-resident offshore oil rig and seismic vessel operators**

Date:	3 October 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/425

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	18 October 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Stephanie Watts	Senior Policy Advisor	s 9(2)(a)

3 October 2022

Minister of Revenue

Extending tax exemption for non-resident offshore oil rig and seismic vessel operators

Executive summary

1. At present, there is a temporary five-year exemption from income tax on the income of non-resident offshore oil rig and seismic vessel operators, which is due to expire on 31 December 2024. A decision is required about whether the exemption should continue to apply, and if so, whether it should be rolled over for a set period (such as a further five years), or made permanent. The exemption was originally introduced in 2004 and subsequently renewed in 2009, 2014 and again in 2019 on the basis that this provides a more sensible result from a tax policy perspective.

2. This is because the normal tax rules create an incentive for rigs and seismic vessels to "churn", that is, move in and out of New Zealand waters within a 183-day period where income is not taxable under many of our double tax agreements (DTAs). Through churning, no company tax would be paid in New Zealand by the oil rig and seismic vessel operators (ie the same outcome as with an exemption), while the increased costs from additional mobilising and demobilising of equipment would be deductible to the New Zealand petroleum miner, which reduces the New Zealand revenue base.

3. Inland Revenue consider that the income tax exemption should be retained and that it should be made permanent. The normal tax rules reduce the tax revenue base if rigs and seismic vessels churn in and out of New Zealand waters. The reduced exploration and production may also result in lower company tax, other taxes, and petroleum royalties being paid over time. The oil rig and seismic vessel operators will continue to be taxed under the income tax rules that apply in their home jurisdiction.

4. The temporary exemption has previously been rolled over for a further five years three times. Continually renewing the same exemption is not good tax policy practice and creates uncertainty for the petroleum industry as well as administration costs in considering the exemption. For these reasons Inland Revenue recommends the exemption is made permanent rather than extended for a further temporary period.

5. The 2015 APEC peer review of fossil fuel subsidy reforms in New Zealand also noted that this exemption appears to prevent 'churning' or cycling of equipment. This avoids unnecessary costs to the rig owners, including additional fuel consumption (i.e., wasteful consumption by drilling operators), and associated greenhouse gas emissions. We note that the OECD lists this measure as a "support measure" but has attributed a zero fiscal cost to New Zealand for each year since 2006.

6. The Ministry of Business, Innovation and the Employment (MBIE) supports the continued exemption; however, notes the context of government commitments and therefore recommends renewing the five-year exemption at this time.

7. The Treasury's view is that the exemption is not consistent with New Zealand's broad-based low-rate tax strategy, and that our tax system does not generally make accommodations for behavioural responses. Further, the environmental and energy policy context is changing. However, the Treasury concurs there are likely

benefits from reduced churn, which is associated with wasteful consumption and unnecessary costs, and notes that no feasible alternatives have been identified that would address the issue in the near term.

8. The Treasury considers the implications of permanently extending or not extending the exemption are difficult to assess while the policy landscape is changing and without a forward-looking view of exploration activity. In the Treasury's view, a five-year extension balances this by addressing churn in the near term and enabling the effectiveness and impacts of the exemption to be monitored as the environmental and energy policy context evolves.

9. The Ministry for the Environment also supports a five-year extension.

10. s 9(2)(h) [redacted]

11. Inland Revenue's judgement is that extending the exemption (temporarily for a further five years, or making it permanent) would have no fiscal implications. Our best estimate if the exemption is not extended, is to reduce fiscal forecasts by $4.5m million per year. This figure is an estimate of additional mobilisation costs for an offshore rig, of approximately US$10-$20 million (NZ$17-35 million), which has flow-on revenue impacts to the taxable profits of petroleum miners. This estimate has not been tested with industry. If you choose to let the current exemption expire we will report with updated figures before updating the forecast.

12. We recommend this exemption is included in the 2023 Omnibus Tax Bill. Once a decision is made regarding the exemption, officials will provide you with a draft Cabinet paper.

Recommended action

We recommend that you:

a. **note** there is an existing temporary income tax exemption for the income of non-resident offshore rig and seismic vessel operators that is due to expire at the end of 2024;

Noted

b. **agree** to adopt one of these three options:

i. **Option 1 – A permanent exemption** for the income of non-resident offshore rig and seismic vessel operators, which would apply from 1 January 2025 *(Inland Revenue's preference)*; OR

Agreed/Not agreed

ii. **Option 2 – A temporary five-year extension of the exemption** for the income of non-resident offshore rig and seismic vessel operators, which would apply from 1 January 2025 (*The Treasury, Ministry for the Environment, Ministry of Business, Innovation and Employment and Ministry of Foreign Affairs and Trade's preference)*; OR

Agreed/Not agreed

iii. **Option 3 – Not extending the existing exemption**, which means no exemption will apply for the income of non-resident offshore rig and seismic vessel operators from 1 January 2025 (*Not recommended)*;

Agreed/Not agreed

c. **agree** to amendments giving effect to the option selected above in the next available tax omnibus bill;

Agreed/Not agreed

d. **note** that officials will provide you with a Cabinet paper reflecting the option you select in b. above.

Noted

e. **refer** a copy of this report to the Minister of Finance, the Minister of Energy and Resources, the Minister for Trade and Export Growth and the Minister for Climate Change for their information;

Referred/Not referred

Paul Fulton
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2022

Background

13. A temporary five-year exemption was introduced in 2004 to address an issue created by our double tax agreements (DTAs), under which non-resident operators are only taxable in New Zealand if they are present here for at least 183 days. The exemption was originally introduced in 2004 and subsequently renewed in 2009, 2014, and again in 2019, on the basis that this provides a more sensible result from a tax policy perspective.

14. As the exemption is due to expire again on 31 December 2024, a decision is required about whether the exemption should continue to apply, and if so, whether it should be rolled over for a set period, such as a further five years, or made permanent.

15. New Zealand generally taxes non-residents on income that has a source in New Zealand. However, our DTAs provide that non-residents are only taxable on their New Zealand-sourced business profits if they have a "permanent establishment" in New Zealand. Many of our DTAs (such as the New Zealand/United States DTA) have a specific rule providing that a non-resident enterprise involved in exploring for natural resources only has a permanent establishment in New Zealand if they are present for a particular period of time, often 183 days in a year. Once a non-resident has a permanent establishment in New Zealand, it is taxed on all its New Zealand business profits starting from their first day in New Zealand.

16. This DTA provision was incentivising rigs and seismic vessels used in petroleum exploration and production to leave New Zealand waters before the 183-day threshold was reached to avoid being subject to New Zealand tax. In most cases, a rig or vessel would leave before 183 days, and a different rig or vessel was mobilised to complete the exploration/production programme (if it was completed). This increased the cost for companies engaged in exploration and production, and also delayed exploration drilling and any subsequent discovery/development of oil or gas. It also meant that there was little revenue collected from rigs and seismic vessels. Because of the limited supply of offshore drilling rigs, it could also result in exploration activity not taking place when it otherwise would. Although petroleum miners will benefit from this exemption, due to their decreased costs, this exemption prevents tax influencing behaviour and was not introduced as a concession to petroleum miners or an incentive for petroleum mining.

17. While there is a worldwide industry in rigs and seismic vessels, no New Zealand companies own these assets, so petroleum miners need to use a rig or seismic vessel provided by a non-resident owner to drill for oil and gas, and to gather data on potential oil and gas finds.

18. Wells generally take between 30 and 90 days to drill, and there is significant cost in bringing a rig or vessel to New Zealand. Operators often align their plans in order to conduct their work using the same rig or vessel in the same summer period.

19. Since 2018, when the exemption was last extended, there have been a total of two offshore non-resident drilling rigs, spending 313 and 226 days in the country each and 14 wells have been drilled. By contrast, between 2000 and 2005 (before the exemption was introduced), no rigs stayed in New Zealand waters beyond six months. Since 2009, thirteen seismic vessels have operated in New Zealand, of which one stayed over 183 days.

Alternatives to an exemption

20. We consider that, consistent with previous rollover decisions, there are no currently viable alternatives to extending the exemption.

21. In the absence of an exemption, non-resident owners of rigs and seismic vessels are expected to resume churning so they are not present for sufficient time to create a permanent establishment in New Zealand. Choosing to enter into contracts that only require equipment to be in New Zealand for less than 183 days, while driven by tax settings, would not in itself be tax avoidance so an anti-avoidance provision could not apply.

22. While some, but not all, DTAs have wording that include associated persons within the 183-day test this is not effective in this situation as the rig or seismic vessel owner, and their associates, will not enter into a second contract within a 12-month period with the second contract being filled by an unrelated owner of a separate rig or seismic vessel.

23. The other alternative that officials consider is not a suitable option is to impose an additional tax on the petroleum miner based on the tax that would have been paid by the rig or seismic vessel owner had they stayed beyond 183 days. A tax charged on a domestic consumer of services provided by a non-resident covered by a DTA could be borne by either party depending on the elasticity of the supply. If the economic burden of the tax was borne by the vessel owner, then this would undermine the spirit of the DTA – it would be trying to achieve the same effect as a tax we agreed not to charge under the DTA. This could have ramifications for how other countries regarded our commitments in future negotiations. In the alternative – that the petroleum miner cannot pass on the tax to the vessel owner – it would significantly over-tax the petroleum miner and represent a major departure from our current tax framework.

24. Final resolution of this issue could only be achieved by renegotiating all relevant DTAs so that rig and seismic vessel owners are not covered by the relevant article. There is an established programme of when DTAs are renegotiated with these renegotiations taking long periods of time and many not scheduled to be renegotiated in the medium term. As part of a renegotiation there is no guarantee another jurisdiction would agree to such a change and even if they did so the petroleum miner could contract with a rig owner from a jurisdiction that did not have an amended DTA to avoid its effect. Officials have not identified how many DTAs would need to be renegotiated but even renegotiating a single DTA would take a significant commitment, and take a long time (potentially decades).

Extending the exemption

25. There are three key options in relation to the income tax exemption that we have considered. These are:

- Make the exemption permanent;
- Extend the exemption by a further five years (or other set period) from 1 January 2025; and
- Let the exemption expire at the end of 2024.

26. Inland Revenue prefer making the exemption permanent. The Treasury, the Ministry of Business, Innovation and Employment, the Ministry for the Environment and the Ministry of Foreign Affairs and Trade prefer a further five-year extension.

27. Ordinarily, a broad-base, low-rate framework applies to the tax system. A consistent application of this framework will normally minimise any distortions caused by tax rules. However, with rigs and seismic vessels used for exploration or production, the normal tax rules do not provide the right outcome. This is because the normal tax rules create an incentive for rigs and seismic vessels to "churn". That is, to move in and out of New Zealand waters within a 183 day period where income is exempt under many of our DTAs. If rigs and seismic vessels churn in and out of New Zealand waters within the non-taxable period of 183 days, it will reduce the revenue base, and increase both unnecessary costs and greenhouse gas emissions.

28. Under any of the above three options, royalties, income tax and other indirect taxes would still be payable in relation to any finds (in addition to the direct and indirect economic benefits from the activity), as the exemption only applies to the non-resident rig and seismic vessel operators and does not apply to employees or contractors on the rig or the petroleum miner.

29. The exemption has been developed for the specific circumstances in New Zealand. We are not aware of any other country having a similar exemption due to a combination of factors such as: not having an offshore petroleum industry, having a sufficiently large market to have domestic-owned rig and seismic vessel operators, being closer to other countries so that mobilisation costs are much lower, and having different wording in their applicable DTAs so that the 183 day threshold does not apply.

30. Inland Revenue considers that there is merit in making the exemption permanent as it has already been rolled over three times, with the associated administration costs of doing so. A permanent exemption would also provide certainty to firms that are currently planning their future exploration or production work in New Zealand.

31. Extending the exemption by a further five years (or other set period) would make it easier to change the tax treatment if there was a globally significant find in New Zealand, and could be prudent in light of current environmental policy considerations to transition to a low emissions economy and New Zealand's engagement in international negotiations in relation to fossil fuel subsidy reform.

32. We do not consider the exemption should be left to expire at the end of 2024, as the underlying tax policy rationale for introducing the exemption is still valid. Based on previous experience, if the exemption is removed it is likely that rig and seismic vessel operators would change their behaviour so they would not be taxed in New Zealand. This would result in higher exploration and production costs, as well as negative impacts on exploration and production programmes, tax revenues, and royalties.

Environmental impact and health and safety

33. This report considers the environmental and economic impact of whether to extend the existing exemption only.

34. The Government has set out a long-term vision for New Zealand to transition to a low emissions economy and have set a low emissions target for 2050. Consistent with this, in 2018 Government announced there would be no further offshore petroleum permit issues, with existing rights and privileges maintained.

35. In response to the Climate Change Commission's (CCCs) advice, *Ināia tonu nei*, the Government set three Emissions Budgets out to 2035, and initiated a large policy work programme to ensure that New Zealand achieves these. These include the development of an Energy Strategy by 2024, and of a Gas Transition Plan that will work as an input into the Energy strategy.

36. The purpose of the Gas Transition Plan is to:

    36.1 establish transition pathways for the fossil gas sector to decarbonise in line with emissions budgets;

    36.2 inform and engage with industry and other stakeholders about the future challenges and opportunities for the sector, and to identify areas where further measures may be required to achieve an equitable transition; and

    36.3 establish a strategic view on the potential role for renewable gases, and potential measures for accelerating their uptake.

37. In its advice, the CCC noted that fossil gas will still be required in our energy system for some time. However, the extent, and pace of this transition is currently hard to predict. The availability of fossil gas over time will be reliant on ongoing field development and investment work by fossil gas companies, which will require access to offshore drilling rigs.

38. Extending the exemption is likely to ensure that petroleum exploration and mining activities are not impeded, compared with letting the exemption expire. This supports ongoing field development activities, increases the changes of successful discoveries, and consequentially oil and gas production, which increases economic development activity, tax revenue, and royalties.

39. The 2015 APEC peer review of fossil fuel subsidy reforms found that the exemption is *"not an inefficient subsidy that encourages wasteful consumption of fossil fuels"*. It also found that *"the tax exemption does appear to prevent 'churning' or cycling of equipment. Curtailing this practice avoids unnecessary costs, including additional fuel consumption (i.e., wasteful consumption by drilling operators), and associated greenhouse gas emissions."*

40. Compared to the situation where an exemption lapses, increased petroleum production may facilitate an increase in carbon dioxide emissions, however given New Zealand's high environmental standards, the environmental footprint from developing petroleum resources in New Zealand is likely to be lower than many other countries these would otherwise be source from. Examples of this are the production of methanol and synthetic fertilisers which are created using New Zealand's fossil gas supply. Therefore, from a global emissions perspective, developing some of these resources in New Zealand may provide better environmental outcomes.

41. Offshore drilling for petroleum in New Zealand began in the 1960s. To date, over 200 offshore wells have been drilled in New Zealand without any significant incidents. New Zealand also has high health and safety standards with respect to oil and gas exploration and production. This is evidenced in our tight regulation and monitoring of operators, and our absence of oil and gas environmental disasters. However, we note that rig mobilisations, demobilisations, and other movements (that occur as a result of churn) create health and safety risks due to the activities and large infrastructure assets involved. If the exemption is allowed to lapse we would expect increased churn, and therefore increased health and safety risks.

s 9(2)(h) [redacted]

42. s 9(2)(h) [redacted]

s 9(2)(h) [redacted]

43. s 9(2)(h) [redacted]

44. s 9(2)(h) [redacted]

Financial implications

45. MBIE's best judgement is that if the exemption is removed, rig and seismic vessel operators are likely to resume churning. In this case, no extra revenue would be collected from oil rig and seismic vessel operators, while firms purchasing their services could pay less tax. This is because the cost of these services (deductible to the New Zealand purchaser) could increase as a result of rigs and seismic vessels being "churned". Our judgement since 2014, and now, is that extending the exemption would have no fiscal implications. We have limited information on future rig movements but have assumed that letting the exemption expire would incur one additional rig mobilisation per current rig mobilisation which would cost New Zealand purchasers of rig services approximately US$10-$20 million (NZ$17-35 million) overall, with flow-on effects for the tax base. Based on recent historical rig movements, we have assumed one additional rig mobilisation every two years with this cost spread annually. As the exemption is currently incorporated into baselines, our best estimate is if the exemption is not extended forecasts will need to be reduced by $4.5 million per year; however, we will provide you updated figures if you choose to let the current exemption expire.

Administrative implications

46. No administrative implications arise from extending the exemption. Making the exemption permanent would remove the costs of considering further extensions each time a temporary exemption expires.

Compliance costs

47. Extending the exemption, either permanently or for five years, would reduce compliance costs for exploration and production companies beyond 2024.

Consultation

48. The Treasury considers a five-year extension is more suitable in light of the evolving policy context. The Treasury's view is that, while there are likely to be benefits from reduced churn, the exemption is not consistent with New Zealand's broad-based, low-rate tax strategy, and our tax system does not generally make accommodations for behavioural responses. Further, the environmental and energy policy context is changing. The Treasury considers the implications of permanently extending or not

extending the exemption are difficult to assess while the policy landscape is changing and without a forward-looking view of exploration activity. In the Treasury's view, a five-year extension would address churn in the near term and enable the effectiveness and impacts of the exemption to be monitored as the environmental and energy policy context evolves, including the development of the Energy Strategy and Gas Transition Plan. The Treasury also considers that a five-year extension would address the need for business certainty.

49. The Treasury suggests that, if an extension of the exemption is agreed, fuller analysis of the ongoing rationale, effectiveness and impacts of the exemption be commissioned to inform future decisions on the policy, including a forward-looking view of offshore exploration activity, alignment with environmental and energy strategy, international obligations, and alternative policy levers.

50. The Ministry of Business, Innovation and Employment supports the rationale for making the exemption permanent but notes the wider context of work taking place to support New Zealand's transition to a low emissions economy and therefore recommends a five-year extension, to provide the opportunity for a further review in 2030

51. The Ministry for the Environment recommends further consideration of the ongoing environmental impacts and signalled policy changes that will impact the oil and gas industry in coming years. They strongly recommend not making the exemption permanent, as it runs the risk of providing false certainty to the industry. However, they do support extending the exemption for five years given the changing context of energy policy.

52. The Ministry of Foreign Affairs and Trade considers a temporary exemption is more appropriate to align with New Zealand's international engagement on fossil fuel subsidy reform.

53. In addition, the oil and gas industry representative body, Energy Resources Aotearoa (ERA) has been consulted. It supports the extension of the exemption and making it permanent. It notes:

> *Renewal of section CW 57 is important to maintain investor confidence in New Zealand. It supports current work programmes and is consistent with the Crown's stated position of honouring the existing rights of permit holders by maintaining long standing exploration rules, of which CW 57 is a part.*

Expiry of the exemption

54. If you choose not to extend the exemption this could be done by simply letting it expire, then removing the relevant provision as a remedial amendment without needing Cabinet approval.

55. However, by the time of the expiry of the current exemption it will have been a feature of the New Zealand tax system for 20 years, including three rollovers. We consider that not extending the exemption would itself be akin to a policy change. Given its significance to the petroleum industry, a decision not to extend the exemption should be approved by Cabinet. Following such a decision, an announcement of this decision should be released in order to provide certainty to the petroleum industry at the earliest possible opportunity.

Next steps

56. If the exemption is to be extended, it will need to be included in the Omnibus Tax Bill scheduled for introduction in early 2023. This is the last Omnibus Tax Bill that is expected to be enacted before the current exemption expires on 31 December 2024. To meet this timeframe, Cabinet would need to agree to your recommendations before the end of 2022.

57. We will provide you with a draft Cabinet paper once you have made a decision regarding the exemption.

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Taxation of backdated ACC and MSD lump sum payments – final proposal**

Date:	20 October 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/436

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations **Note** the contents of this report	9 November 2022
Minister for Social Development and Employment; Minister for ACC	**Note** the contents of this report	9 November 2022
Minister of Revenue	**Agree** to recommendations **Note** the contents of this report	9 November 2022

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Bary Hollow	Principal Advisor	s 9(2)(a)
Natisha Jones	Policy Advisor	s 9(2)(a)

20 October 2022

Minister of Finance
Minister for Social Development and Employment
Minister for ACC
Minister of Revenue

Taxation of backdated ACC and MSD lump sum payments – final proposal

Purpose

1. This report seeks your agreement on an alternative tax treatment for backdated Accident Compensation Corporation (ACC) and the Ministry of Social Development (MSD) lump sum payments.

Context and background

2. This proposal seeks to address the tax disparity that arises where the timing of a backdated lump sum payment (BLSP) results in a higher tax liability than if the amount paid had been correctly paid over periods to which it relates (i.e., an amount that should have been paid over multiple years but is paid as a lump sum in a single year).

3. Generally, payments of employment type income are taxed on a cash basis (i.e., when they are received). This allows tax to be deducted by the payer (employer) when paid in the current tax year. This principle reduces compliance costs and is simple and easy to understand.

4. While taxing on a cash basis may be the best option for employment-related payments, a subset of these payments may give rise to a fairness issue if they are paid in a later tax year but relate to two or more previous tax years.

5. This issue has been raised repeatedly over several years in complaints to the Commissioner, Ministerial correspondence, media articles and Select Committee submissions.

6. In a previous report to the Minister of Revenue (IR2022/310 refers), we provided an update on the key feedback from initial consultation and outlined several potential options to deal with the BLSP issue. The Minister of Revenue agreed:

   6.1 that officials continue to work on a solution;

   6.2 to limit the scope of the project to BLSPs made by ACC, MSD and the Ministry of Business Innovation and Employment (MBIE); and

   6.3 that officials undertake targeted consultation on options to address the issue.

7. During targeted consultation, stakeholders were supportive of the policy objectives and their feedback contributed into refining the recommended options.

8. This report sets out the final proposal for MSD and ACC BLSPs (following consultation, the MBIE payments have been omitted from the proposal), and the fiscal and administrative implications flowing from these.

Problem definition

9. A person may be required to pay a higher amount of tax if an amount is paid in a lump sum in one tax year rather than being paid over multiple years. This is because, for most individual taxpayers, income is derived when it is received. This can be seen as unfair when the person was entitled to receive the payment in earlier years.

10. Receipt of the lump sum can "artificially" push people into a higher tax bracket for a single year. This compounds the disadvantage suffered by the affected person who, in addition to having had a delay in receiving their entitlement, also receives a smaller net amount than if the amount had been paid over multiple years (i.e., when it should have been paid).

11. A fairness issue arises when all the following occur:

11.1 A backdated (or remedial) payment relating to two or more tax years is made in a lump sum.

11.2 The amount is significant enough to move the taxpayer into a higher tax bracket.

11.3 If spread over the relevant tax years, the taxpayer would have had a lower tax liability in relation to that amount.

11.4 The delay or error has been caused by an action or inaction by the Crown.

Example:

Montgomery Scott (Scotty) was a forklift operator for one of the major ports in New Zealand. In 2018, he was involved in a workplace accident that saw him suffer long-term damage to his leg.

For a time, Scotty received weekly compensation under the Accident Compensation Act 2001 for loss of earnings. However, ACC stopped paying him weekly compensation in 2018 when it considered he was able to return to paid employment. Scotty disputed this decision, but it took some years to resolve as there were several investigations that needed to be completed before final eligibility was established. In 2022, Scotty was awarded a payment of $50,000 per year. This was paid in a lump sum of $200,000 in March 2022.

If Scotty had received this amount in the relevant years, his tax liability for the payments would have been as follows:

	2019	2020	2021	2022	Total
Income	$50,000	$50,000	$50,000	$50,000	$200,000
Tax liability	$8,020	$8,020	$8,020	$8,020	$32,080

However, for tax purposes the payment is only taxed on receipt of the full amount in 2022. This will result in income in the 2022 year of $200,000, and a tax liability for Scotty of $58,120.

The difference between the two treatments is an additional tax liability for Scotty of $26,040.

12. We consider the payments that fit within the problem definition, and of most concern, are backdated ACC compensation payments and backdated main benefit payments paid by MSD.

Payments not within the problem definition

13. We have drawn a distinction between lump sum payments in general and BLSPs, which relate to prior years. A lump sum payment of income may lead to a higher tax bill in one tax year than if it were spread over multiple years. However, this does not create a policy issue unless the entitlement to the payment arose, and should have been paid, in earlier years.

14. Further distinctions may be drawn when a lump sum payment arises from an employment agreement, in other words, when it is contemplated the payment will be paid out in a lump sum as opposed to spread over multiple tax years.

15. Where a provision in an employment agreement triggers an entitlement and this entitlement is paid out pursuant to the provisions in the employment agreement (e.g., bonuses), we consider no alternative tax treatment is required.

16. This was affirmed through consultation that although arguments can be made for other types of payments to be included, other lump sum payments are generally either:

    16.1 calculated with reference to prior years but incurred because of an action during the current year (e.g., redundancy and pay equity payments); or

    16.2 are not material enough to shift a person into a higher tax bracket (e.g., holiday pay reparation).

17. However, notwithstanding the general feedback from consultation, if Ministers agree to the proposal, it is likely that Ministers will be asked to make the ambit of the rules wider to include other lump sum payments. Calls for change are likely to come once the proposed change is announced, and through the legislative process.

18. Officials recommend that only types of BLSPs noted in this report which can be well defined should be included in the proposal. As explained, we believe that these payments are ACC and MSD BLSPs. The rationale for these payments is stronger than the others noted above, and there would be significant fiscal and administrative implications to any widening of the payments included within the proposal.

Desired outcome

19. The desired outcome is that any tax effects from receiving a multi-year payment in one tax year are mitigated using an alternative tax treatment to approximate the lower amount that would have been paid had the payment been made over multiple years.

20. We note that implementing an alternative tax treatment would not compensate customers for delayed payments. This proposal seeks to address the tax impacts only. We acknowledge that the delayed nature of these payments adds to the perception of a lack of fairness. However, to the extent that further compensation for delayed payment is desirable,[1] this is outside the scope of this proposal and should ultimately be dealt with in the specific Act that authorises the payments.

[1] ACC BLSPs generally include a portion intended to compensate for the time value of money.

Recommended options to address the problem

21. We consulted on three options to address the fairness issue for ACC payments and one option for MSD payments (IR2022/310 refers). After targeted consultation and analysis, we recommend the following option for each type of payment.

ACC compensation payments

22. ACC pays BLSPs of compensation to clients who are eligible for compensation for periods in the past. Backdating of ACC compensation may occur for various reasons, such as a late claim, a revoked decision, a settlement, or a decision quashed in review or in court.

23. ACC BLSPs can be for historic periods and range from weeks to decades. The quantum of these payments can be large, running into tens or hundreds of thousands of dollars, and hence these payments are often the most obvious ones raised as an example of unfair tax treatment.

24. ACC made on average 1,328 BLSPs a year over the period from 2017 to 2021. The average amount of those BLSPs payments was $48,228, with an average maximum payment of $865,000.

25. Our recommended option for ACC payments is to apply the person's average tax rate over the previous 4 years before receipt of the BLSP (separate from the person's annual income) to the BLSP. This would tax the BLSP at a more average tax rate and adjust for short-term changes in their marginal tax rates.

26. Inland Revenue would calculate this rate based on the income information it holds. Under the proposal, ACC could request the person's average tax rate before the BLSP is made and then apply that as the withholding rate. This would mean no additional amount of tax should be payable for the BLSP (assuming the recipient's circumstances do not change).

27. Under the proposal, the lowest rate that would be applied would be 10.5%. For example, a person with an average tax rate of less than 10.5% would be capped at 10.5% to account for the payment itself.

28. However, this proposed treatment could result in some recipients who are worse off than under the current treatment. This could occur where a person has had a higher tax rate in the four years prior to the lump sum payment but has a lower tax rate in the year the lump sum is paid. In this case, the recipient may end up with a higher tax bill than under the status quo.

29. To counter this, we propose that there be a "lower of" test to ensure recipients are not worse off under this proposal compared to the status quo. For example, if someone is on a lower tax rate in the current year than in the last four years the status quo treatment would apply rather than the alternative treatment.

30. If there was no "lower of" test, from the information we have obtained from ACC, we estimate that the number of people worse off than under the status quo treatment, would be between 39-84 per year. Due to the small number of affected taxpayers, this may be delivered in a slightly different way than the main proposal (i.e., it may require some manual intervention by the recipient). These issues will be worked through in the ultimate design of any proposed solution.

Backdated MSD entitlements

31. Backdated payments of main benefits from MSD (MSD entitlements)[2] may also give rise to an increased tax liability if they are paid in a subsequent tax year. This may occur for multiple reasons, including a system error, or incorrect or incomplete information being provided at the time of an assessment. Compared to ACC BLSPs, these payments tend to be smaller amounts.

32. Due to the way MSD calculates entitlements, a more tailored option can be implemented. MSD calculates entitlements from the ground up. They first decide how much a person is entitled to in their hand and then grosses that amount up for the tax payable. This also occurs for BLSPs, MSD calculates the net amount of the underpayment and calculates the tax to withhold with reference to the period the client was underpaid. In essence, MSD calculates the correct tax liability as if the payments had been correctly made on time.

33. In theory, this will give the recipient the correct net amount, however, the payment is taxed in the year of receipt by Inland Revenue, which may result in a higher amount of tax payable for the same reasons as ACC BLSPs.

34. For some recipients of backdated MSD entitlements, there is a tax write off available for these differences in tax.[3] However, for those who receive Working for Families or those who are no longer on a benefit, the differences will be payable.

35. Our recommended option for MSD payments is to assume the tax deducted by MSD is correct and ignore the BLSP for the purpose of the recipient's income tax liability (but not social policy entitlements).

Administrative and compliance implications

36. Implementing the recommended options will require moderate systems changes from ACC and MSD. This is because it will require an update to the employer information return to identify the BLSPs. This will impact ACC and MSD because they will be required to identify when the payment is a BLSP, which will flow through to Inland Revenue where the alternative tax treatment needs to be applied. There will also be costs for ACC involved in requesting the new proposed tax rate from Inland Revenue to enable them to withhold correctly from the BLSPs.

37. The proposals will also involve complex system changes by Inland Revenue to alter the annual tax calculation to account for the differing treatment of those payments. The differing treatments may also be more difficult for recipients to understand over the status quo (notwithstanding that the status quo results in higher taxation).

38. Given the complexity of system changes involved and the fact that those changes affect the employer information return, it will not be able to be implemented until 1 April 2024.

39. MSD has indicated this work is doable in the timeframe, however, they are still to work out the cost of the changes. ACC has indicated the changes required are possible within the timeframe, and system changes may cost between $200,000 - $400,000 to implement.

40. The recommended option will have minimal compliance costs for recipients. For ACC payments, ACC will be able to request a withholding rate from Inland Revenue and apply this without requiring further information from the recipient. Provided the

[2] Only main benefits and New Zealand Super are subject to tax, supplementary assistance such as the accommodation supplement and hardship grants are not taxed. This proposal does not apply to New Zealand Super because that entitlement is calculated on a gross basis.
[3] This write off is available for auto-calculation customers who do not receive Working for Families and for whom their only income is from MSD (with a de minimis that allows a small amount of other income).

recipients position does not change in the current year, they will not be required to pay any additional tax. For MSD recipients, they will be unlikely to have any additional income tax owing.

41. For both payments the BLSP will impact on the recipient's social policy entitlements for the current year. Although these are adverse impacts on entitlements for the current year essentially these are clawing back overpayments in prior years where the recipient may have received more than they were entitled to because they had lower income due to the underpayment of main benefits.

42. In addition, some social policy obligations depend on the amount of cash a person has at any one time. The proposed change in tax treatment will not impact on the increased cash from the BLSP available to meet obligations such as student loans or child support (other than increase it through a lower tax impost).

Transitional considerations

43. A further consideration is whether the proposal should apply only prospectively or whether concessional treatment should be applied retrospectively upon application.

44. Due to the extended media coverage of these types of payments, we expect that the issue of retrospectivity will be raised after any announcement of the change and during the legislative process. This would again highlight the perceived unfairness of the current policy for past BLSPs. Especially because these claimants have already had to fight against ACC or MSD to get payments they were entitled to, only to see an excess amount be paid in tax due to the way these payments are taxed.

45. While applying the proposed solution retrospectively may be seen to be "undoing a wrong," we do not consider this change would meet the usual criteria for a retrospective change. Changes are normally made retrospective where a change fills in a gap in existing legislation - in particular a relatively newly enacted regime. It either "fills gaps" in such a regime, fixes an obvious error or confirms well-documented policy intent. The tax treatment of BLSPs would fill no such gap and it is a well-established policy decision that employment "type" payments are taxed on receipt.

46. A second reason legislative changes may be applied retrospectively is where the change is taxpayer friendly, and the fiscal cost is acceptable. On a prospective basis, this change is taxpayer friendly because it reduces the tax impact on BLSPs. However, extending the change retrospectively will favour some taxpayers in this situation but not all, unless the change was made back to when these types of payments were first made (which could in theory go back to 1974 when ACC was created). To extend the benefit for some taxpayers for a shorter period will continue to result in some taxpayers not getting the benefit of the change. Additionally, determining where that line should be set would be arbitrary.

47. The fiscal cost of making this change retrospective would also be prohibitive. We have forecasted the impact of making the change retrospective for ACC BLSP's back four years (which equates to the time bar period at which the Commissioner can amend a person's assessment) and this would be approximately $40.4m.

48. Applying any solution retrospectively would increase the number of BLSPs eligible for concessionary treatment. The extent of any retrospective application will impact on the financial cost and impose significant compliance and system and manual administrative costs.

49. There is also no principled basis on which to draw the line, as there will always be payments who fall outside of the rules. In addition, making this type of policy change retrospective could have a precedential effect on future changes that relieve a tax impost on taxpayers which would not be desirable.

50. Given the above, officials' recommendation would be to apply the solution prospectively. If Ministers decided to make the change retrospective, officials will need to provide further advice on a suitable retrospective period and provide further advice as to how the cost could be funded. The cost of making the proposal retrospective will not meet the criteria to use the tax policy scorecard and we understand there are limited funds available in the between budget contingency.

Financial implications

51. The cost associated with the ACC payment proposal, including the potential cost to apply the proposal retrospectively to payments from the 2018-19 income year onwards are as follows:

Table 1: Four-year average tax rate

	$m – increase/(decrease)			
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(1.900)	(8.100)	(8.500)	(8.900)

Table 2: Four-year average tax rate applied retrospectively[4]

	$m – increase/(decrease)			
Vote Revenue Minister of Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(42.3)	(8.100)	(8.500)	(8.900)

52. The prospective costs meet the requirements to be charged against the tax policy scorecard. If Ministers wish to apply the change retrospectively, these costs will not meet the requirements of the scorecard and we will need to provide you with further advice on where this could be funded (along with advice around a suitable period to make the changes retrospective).

Consultation

53. As agreed with the Minister of Revenue, we engaged in targeted consultation with several key stakeholders on the various options. All submitters were supportive of the purpose of the project and were largely in agreement that the preferred option was the best option given the low compliance costs for payers and recipients.

54. Stakeholders favoured an average tax rate for the previous four income years, rather than two years (as an alternative option), as they considered using a longer period should mitigate any adverse movement in tax rates. Some raised the issue of social policy obligations still being adversely affected in the year of receipt. Some stakeholders also questioned the scope of the proposal and whether it should be

[4] Assuming all back-year claims from 2018/19 onwards are dealt with in the 2023/24 fiscal year and no floor on the amount of refund that can be claimed.

extended to other payments but did accept that these two types of payments were the most harshly treated and met the problem definition.

55. We consulted with the Treasury, ACC and MSD and they were supportive of the project.[5] Both ACC and MSD acknowledged that this will require system changes, which are outlined above.

Next steps

56. Should you wish to progress this, the proposal could be included in the March 2023 Omnibus Tax Bill. The next steps include:

56.1 The proposal would be included in the Omnibus Taxation Cabinet paper for the March 2023 Tax Bill at DEV on 7 December 2022;

56.2 The Bill would be introduced in March 2023; and

56.3 Implementation of the policy for payments made on or after 1 April 2024.

[5] MBIE were also consulted, however, those payment were not considered suitable for the proposed treatment due to the ad hoc nature of those and the fact those payments were not centrally paid by MBIE.

Recommended action

We recommend that you:

Recommendations		Minister of Finance	Minister of Social Development and Employment; Minister of ACC	Minister of Revenue
57.	**note** the contents of this report	Noted	Noted	Noted
58.	**agree** to provide alternative tax treatment for ACC backdated payments based on the recipients' average tax rate for the 4 years prior to the year of receipt of the backdated payment.	Agreed Not agreed	N/A	Agreed Not agreed
59.	**agree** to provide alternative tax treatment for MSD backdated main benefit payments by ignoring those payments for the purposes of calculating the recipients tax liability but not their social policy obligations.	Agreed Not agreed	N/A	Agreed Not agreed
60.	**note** that granting alternative tax treatment for two types of backdated lump sum payments is likely to lead to calls for tax relief for other types of lump sum payments.	Noted	Noted	Noted
61.	**agree** that the change to the tax treatment will apply to BLSP payments referred to in paragraphs 58 and 59 made on or after 1 April 2024. ***(Officials' recommendation)****.* **OR** **agree** that the change to the tax treatment to BLSP payments referred to in paragraphs 58 and 59 be made retrospective subject to further advice from officials on a suitable period to make the change retrospective and funding of the additional cost.	Agreed Not agreed Agreed Not Agreed	N/A N/A	Agreed Not agreed Agreed Not Agreed

<table>
<tr><td>62. note that granting alternative tax treatment prospectively is likely to come under criticism from those who have received payments prior to the legislative change.</td><td>Noted</td><td>Noted</td><td>Noted</td></tr>
<tr><td>63. Note the fiscal cost of the proposal for prospective payments is:
<table>
<tr><td></td><td colspan="4">$m – increase/(decrease)</td></tr>
<tr><td>Vote Revenue Minister of Revenue</td><td>2023/24</td><td>2024/25</td><td>2025/26</td><td>2026/27 & outyears</td></tr>
<tr><td>Crown Revenue and Receipts: Tax Revenue</td><td>(1.900)</td><td>(8.100)</td><td>(8.500)</td><td>(8.900)</td></tr>
</table>
</td><td>Noted</td><td>Noted</td><td>Noted</td></tr>
<tr><td>64. agree to charge the fiscal cost of the prospective change to the taxation of BSLPs in paragraph 63 to the tax policy scorecard.</td><td>Agreed
Not agreed</td><td>N/A</td><td>Agreed
Not agreed</td></tr>
<tr><td>65. agree to include these proposals in the upcoming March 2023 omnibus tax Bill.</td><td>Agreed
Not agreed</td><td>N/A</td><td>Agreed
Not agreed</td></tr>
</table>

s 9(2)(a)

Bary Hollow
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2022

Hon Carmel Sepuloni
Minister for Social Development
Minister for ACC
/ /2022

Hon David Parker
Minister of Revenue
/ /2022

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Extending tax exemption for non-resident offshore oil rig and seismic vessel operators – Cabinet approval**

Date:	20 October 2022	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2022/481

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to the recommendations	Thursday 17 November 2022
Minister of Revenue	**Agree** to the recommendations **Sign** and **refer** the attached Cabinet Paper to Cabinet Office	10am Thursday 17 November 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Stephanie Watts	Senior Policy Advisor	s 9(2)(a)

20 October 2022

Minister of Finance
Minister of Revenue

Extending tax exemption for non-resident offshore oil rig and seismic vessel operators – Cabinet approval

Summary

1. The Minister of Revenue has agreed that the income tax exemption for non-resident oil rigs and seismic vessels should be extended beyond its current expiry of 31 December 2024 for a further 5 years until 31 December 2029. [IR2022/425 refers].

2. This report has also been sent to the Minister of Finance due to the fiscal impact, which corrects the position in IR2022/425. We recommend that the Minister of Revenue sign the attached Cabinet paper and refer it to the Cabinet Office.

3. The Cabinet paper needs to be lodged with the Cabinet Office by 10am on Thursday 17 November 2022 for consideration by the Cabinet Economic Development Committee on Wednesday 23 November 2022.

Fiscal impact

4. Report IR2022/425 advised that the exemption was incorporated into baselines beyond 2024 and that, if the exemption was not extended, forecasts would need to be reduced by $4.5 million per year. This amount is due to one additional rig mobilisation every two years[1] with these costs being deductible to petroleum miners.

5. We have since confirmed that the exemption is not incorporated into baselines beyond its current expiry of 31 December 2024. If the exemption is extended for a further 5 years, as recommended in the attached Cabinet paper, there will be a revenue gain of $4.5 million per year for the 5-year extension of the exemption. The attached Cabinet paper reflects this corrected position.

6. Agreeing to the extension until 2029 will have the following estimated revenue gain, which can be accounted for on the tax policy scorecard:

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & Outyears[2]**
Crown Revenue and Receipts: Tax Revenue	-	-	4.500	4.500	4.500
Total operating	**-**	**-**	**(4.500)**	**(4.500)**	**(4.500)**

[1] We are unable to accurately estimate when these rig mobilisations will occur so have averaged the cost across each year.
[2] The final year of revenue impact is 2028/29, when the exemption expires.

Recommended action

We recommend that you:

a. **note** that extending the exemption until 31 December 2029 will have an estimated revenue gain of $13.5 million over the forecast period;

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & Outyears[3]**
Crown Revenue and Receipts: Tax Revenue	-	-	4.500	4.500	4.500
Total operating	**-**	**-**	**(4.500)**	**(4.500)**	**(4.500)**

Noted Noted

b. **agree** that the additional revenue be accounted for on the tax policy scorecard;

Agreed/Not Agreed Agreed/Not Agreed

c. **sign** and **refer** the attached Cabinet paper and Regulatory Impact Assessment on Extending tax exemption for non-resident offshore oil rig and seismic vessel operators to the Cabinet Office by 10.00am, Thursday 17 November 2022 for the Cabinet Economic Development Committee to consider at its meeting on 23 November 2022.

Signed and referred

Paul Fulton
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2022

Hon David Parker
Minister of Revenue
/ /2022

[3] The final year of revenue impact is 2028/29, when the exemption expires.

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Non-fiscal remedial items for the March 2023 omnibus taxation bill**

Date:	3 November 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/448

Action sought

	Action sought	Deadline
Minister of Revenue	**Endorse** the agreement of the Parliamentary Under-Secretary to the recommendations in this report	27 November 2022
Parliamentary Under-Secretary to the Minister of Revenue	**Agree** to recommendations **Refer** this report to the Minister of Revenue	27 November 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Gabriel Brdanovic	Bill Manager	s 9(2)(a)
Lucy England	Bill Coordinator	s 9(2)(a)

3 November 2022

Minister of Revenue
Parliamentary Under-Secretary to the Minister of Revenue

Non-fiscal remedial items for the March 2023 omnibus taxation bill

Executive summary

1. This report seeks agreement from the Parliamentary Under-Secretary to the Minister of Revenue and endorsement by the Minister of Revenue to make amendments to several Inland Revenue Acts[1] for inclusion in the omnibus taxation bill scheduled for introduction in March 2023.

2. The proposed amendments are remedial in nature and thus do not require Cabinet approval. The recommended changes are to ensure the relevant tax law is consistent with the policy intent and do not have any material revenue or other fiscal costs, compliance or administrative costs, or systems or technology implications.

3. The Treasury has been consulted on this report and they agree with the recommendations.

[1] The Income Tax Act 2007, the Tax Administration Act 1994, the KiwiSaver Act 2006 and the Child Support Act 1991.

Recommended action

We recommend that the Parliamentary Under-Secretary to the Minister of Revenue:

4. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

   Indicated

5. **Agree** that, except where specified, the approved amendments outlined in this report will apply from the date of enactment.

   Agreed/Not agreed

6. **Refer** a copy of this report to the Minister of Revenue.

   Referred

We recommend that the Minister of Revenue:

7. **Endorse** the Parliamentary Under-Secretary to the Minister of Revenue's agreement to the recommendations made above.

   Endorsed

8. **Agree** that the approved amendments be included in the omnibus taxation bill scheduled for introduction in March 2023.

   Agreed/Not agreed

s 9(2)(a)

[redacted]

Gabriel Brdanovic
Bill Manager
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2022

Dr Deborah Russell
Parliamentary Under-Secretary to the Minister of Revenue
/ /2022

Background

9. This report recommends remedial amendments to the Income Tax Act 2007 (the ITA), the Tax Administration Act 1994 (the TAA), the KiwiSaver Act 2006 and the Child Support Act 1991 for inclusion in the omnibus taxation bill scheduled for introduction in March 2023 (the Bill).

10. The amendments proposed in this report would align tax law with the relevant policy intent and support the coherence and integrity of the tax system. They are remedial in nature and do not have any material:

    10.1 revenue or other fiscal costs

    10.2 compliance or administrative costs, or

    10.3 systems or technology implications.

11. The amendments would apply from the date of enactment of the Bill unless otherwise stated.

12. We seek the agreement of the Parliamentary Under-Secretary to the Minister of Revenue to the proposed changes and endorsement of this agreement by the Minister of Revenue. We do not consider it necessary to obtain Cabinet approval of the recommendations in this report.

Remedial programme update

13. Since March 2022, external stakeholders have referred four remedial items to Inland Revenue's Referrals and Remedials Group (the Group). The first item, *10% income interest test for access to the attributable FIF income method*, is addressed in the upcoming report containing policy items and fiscal remedial items proposed for inclusion in the Bill (IR2022/449 will refer). The second item, *R&D tax incentive expenditure exclusions – oil and gas industry*, is addressed in a separate upcoming report and may be included in the Bill subject to Ministerial decisions (IR2022/500 will refer). The third and fourth items, *Thin Capitalisation remedials* and *Research and development tax incentive imputation credit date*, were raised with the Group in October 2022. Timelines are too tight to progress these items for the Bill, but they will be considered further for potential inclusion in future bills.

14. As noted in this report, three of the proposed amendments respond to issues brought to our attention by external stakeholders.

Charitable entity definition

15. The TAA treats charitable trusts registered under the Charities Act 2005 as having resident withholding tax (RWT) exempt status for the duration of their registration. The Charities Act provides for the registration of "charitable entities", not just charitable trusts. Registered charities that are not trusts (e.g. companies) are required to apply for RWT-exempt status. There is no policy reason to distinguish between charitable trusts and other entities registered under the Charities Act for this RWT treatment.

16. We recommend that automatic RWT-exempt status be extended to all entities registered under the Charities Act 2005. This will ensure that registered charities that are not trusts do not incur unnecessary compliance costs having to apply for RWT-exempt status. This proposal will have no fiscal impact as it would align the legislation with existing practice.

17. The proposed amendment should apply retrospectively from 1 April 2020, to align the RWT-exempt treatment for all entity types.

Recommendations

Agree that all entities registered under the Charities Act 2005 be treated as having RWT-exempt status for the duration of their registration.

Agreed/Not agreed

Agree that this proposal apply retrospectively from 1 April 2020.

Agreed/Not agreed

Definition of a gift-exempt body

18. Specific integrity provisions in the TAA apply to gift-exempt bodies, including a requirement for the Commissioner of Inland Revenue to notify the Minister of Revenue where funds of gift-exempt bodies are applied for purposes other than charitable, benevolent, philanthropic or cultural purposes. Gift-exempt bodies must keep New Zealand records to allow the Commissioner to determine the source of donations and the application of funds.

19. A gift-exempt body is any entity specifically named in Schedule 32 of the ITA (overseas donee status) or any person who has RWT-exempt status following an application made under section 32E(2)(k) or (l) of the TAA. These TAA provisions allow entities that derive income under certain income tax exemptions to apply for RWT-exempt status. The gift-exempt body definition is limited to entities that have made an application for RWT-exempt status. Charitable trusts registered under the Charities Act 2005 do not meet this definition as they are automatically treated as having RWT-exempt status without needing to apply.

20. We recommend extending the definition of a gift-exempt body to include all charities registered under the Charities Act 2005 and all persons that are eligible to apply for RWT-exempt status under section 32E(2)(k) or (l) of the TAA. This will ensure that the gift-exempt body integrity provisions apply to certain entities that derive exempt income or non-profit organisations regardless of whether they have applied for RWT-exempt status.

Recommendations

Agree that the definition of a gift-exempt body include all charities registered under the Charities Act 2005.

Agreed/Not agreed

Agree that the definition of a gift-exempt body include all persons that are eligible to apply for RWT-exempt status under section 32E(2)(k) or (l) of the Tax Administration Act 1994.

Agreed/Not agreed

Deregistration tax

21. A deregistration tax applies to assets held by charities that have deregistered under the Charities Act 2005. The deregistration tax is intended to ensure that where an entity has claimed income tax exemptions as a charity and has accumulated assets and income, these assets and income should be destined for a charitable purpose, even if the entity is deregistered by the regulator. The rules are designed to be a disincentive to transferring assets out of the charitable base once they are settled there.

22. The deregistration tax imposes income tax on the value of net assets of the deregistered charity which are held 12 months after the date of deregistration. Assets transferred or disposed of to a person "for charitable purposes" by the deregistered charity within 12 months of deregistration are excluded from the calculation of the deregistration tax.

23. Currently, assets that are transferred by a deregistered charity to an entity that is not a registered charity but has charitable purposes are not subject to the deregistration tax. This includes assets transferred to persons not resident in New Zealand. Once assets are transferred from a registered charity to the unregulated charitable sector, the deregistration tax is no longer applicable, and the assets can be subsequently transferred to any person.

24. This is a significant integrity risk as it allows for funds to accumulate in the charitable sector with the benefit of charitable tax concessions, and subsequently be transferred to another person (including overseas persons) for private use – with no benefit to the New Zealand charitable sector.

25. We recommend amending the deregistration tax to ensure that assets that are transferred to a person that is not a charity registered under the Charities Act are subject to the deregistration tax. This will ensure that the exclusion applies only to the transfer of assets from a deregistered charity to a registered charity. We recommend that the proposed integrity measure applies retrospectively from the date of introduction of the Bill.

26. This amendment will have an unquantifiable fiscal impact. Any impact will be dependent on the number of deregistered charities and the amount of assets transferred from those charities to entities with charitable purposes.

Recommendations

Agree that assets transferred from a deregistered charity to an entity that has charitable purposes but is not registered under the Charities Act be subject to the deregistration tax.

Agreed/Not agreed

Agree that this proposed amendment apply retrospectively from the date of introduction of the Bill.

Agreed/Not agreed

Overreach of the New Zealand double tax agreement (DTA) source rule

27. Non-residents are only taxed on their New Zealand-sourced income. In broad terms, income is treated as having a source in New Zealand when its connection with New Zealand is strong enough for New Zealand to exert taxing rights over that income. Since 2018, income is also deemed to have a source in New Zealand if New Zealand has a right to tax the item of income under a DTA (the DTA source rule).

28. Stakeholders have identified situations where the DTA source rule deems income to be sourced in New Zealand in circumstances where the connection with New Zealand is tenuous, and where New Zealand did not anticipate collecting tax on that income. We agree there is unintended overreach of the rule in relation to technical service fees and certain payments connected to a third State permanent establishment (PE). Stakeholders have also argued that there is an overreach in the case of directors' fees paid by a New Zealand company to a non-resident director, but we consider the rule is appropriate in those cases.

Technical service fees

29. Income from personal services is generally treated as sourced in New Zealand if the service is performed in New Zealand. Under our DTAs with India, Fiji and Malaysia, New Zealand has a right to tax fees for technical services provided by a non-resident to a New Zealand customer. These provisions were included at the request of those countries and is not part of New Zealand's DTA negotiating model. As a result, the DTA source rule deems income from these technical service fees to be sourced in New Zealand even though the services are performed overseas.

30. Having different source rules apply depending on which DTA is involved makes it difficult for taxpayers to understand and comply with the law, and for Inland Revenue to enforce the rules. In particular, there is no mechanism to collect withholding tax from a New Zealand customer paying a technical service fee to a non-resident. The current rules rely on the non-resident registering and returning their income to Inland Revenue, which we understand rarely, or never, happens in practice. Having a different outcome for different countries may also disincentivise taxpayers from acquiring services from providers in particular countries, and so distort their economic decision making.

31. We recommend that technical services fees be excluded from the DTA source rule.

Certain payments connected to a third State permanent establishment (PE)

32. Another instance of overreach of the DTA source rule arises in the case of interest and royalties paid by a New Zealand resident to a recipient in a DTA country, for the purposes of its PE in a third State.

33. For example, a New Zealand resident may borrow from a US lender for the purposes of its PE in Canada. Under the New Zealand–US DTA, and most of our DTAs,[2] interest is deemed to have a source in the payer's State (in this case New Zealand), even when it is connected to a PE of the payer in a third State. As a result, the interest will be taxable in both New Zealand (under New Zealand domestic tax law) and Canada (under Canadian domestic tax law), with no relief for double taxation. If the payer's PE had been located in the US, this issue would not arise as the New Zealand–US DTA would treat the income as sourced in the US instead of in New Zealand. Our domestic source rules exclude interest and royalties connected to a fixed establishment[3] outside New Zealand, but the DTA source rule inadvertently overrode this when introduced.

34. We recommend that payments for interest and royalties connected to a payer's PE outside New Zealand should be excluded from the DTA source rule.

Application date

35. We understand compliance with these rules is low given these outcomes were not intended when the DTA source rule was introduced. We therefore recommend a retrospective application date of 1 July 2018. This aligns with previous carveouts to the DTA source rule which also took retrospective effect from 1 July 2018.

Recommendations

Agree that technical service fees be excluded from the DTA source rule.

Agreed/Not agreed

[2] One exception is our DTA with Australia.
[3] A fixed establishment is the domestic law equivalent of, and very similar in definition to, a PE.

Agree that interest and royalties connected to a third state PE be excluded from the DTA source rule.

Agreed/Not agreed

Agree that the two recommendations above apply retrospectively from 1 July 2018.

Agreed/Not agreed

Provisional tax amendment – prior year residual income tax

36. There are special rules in the ITA which deal with a situation where a taxpayer calculates their provisional tax liability with reference to the prior year and a reassessment of that prior year is subsequently made that changes that instalment amount after they have paid it.

37. The wording of these rules is limited to where the prior year (current year (CY) – 1) is reassessed. External stakeholders have highlighted that this creates an issue where a taxpayer is using the year preceding the prior year (CY-2) to calculate their provisional tax liability and that year is subject to a reassessment.

38. When these provisions of the ITA were rewritten the application of this provision was limited to the prior year (current year (CY) – 1). This may expose the taxpayer to use of money interest and penalties where they have no knowledge of the actual liability.

39. The current wording of the section in relation to the CY-2 is inconsistent with the treatment of the CY-1 year and the policy intent. There is no policy reason why the two years should be treated differently, and this looks to be a drafting error at the time the provisions were rewritten.

40. We recommend the prior wording (i.e. prior to the rewrite of the ITA) be restored, with application from the commencement of the ITA.

Recommendations

Agree to amend the current provision which calculates provisional tax for a taxpayer who has a reassessment to include those taxpayers who base instalments on the year preceding the prior year (CY-2).

Agreed/Not agreed

Agree that the amendment apply from the commencement of the ITA.

Agreed/Not agreed

Portfolio investment entity rules – minor wording and cross-reference corrections

41. There are a number of minor wording issues with provisions that deal with the calculation of investor tax liabilities for investments in portfolio investment entities (PIEs).

42. A number of provisions require "re-linking" to other amended provisions and a number of outdated references should be corrected. These are required to ensure these sections work as intended.

Recommendations

Agree to wording and cross-reference corrections to provisions relating to the calculation of PIE tax liabilities to ensure the provisions work as intended.

Agreed/Not agreed

Custodians and resident withholding tax

43. Section RE 14C of the ITA deals with the situation where an intermediary, such as a custodian, receives a non-cash dividend from a foreign company and passes that non-cash dividend on to the owner of the underlying shares.

44. This section provides that the intermediary does not have to pay resident withholding tax in respect of the dividend.

45. However, some of the language used in the section does not reflect the custodial relationship correctly. Specifically, the section refers to:

    45.1 the custodian "deriving" the dividend, when legally the custodian has no shareholding in the underlying company, and

    45.2 the ultimate shareholder is referred to as the "shareholder in the company", which can be read as the custodial company rather than the underlying foreign company.

46. This language should be clarified to ensure that the section works as intended. It is proposed that the changes be made retrospective to when they came into effect (i.e. the rules were effective from 1 April 2017, with application for the 2017-18 and later income years).

47. This item was raised with us by an external stakeholder.

Recommendations

Agree to remedial amendments to ensure the provision relating to non-cash dividends received from a foreign company by a custodian applies as intended.

Agreed/Not agreed

Agree these amendments apply from the 2017-18 income year, when the provision was originally enacted.

Agreed/Not agreed

Transitional residents holding domestic financial arrangements

48. When a person becomes a New Zealand tax resident there is a deemed acquisition of their financial arrangements so that only gains and losses after they become New Zealand resident are subject to the financial arrangements rules. Since the introduction of the transitional residence rules, this deemed acquisition occurs when the New Zealand resident ceases to be a transitional resident.

49. However, the rules do not apply correctly when this person holds financial arrangements with a New Zealand source (e.g. New Zealand government bonds). Currently these do not have a deemed acquisition so the financial arrangements rules will effectively apply from the time the financial arrangement was acquired while the person was a non-resident. This means gains or losses before the person became a New Zealand resident will be subject to New Zealand tax.

50. We recommend a deemed acquisition is created for financial arrangements with a New Zealand source held by a non-resident at the time they become a New Zealand resident. This should apply to:

    50.1 all persons becoming New Zealand resident after the date of enactment of the Bill, and

    50.2 all arrangements with a New Zealand source that a person who became a New Zealand resident on or after 1 April 2008 is party to if they became party to that arrangement when they were a non-resident and were still party to that arrangement on the date of enactment of the Bill.

51. Given that the deemed acquisition only affects the amount of tax payable upon maturity of an arrangement, the proposed application dates will not affect any tax positions that have already been filed.

Recommendations

Agree that a person becoming a New Zealand resident be required to do a deemed acquisition of all financial arrangements with a New Zealand source on the date they become a New Zealand resident.

Agreed/Not agreed

Agree that the first recommendation apply to all arrangements acquired on or after 1 April 2008 when a New Zealand resident was a non-resident if no Base Price Adjustment has been required before the enactment of the Bill.

Agreed/Not agreed

Addressing extra pay inaccuracy

52. Where the employment of an employee concludes and an amount of extra pay is owed to the employee, the employer must add the amount of extra pay to the value of all PAYE payments made to the employee in the preceding four-week period before applying the employee's marginal rate to the extra pay owed to the employee.

53. The requirement to consider payments made to the employee in the four weeks prior to the employee's termination can result in the employer's final payment being either under or over-taxed depending on the value of the payments made within that preceding four-week period. Where an incorrect result arises, the employee will receive either a bill or a refund at the end of the tax-year.

54. To ensure amounts of extra pay are taxed correctly from the start, the ITA should be amended to allow payroll providers to "look back" to the last complete pay cycle. This will ensure the taxation of an employee's extra pay occurs at the correct marginal rate.

55. This item was raised with us by payroll providers.

Recommendations

Agree to allow payroll providers to "look back" to the last complete pay cycle when determining the marginal rate to apply to the taxation of an amount of extra pay on the termination of a person's employment.

Agreed/Not agreed

Allowing Inland Revenue to supply the names of the executors of KiwiSaver members' estates

56. When KiwiSaver members die their KiwiSaver accounts can lie dormant, no longer receiving contributions while remaining subject to KiwiSaver provider fees.

57. In some cases, the scheme provider may not learn of the member's death or know the contact details of the deceased's estate. In others, the executors may be unaware the deceased's KiwiSaver account exists. In either case, the member's account will remain undistributed to the intended heirs.

58. Under current legislative settings, Inland Revenue is unable to offer KiwiSaver providers any information about the executors of the deceased member's estate. We understand that there are some 11,000 deceased members still enrolled in KiwiSaver.

59. We recommend the KiwiSaver Act 2006 be amended to allow the Commissioner to share information related to a deceased KiwiSaver member's estate with KiwiSaver providers.

Recommendations

Agree that the Commissioner be permitted to share information relating to a deceased KiwiSaver member's estate with KiwiSaver providers.

Agreed/Not agreed

Clarifying that the child support time bar does not apply to temporary exemptions

60. The Child Support Amendment Act 2021 (the Amendment Act) introduced a four-year time bar for reassessments of child support. Reassessments will not occur beyond the four-year period, subject to specified exceptions. Currently, there is no exception to allow a liable person who has been granted a temporary exemption a reassessment in the time-barred period. This is contrary to the original policy intent, and inconsistent with an exemption relating to victims of sexual offending, which is specifically excluded from the time bar.

61. Temporary exemptions from paying child support are available to liable persons when certain criteria are met. They are granted on the grounds that a person has limited income and limited capacity to earn income. These exemptions apply to liable persons who are in prison, hospital, or a treatment facility; or who are suffering from a long-term illness or injury; and those under the age of 16 years.

62. It was intended that these exemptions could be applied to periods that would otherwise be time barred, but the Amendment Act does not achieve this outcome. This will cause issues for liable persons who continuously qualify for a temporary exemption for periods more than four years ago, such as those in prison. If the time bar did not apply, these persons could seek to have their temporary exemption backdated to apply to those past years.

63. We recommend the Child Support Act 1991 be amended to clarify that temporary exemptions can be backdated to apply to periods that would otherwise be time barred. This amendment should apply retrospectively from the introduction of the four-year time bar on 26 October 2021 in the Child Support Act 1991.

Recommendations

Agree that the four-year time bar for reassessments should not apply to temporary exemptions under the Child Support Act 1991 in line with the original policy intent.

Agreed/Not agreed

Agree that this amendment apply retrospectively from the introduction of the four-year time bar on 26 October 2021 in the Child Support Act 1991.

Agreed/Not agreed

Clarifying the meaning of "building" for depreciation purposes

64. Under the current depreciation rules, depreciation can be claimed on "non-residential buildings", but not "residential buildings". Although the terms "residential building" and "non-residential building" are defined in the ITA, the word "building" is not. In the recently published interpretation statement *IS 22/04: Claiming depreciation on buildings*, Inland Revenue confirmed its view that a "building", in a depreciation context, will, among other things:

    64.1 be enclosed by walls and a roof

    64.2 be able to function independently of any other structure, and

    64.3 have an appearance and function that fits with the idea of what a conventional building looks like and is ordinarily used for.

65. This interpretation arguably leads to the conclusion that part of a building owned under a unit title is not a "building", and therefore not depreciable, even where it is used predominantly for non-residential purposes. Such an outcome would be inconsistent with the policy intent of the depreciation rules.

66. We therefore recommend inserting a new definition of "building" into section YA 1 of the ITA clarifying that, for depreciation purposes, a "building" includes part of a building owned under a unit title. This will provide certainty to taxpayers that "non-residential" unit titled buildings are depreciable. This proposal will have no fiscal impact as it would align the legislation with policy intent of the depreciation rules. The proposed amendment should apply retrospectively from 1 April 2020, being the date on which depreciation for non-residential buildings was reinstated.

Recommendations

Agree that a new definition of "building" be inserted into section YA 1 of the ITA, clarifying that, for depreciation purposes, a "building" includes part of a building owned under a unit title.

Agreed/Not agreed

Agree that this amendment apply retrospectively from 1 April 2020.

Agreed/Not agreed

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Cabinet paper – Omnibus policy measures for inclusion in the March 2023 taxation bill**

Date:	10 November 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/449

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	10am, Thursday 1 December 2022
Minister of Revenue	**Agree** to recommendations **Approve** and **lodge** the attached Cabinet paper with the Cabinet Office	10am, Thursday 1 December 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
Gabriel Brdanovic	Principal Advisor	s 9(2)(a)
Lucy England	Policy Advisor	s 9(2)(a)

10 November 2022

Minister of Finance
Minister of Revenue

Cabinet paper – Omnibus policy measures for inclusion in the March 2023 taxation bill

Executive summary

1. This report seeks your agreement to set the annual rates for the 2023–2024 tax year in the omnibus taxation bill scheduled for introduction in March 2023 (the Bill).

2. This item has been included in the attached Cabinet paper alongside the following two additional policy items that have been previously agreed by Ministers for inclusion in the Bill:

   2.1 The Minister of Revenue has previously agreed to the addition of three New Zealand charities – Butterfly Trust, Ekal Vidyalaya Foundation of New Zealand, and Pasifika Safe Shelter Trust – to the list of overseas donee organisations in the Income Tax Act 2007 (IR2022/450 refers).

   2.2 The Minister of Revenue and Minister of Finance have previously agreed to introduce alternative tax treatment for backdated Accident Compensation Corporation (ACC) and the Ministry of Social Development (MSD) lump sum payments (IR2022/436 refers).

3. All three policy items require Cabinet approval. To ensure their inclusion in the Bill at introduction, they would need to be considered by the Cabinet Economic Development Committee at its meeting on 7 December 2022 and by Cabinet on 14 December 2022.

4. The report also seeks agreement to a remedial item which would amend the calculation of a person's income interest in a foreign investment fund (FIF) in order to use the attributable FIF income method. This item is included in this report for efficiency and does not require Cabinet approval.

5. If you agree to all the policy initiatives in this report, please refer the attached Cabinet paper to the Cabinet Office by 10:00am Thursday, 1 December.

Recommended action

We recommend that you:

6. **Indicate** in the body of this report where you agree or do not agree with a recommendation.

   Indicated Indicated

7. **Note** that where a policy item requires a regulatory impact assessment, this has been completed and is attached to the Cabinet paper.

   Noted Noted

8. **Approve** and **lodge** the attached Cabinet paper and regulatory impact assessments to the Cabinet Office by 10:00am Thursday, 1 December 2022 for the Cabinet Economic Development Committee to consider at its meeting on 7 December 2022.

Agreed/Not agreed

s 9(2)(a)

Gabriel Brdanovic
Principal Advisor
Inland Revenue

Hon Grant Robertson
Minister of Finance
/ /2022

Hon David Parker
Minister of Revenue
/ /2022

Background

9. This report seeks your agreement to set the annual rates for the 2023–2024 tax year in the omnibus taxation bill scheduled for introduction in March 2023 (the Bill).

10. If you agree, please refer the attached Cabinet paper to the Cabinet Office by 10:00am Thursday 1 December so that it can be considered by Cabinet Economic Development Committee at its meeting on 7 December.

11. The report also seeks your agreement to amend the 10% income interest test for access to the attributable foreign investment fund (FIF) income method. This item is remedial in nature and does not require Cabinet approval. We have included it in this paper for efficiency reasons and due to the small fiscal cost associated with it.

Financial implications

12. As described in the body of the report, there is a fiscal cost associated with amending the 10% income interest test for access to the attributable foreign investment fund (FIF) income method. We propose charging this cost against the Tax Policy Scorecard (the Scorecard). Treasury have advised that this change meets the criteria for use of the Scorecard.

13. The Scorecard is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. Ministers have previously agreed that the Tax Policy Scorecard should be the default option for managing the fiscal impact of tax policy changes, excluding "structural" changes, social policy, departmental funding, and changes mainly intended to achieve non-tax objectives (T2021/1273 refers).

10% income interest test for access to the attributable FIF income method

14. The FIF rules attribute income from certain foreign investments to New Zealand resident investors. These rules contain several different methods to calculate the income from these investments. When calculating FIF income or loss, to apply the attributable FIF income (AFI) method a person is required to, at all times in the accounting period, have an income interest in a FIF of 10% or more. Where there are variations in the income interest during the accounting period, a weighted average calculation is performed.

15. This rule does not work as intended when a FIF interest is acquired or disposed of part way through the FIF's accounting period. This is because an acquisition or disposal may result in an average income interest below 10% for the entire accounting period, despite the actual interest held during the period of ownership being over 10%. As a result, a taxpayer may not be able to access the AFI method for that period only and instead have to apply a less favourable FIF calculation method.

16. We recommend changing the relevant period for the 10% income interest test to be the period of ownership within the accounting period, rather than the entire accounting period.

17. We recommend that this change apply from 1 July 2011, being the start date from when the AFI method became available to taxpayers.

Financial implications

18. If you agree to this change, there will be a cost of approximately $0.7 million in the first year followed by an ongoing nominal cost of approximately $0.2 million per year, with a corresponding impact on the operating balance:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	-	(0.700)	(0.200)	(0.200)	(0.200)

19. The fiscal cost arises because taxpayers are currently using other methods that result in them paying more tax than they would using the AFI method. The increased cost of $0.7 million in the first year is due to one known case which will benefit from the retrospective application at a cost of approximately $0.5 million. We have not identified and do not expect other cases of this size.

Recommended action

20. **Agree** to the relevant time period for the 10% income interest test to access the attributable FIF income method being the period of ownership within an accounting year.

Agreed/Not agreed Agreed/Not agreed

21. **Agree** that this amendment apply for income years beginning on or after 1 July 2011.

Agreed/Not agreed Agreed/Not agreed

22. **Note** the following changes to tax revenue as a result of recommendations 20 and 21, with a corresponding impact on the operating balance:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	-	(0.700)	(0.200)	(0.200)	(0.200)

Noted Noted

23. **Agree** to charge the fiscal impact noted in recommendation 22 to the Tax Policy Scorecard.

Setting Annual Rates for 2023–2024

24. The Income Tax Act 2007 requires the rates of income tax to be set each tax year by an annual taxing Act.

25. It is proposed that the Bill set the annual rates of income tax for the 2023–24 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007.

26. This would not have any fiscal or administrative implications.

Recommended action

27. **Agree** to set the annual rates of income tax for the 2023–2024 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007.

Agreed/Not agreed Agreed/Not agreed

Overseas donee organisations

28. The Minister of Revenue has previously agreed to the addition of three New Zealand charities – Butterfly Trust, Ekal Vidyalaya Foundation of New Zealand, and Pasifika Safe Shelter Trust – to the list of overseas donee organisations in the Income Tax Act 2007 (IR2022/450 refers).

Recommended action

29. **Note** that the Minister of Revenue previously agreed to add three New Zealand charities to the list of overseas donee organisations in the Income Tax Act 2007 and the attached Cabinet paper includes material on this.

Noted Noted

ACC and MSD backdated lump-sum payments

30. The Minister of Revenue and Minister of Finance have previously agreed to introduce alternative tax treatment for backdated lump sum payments (BLSPs) made by the Accident Compensation Corporation (ACC) and the Ministry of Social Development (MSD) (IR2022/436 refers).

31. In that previous report (IR2022/436), we outlined the fiscal cost of amending the tax treatment of ACC BLSPs only. Since then, we have considered the fiscal cost of the proposed tax treatment of MSD BLSPs. Tax liabilities arising on the receipt of MSD BLSPs are subject to a write-off in most cases. The only exception to this rule is where the recipient is receiving Working for Families entitlements or where they are no longer receiving a benefit. The revenue collected from these exceptional cases is within the margin of error of the fiscal cost of the ACC BLSPs. Therefore, no additional fiscal cost needs to be accounted for in respect of ACC BLSPs.

32. In that report we also indicated that the cost for ACC to implement the changes would be between $200,000 and $400,000, with MSD's implementation costs still to be determined (IR2022/436). MSD have now indicated the cost to implement the changes would be $525,000. Any development costs for Inland Revenue will occur within a wider programme of changes and will be absorbed. We estimate these changes will be in the range of $200,000 – $400,000.

Recommended action

33. **Note** that the Minister of Revenue and Minister of Finance have already agreed to introduce alternative tax treatment for ACC and MSD backdated lump sum payments.

Noted Noted

34. **Note** that the fiscal cost of amending the tax treatment of MSD backdated lump sum payments will not be accounted for because it is within the margin of error of

the fiscal cost of the alternative tax treatment of ACC backdated lump sum payments.

Noted Noted

Consultation

35. The Treasury was consulted on the content of this report and draft Cabinet paper. The Department of Prime Minister and Cabinet was consulted on the draft Cabinet paper and had no comment.

Next steps

36. If you agree to all the policy items in this report, please refer the attached Cabinet paper to the Cabinet Office by 10am Thursday, 1 December 2022.

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

Extending tax exemption for non-resident offshore oil rig and seismic vessel operators

Proposal

1 At present, there is a temporary five-year exemption from income tax on the income of non-resident offshore oil rig and seismic vessel operators which is due to expire on 31 December 2024. I propose that the exemption be extended for a further five years from 1 January 2025 until 31 December 2029.

Executive Summary

2 At present, there is a temporary five-year exemption from income tax on the income of non-resident offshore oil rig and seismic vessel operators which is due to expire on 31 December 2024. The exemption removes the incentive for rigs and seismic vessels to “churn”, that is, move in and out of New Zealand waters within 183-days to ensure income is exempt from income tax under many of our double tax agreements (DTAs).

3 The normal tax rules reduce the tax revenue base as rigs and seismic vessels will churn in and out of New Zealand waters, and the increased costs from churning would be deductible to the New Zealand petroleum company. The reduced exploration and production may also result in lower company taxes, petroleum royalties, and other taxes being paid over time. The oil rig and seismic vessel operators will continue to be taxed under the income tax rules that apply in their home jurisdiction.

4 A decision to extend the income tax exemption would be in keeping with the 2018 announcement that there will be no new offshore petroleum exploration permits granted, which included maintaining the existing and subsequent rights of existing operators. Where further offshore petroleum exploration is undertaken under existing permits, it is in New Zealand’s interest for this to be done as efficiently as possible, without having policies that encourage churn.

Background

5 The tax exemption was introduced in 2004 to address an issue created by our DTAs, under which operators are only taxable in New Zealand if they are present here for at least 183 days. A permanent solution would be to amend all our relevant DTAs so these rigs and vessels are taxable from the day they arrive in New Zealand, but this is not considered practical. The exemption was subsequently renewed in 2009, 2014 and again in 2019 on the basis that this provides a more sensible result from a tax policy perspective. As the exemption is due to expire again on 31 December 2024, a decision is required on whether the exemption should continue to apply.

6 New Zealand generally taxes non-residents on income that has a source in New Zealand and if the non-resident has a "permanent establishment" in New Zealand. Many of our DTAs (such as the New Zealand/United States DTA) have a specific rule providing that a non-resident enterprise involved in exploring for natural resources only has a permanent establishment in New Zealand if they are present for a particular period of time, often 183 days in a year. Once a non-resident has a permanent establishment in New Zealand, it is taxed on all its New Zealand business profits starting from its first day in New Zealand.

7 Before the exemption was introduced rigs and seismic vessels used in petroleum exploration and production were leaving New Zealand waters before the 183 day threshold was reached to avoid being subject to New Zealand tax. This meant that rigs and vessels would leave before 183 days and a different rig or vessel was mobilised to complete the exploration/production programme, if required. This increased the cost for companies engaged in exploration and production and delayed exploration drilling and any subsequent discovery/development of oil or gas. It also meant that there was no company tax revenue collected from rigs and seismic vessels and their emissions, due to additional mobilisations, were higher.

Comment

8 Rigs and seismic vessels are used to drill for oil and gas and gather data on potential oil and gas finds. No New Zealand companies own these assets, and offshore rigs and seismic vessels owned by non-residents are covered by the current income tax exemption.

9 Since 2018, when the exemption was last extended, there have been a total of two offshore non-resident drilling rigs, spending 313 and 226 days in the country each and 14 wells have been drilled. By contrast, between 2000 and 2005 (before the exemption was introduced), no rigs stayed in New Zealand waters beyond six months.

10 Thirteen seismic vessels have operated in New Zealand since 2009 with an average duration of 108 days with one high-value survey extending through to 200 days. Maintaining the exemption removes a barrier for lengthier stays (which have been fewer but are typically more lucrative).

11 A consistent application of New Zealand's tax policy framework would normally minimise any distortions caused by tax rules. However, with rigs and seismic vessels used for exploration or production work the normal tax rules do not provide the right outcome. This is because the normal tax rules create an incentive for rigs and seismic vessels to "churn", that is, move in and out of New Zealand waters within a 183 day period where income is exempt under many of our DTAs. If rigs and seismic vessels churn in and out of New Zealand waters within the non-taxable period of 183 days it will reduce the revenue base, and increase unnecessary costs and greenhouse gas emissions.

12 Under the exemption, royalties, income tax and other indirect taxes would still be payable in relation to any petroleum discoveries (in addition to the direct and indirect economic benefits from the activity), as the exemption only applies to the non-resident rig and seismic vessel operators and does not apply to employees or contractors on the rig or the petroleum miner.

Environmental impact, health and safety and security of supply

13 The Government has set out a long-term vision for New Zealand to transition to a low emissions economy and have set a low emissions target for 2050. In response to the Climate Change Commission's (CCCs) advice, *Ināia tonu nei*, the Government set three Emissions Budgets out to 2035, and initiated a large policy work programme to ensure that New Zealand achieves these. These include the development of an Energy Strategy by 2024, and of a Gas Transition Plan that will work as an input into the Energy strategy.

14 In its advice, the CCC noted that fossil gas will still be required in our energy system for some time. However, the extent, and pace of this transition is currently hard to predict. New Zealand's gas reserves are only sufficient to cover a decade of annual gas demand at current demand levels. The availability of fossil gas beyond this period will be reliant on ongoing field development and investment work by fossil gas companies, which may require access to offshore drilling rigs.

15 Extending the exemption is likely to ensure oil and gas exploration and mining activities are not impeded compared with letting the exemption expire. This increases the chance of successful discoveries and consequentially oil and gas production. Compared to the situation where an exemption lapses, increased petroleum production may facilitate an increase in carbon dioxide emissions, however, given New Zealand's high environmental standards, the environmental footprint from developing petroleum resources in New Zealand is likely to be lower than many other countries these resources would otherwise be sourced from. Examples of products which have a lower environmental impact when manufactured in New Zealand include methanol and synthetic fertilisers which are created using New Zealand's fossil gas supply. Therefore, from a global emissions perspective, developing some of these resources in New Zealand may provide better environmental outcomes.

16 The 2015 APEC fossil fuel subsidy reform peer review of New Zealand noted that this exemption is "*not an inefficient subsidy that encourages wasteful consumption of fossil fuels*". It also found that "*the tax exemption appears to prevent 'churning' or cycling of equipment. Curtailing this practice avoids unnecessary costs, including additional fuel consumption (i.e. wasteful consumption by drilling operators), and associated greenhouse gas emissions*". The OECD lists this measure as a "support measure" but has attributed a zero fiscal cost to New Zealand for each year since 2006.

17 Offshore drilling for petroleum in New Zealand began in the 1960s. To date, over 200 offshore wells have been drilled in New Zealand, 10 of which have been in deep water, without any significant incidents. New Zealand also has high health and safety standards with respect to oil and gas exploration and production. This is evidenced in our tight regulation and monitoring of operators and our absence of oil and gas environmental disasters. However, rig mobilisations, demobilisations, and other movements (that occur as a result of churn) increase health and safety risks due to the activities and large infrastructure assets involved. If the exemption is allowed to lapse I would expect increased churn, and therefore increased, but still a low probability of, health and safety risks.

s 9(2)(h) [redacted]

18 s 9(2)(h) [redacted]

19 s 9(2)(h) [redacted]

20 s 9(2)(h) [redacted]

Consistency with 2018 Government announcement on no new offshore petroleum exploration permits

21 On 12 April 2018 the Government announced there will be no new offshore petroleum exploration permits granted. The Cabinet Minute [CAB-18-MIN-0162 refers] confirms this policy is not intended to affect the rights of current permit holders to continue production or exploration activities under existing permits.

22 A decision to extend the income tax exemption would be in keeping with the policy to maintain the rights of existing operators. Where further offshore petroleum exploration is undertaken under existing permits, it is in New Zealand's interest for this to be done as efficiently as possible, without encouraging churn.

23 Instead of a further five-year extension I also considered making the exemption permanent. I consider a five year extension is more prudent as this will provide sufficient certainty for near-term investment decisions while enabling the effectiveness and impacts of the exemption to be monitored as the environmental and energy policy context evolves, including the development of the Energy Strategy and Gas Transition Plan.

Consultation

24 Targeted consultation has been undertaken with the oil and gas industry representative body, Energy Resources Aotearoa (ERA), which supports extending the exemption.

25 Inland Revenue, the Ministry of Business, Innovation and Employment, the Treasury, the Ministry of Foreign Affairs and Trade and the Ministry for the Environment have been consulted and support the proposed 5-year extension. The Treasury and the Ministry of Foreign Affairs and Trade consider a 5-year extension would address churn in the near term while enabling the exemption to be monitored in the changing policy context.

26 s 9(2)(h) [redacted]

Financial Implications

27 Officials' best judgement is that if the exemption is not extended, rig and seismic vessel operators are likely to resume churning. In this case, no extra revenue would be collected from oil rig and seismic vessel operators while firms purchasing their services are expected to pay less tax, because the cost of these services (deductible to the New Zealand purchaser) could increase as a result of rigs and seismic vessels being churned. This expectation is already included in the baseline forecasts.

28 The table below shows the forecast revenue gains of extending the exemption. The final year of revenue impact is 2028/29, when the extended exemption expires.

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	-	4.500	4.500	4.500
Total operating	-	-	**(4.500)**	**(4.500)**	**(4.500)**

29 The revenue gain from this proposal can be accounted for on the tax policy scorecard.

Human Rights

30 The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

31 Extending the exemption before the expiry of the current exemption on 31 December 2024 will require an amendment to the Income Tax Act 2007. I recommend this be included in the next available tax omnibus bill scheduled for introduction in 2023.

Impact Analysis

Regulatory Impact Analysis

32 An update to the 2019 Regulatory Impact Statement (RIS) [CAB-19-MIN-0287] to extend the tax exemption for non-resident oil rig and seismic vessel operators has been completed and is attached in appendix 1.

33 The Treasury's Regulatory Impact Analysis Team has granted an exemption from producing a new RIS, conditional on a quality assurance check to ensure the updated 2019 RIS reflects any developments since it was originally produced. Inland Revenue's quality assurance panel has confirmed that the RIS is still fit for purpose.

Climate Implications of Policy Assessment

34 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not expected to be met. However, as no modelling or data analysis regarding the emissions impacts of this proposal has been completed, climate implications are difficult to quantify at this point.

35 The CIPA team notes that recommendations in this paper take into account the Government's overall emissions reduction plan, including intent to reduce emissions from energy production, by not granting a permanent tax exemption for this activity.

Publicity

36 I will make an announcement on the contents of the bill when it is introduced to the House. Inland Revenue will publish details of the new legislation in a Tax Information Bulletin once the tax bill containing the amendments is enacted.

Proactive Release

37 I propose to proactively release this Cabinet paper, together with the associated RIS.

Recommendations

I recommend that the Committee:

1 **Note** that there is an existing temporary income tax exemption for the income of non-resident offshore rig and seismic vessel operators that is due to expire on 31 December 2024.

2 **Note** early signalling of intentions is important for industry certainty and investment decisions.

3 **Note** that maintaining the exemption would be consistent with the approach to maintain existing settings taken in the offshore oil and gas exploration announcement made on 12 April 2018.

4 **Agree** to the exemption for the income of non-resident offshore rig and seismic vessel operators being extended until 31 December 2029.

5 **Agree** to amendments giving effect to the above recommendation being included in the next available tax omnibus bill, to apply from 1 January 2025.

6 **Note** that agreeing to recommendation 4 above will have an estimated revenue gain of $13.5 million over the forecast period, which can be accounted for on the tax policy scorecard:

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	-	4.500	4.500	4.500
Total operating	**-**	**-**	**(4.500)**	**(4.500)**	**(4.500)**

7 **Note** the last year of revenue impact is 2028/29, when the exemption expires.

8 **Note** that this Cabinet paper, the associated Cabinet minute, and Regulatory Impact Assessment will be proactively released on Inland Revenue’s website.

Authorised for lodgement

Hon David Parker

Minister of Revenue

Doc 8

CBC-22-MIN-0053

Cabinet Business Committee

Minute of Decision

Extending Tax Exemption for Non-resident Offshore Oil Rig and Seismic Vessel Operators

Portfolio **Revenue**

On 28 November 2022, the Cabinet Business Committee:

1 **noted** that there is an existing temporary income tax exemption for the income of non-resident offshore rig and seismic vessel operators that is due to expire on 31 December 2024, agreed by the Cabinet Economic Development Committee in June 2019 [DEV-19-MIN-0151];

2 **noted** that early signalling of intentions is important for industry certainty and investment decisions;

3 **noted** that maintaining the exemption would be consistent with the approach to maintain existing settings taken in the offshore oil and gas exploration announcement made on 12 April 2018;

4 **agreed** to the exemption for the income of non-resident offshore rig and seismic vessel operators being extended until 31 December 2029;

5 **agreed** to amendments giving effect to the above decision being included in the next available tax omnibus bill, to apply from 1 January 2025;

6 **noted** that agreeing to paragraph 4 above will have an estimated revenue gain of $13.5 million over the forecast period, which can be accounted for on the tax policy scorecard as follows:

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	-	4.500	4.500	4.500
Total operating	**-**	**-**	**(4.500)**	**(4.500)**	**(4.500)**

7 **noted** that the last year of revenue impact is 2028/29, when the exemption expires.

Rachel Clarke
Committee Secretary

Present:
Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Carmel Sepuloni
Hon Andrew Little
Hon Stuart Nash
Hon Jan Tinetti
Hon Michael Wood
Hon Kiri Allan

Officials present from:
Office of the Prime Minister
Department of the Prime Minister and Cabinet

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Cabinet paper: Measures for inclusion in the 2023 omnibus taxation bill**

Date:	8 February 2023	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2023/002

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations **Approve** and **lodge** the attached Cabinet paper with the Cabinet Office	10 am, Thursday, 2 March 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
Brandon Sloan	Principal Policy Advisor	s 9(2)(a)
Harper Burtenshaw	Policy Advisor	s 9(2)(a)

2 February 2023

Minister of Revenue

Cabinet paper: measures for inclusion in the 2023 omnibus taxation bill

Executive summary

Purpose

1. This report seeks your agreement to:

   1.1 Add a further three New Zealand charities to the list of overseas donee organisations in the Income Tax Act 2007 (these charities are additional to the ones you agreed to in 2022 (IR2022/450, dated 28 September 2022 refers).

   1.2 The removal of five charities on the list as they have ceased their activities and wound up.

2. If you agree to the recommendations in this report, we also recommend you approve the attached amended paper to Cabinet Economic Development Committee seeking its approval to a range of policy measures for inclusion in the next taxation bill for 2023. The measures contained in the attached Cabinet paper which you have previously agreed to are:

   2.1 Setting the annual rates for 2023-24 (IR2022/449, dated 10 November 2022 refers);

   2.2 Changes to the tax treatment of backdated Accident Compensation Corporation (ACC) and the Ministry of Social Development (MSD) lump sum payments (IR2022/436, dated 20 October 2022 refers); and

   2.3 Earlier approvals to the list of overseas donee organisations in the Income Tax Act 2007 (IR2022/450).

3. For the paper to be considered by Cabinet Economic Development Committee at its meeting on 8 March 2023, the attached Cabinet paper needs to be lodged with the Cabinet Office by 10am, Thursday, 2 March.

Further additions to schedule 32 of the Income Tax Act

4. Due to the introduction of the next omnibus taxation bill being moved to May 2023, we have progressed our consideration of three more charities for overseas donee status. "Overseas donee status" is used to describe certain New Zealand charities with overseas purposes for which donors are eligible for tax benefits, including:

   4.1 the donation tax credit, and

   4.2 tax deductions if the monetary donation is from a company or Māori authority.

5. Overseas donee status is an exception to the policy framework that generally limits tax benefits to donations to charities with New Zealand purposes. It is designed to complement the government's overseas development strategy by using the tax system to support charities that undertake activities that are consistent with the purposes set out in paragraph 22 (Cabinet's approval criteria).

6. The further three charities we recommend be granted overseas donee status are:

   6.1 Develop Together

   6.2 The Limapela Foundation

   6.3 The Make My Name Count Charitable NZ Trust (for a time limited period, ending 31 March 2028)

7. Descriptions of the charities, their purposes and activities, are provided in paragraphs 27 to 31 of this report.

8. The three charities we recommend be given overseas donee status meet Cabinet's criteria (paragraph 22). They are largely involved in the relief of poverty, the relief of sickness, or improving education outcomes in developing countries. All are registered under the Charities Act 2005, and have adequate procedures for the accountability of funds applied to projects outside New Zealand.

9. We recommend that these charities receive overseas donee status from 1 April 2023.

Removals from schedule 32

10. We also recommend the removal of five charities that have ceased operations.

    10.1 Akha Rescue Ministry Charitable Trust

    10.2 Astha Childrens Home (Nepal/New Zealand)

    10.3 Bangladesh Flood Appeal Trust

    10.4 Nelson Mandela Trust (New Zealand)

    10.5 Operation Hope (Aid Ship to Africa)

11. We recommend the charities' names be removed on the enactment of the proposed taxation bill. The reasons for removing the charities are set out in paragraph 33. Cabinet approval is not required for the charities we recommend be removed from schedule 32.

Financial implications

12. The revenue effect of giving overseas donee status to the three charities recommended in this report is estimated to be $1.204 million over the forecast period. The revenue effect is recognised as a forecasting change because it reflects an increase in the cost of the decision to allow donations to New Zealand-based charities with overseas purposes to be eligible for tax benefits. No adjustment is made for the five charities we recommend be removed from schedule 32. The recommendations in this report have no impact of the Tax Policy Scorecard.[1]

Consultation

13. The Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Division) and the Department of Internal Affairs – Charities Services were consulted as part of our analysis of the charities discussed in this report.

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[1] The Tax Policy Scorecard is a memorandum account that records the fiscal effect of approved tax policy decisions that improve the tax system outside of the Budget process.

14. The Treasury has been consulted in preparing this report and agrees with its recommendations.

Next steps

15. If you agree to the recommendations in this report, we recommend that you approve and lodge the draft paper with the Cabinet Office for consideration by the Cabinet Economic Development Committee at its meeting for 8 March 2023. The attached paper seeks approval to a range to tax policy changes for inclusion in the omnibus taxation bill scheduled for introduction in May 2023.

16. A copy of this report should be referred to the Minister of Finance for his information.

Recommended action

1. **Agree** that the following charities be added to the list of organisations with overseas donee status in the Income Tax Act 2007:

(i)	Develop Together	Agreed/ Not agreed
(ii)	The Limapela Foundation	Agreed/ Not agreed
(iii)	The Make My Name Count NZ Charitable Trust	Agreed/ Not agreed

2. **Agree** that any charities in recommendation 1 that you have approved are given overseas donee status from the following dates;

(i)	The Make My Name Count NZ Charitable Trust from 1 April 2023 until 31 March 2028.	Agreed/ Not agreed
(ii)	The rest from 1 April 2023	Agreed/ Not agreed

3. **Note** that agreeing recommendations 1 and 2 will result in the following adjustments to revenue forecasts:

Vote Revenue **Minister of Revenue**	**2022–23**	**2023–24**	**2024–25**	**2025-2026**	**2026–27 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.000	(0.284)	(0.296)	(0.307)	(0.317)

4. **Agree** to remove the following charities from the list of donee organisations in the Income Tax Act, from the date of enactment of the proposed taxation bill to be introduced in the first half of 2023;

(i)	Akha Rescue Ministry Charitable Trust	Agreed/ Not agreed
(ii)	Astha Childrens Home (Nepal/New Zealand)	Agreed/ Not agreed
(iii)	Bangladesh Flood Appeal Trust	Agreed/ Not agreed
(iv)	Nelson Mandela Trust (New Zealand)	Agreed/ Not agreed
(v)	Operation Hope (Aid Ship to Africa)	Agreed/ Not agreed

5. **Agree** that amendments giving effect to recommendations 1,2, and 4 be included in the omnibus taxation bill scheduled for introduction in the first half of 2023.

   Agreed/ Not agreed

6. **Approve** and **lodge** the attached draft Cabinet paper and regulatory impact assessments with the Cabinet Office for consideration by the Cabinet Economic Development Committee on 8 March 2023.

   Agreed/Not agreed

7. **Refer** a copy of this report to the Minister of Finance for his information.

   Referred/Not referred

s 9(2)(a)

Brandon Sloan
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2023

Overseas donee status: Further additions and removals for inclusion in the next taxation bill for 2023

Background

18. Since 1962, the Income Tax Act has provided tax benefits for monetary donations to New Zealand charities (including benevolent, philanthropic, or cultural organisations) whose purposes are largely limited to New Zealand. The Income Tax Act imposes certain statutory limitations on the entity's purposes and its application of funds, which must relate "wholly or mainly" to purposes in New Zealand. At the time, three charities with overseas purposes were made specific exceptions to the rule. The government also acknowledged that charities could be added to the list of names from time to time as comparable cases arise. In 1978, Cabinet developed criteria to support consideration about future additions of New Zealand-based overseas aid organisations to the legislative list (see paragraph 23).

19. Supporting New Zealand charities through granting overseas donee status is intended to assist the New Zealand Government's overseas development efforts, where aid objectives are better achieved by charitable non-government organisations (NGOs). The assistance is open-ended and less discretionary than other forms of government assistance[2] because it is delivered through the tax system using the benefits attached to monetary donations made to the listed charities.

20. Broadly, governments may seek to promote charitable giving:

    20.1 to further social objectives – in this particular case, overseas development aid,

    20.2 for the wider benefits to society (externalities), which may be over and above the value of the benefit provided via the tax system, and

    20.3 because donations can be effective indicators of when extra goods and services should be provided in market conditions that might otherwise not exist – this is particularly the case in developing countries, or when assisting individuals suffering from the effects of poverty or sickness, or a natural disaster.

21. The trade-off for these benefits is the open-ended revenue cost that applies for as long as the charity is on the list of approved donee organisations.

Cabinet's consideration of requests for overseas donee status

22. Since 1978, Cabinet has applied the following criteria to assess applications for overseas donee status.

    The basic criteria for adding an organisation to the list of approved "overseas" charities:

    (i) the funds of the charity should be principally applied towards:

    the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

    the economy of developing countries; or*

[2] For example, the Ministry of Foreign Affairs and Trade's New Zealand aid programmes: the New Zealand Partnerships for International Development Fund (Partnerships Fund), the Sustainable Development Fund, the New Zealand Disaster Response Partnership (NZDRP), and the Pacific Island Countries Participation Fund (PIC Fund).

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;

[CM 78/14/7 refers]

23. The eligible purposes set out in the criteria are aligned with the Government's overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of "charitable purpose" and the legislative framework in the Charities Act. Determination of donee status, including overseas donee status, remains the responsibility of Inland Revenue because of the tax benefits that attach to monetary donations.

24. Irrespective of whether a charity's founding documents and activities are charitable, approval for inclusion on schedule 32 of the Income Tax Act (conferring overseas donee status) is not automatic, and requests are considered on a case-by-case basis.

25. An overarching consideration is that any charity approved for overseas donee status is credible, transparent, and accountable.[3] Fiscal impacts and the integrity of the tax system are also relevant considerations. Overseas donee status is an exception to the policy that tax benefits for donations should be limited to charities with New Zealand purposes and requires amending the Income Tax Act. In 2016, the Legislation Design and Advisory Committee provided advice to Inland Revenue confirming that the use of legislation to grant overseas donee status is appropriate

Charities recommended for overseas donee status

26. The three charities discussed below have purposes that come within the criteria provided in paragraph 12, and we recommend that they be granted overseas donee status. They all have adequate procedures for the accountability of funds applied to projects.

Develop Together

27. Develop Together was established in 2022 to continue the work of BANZAid (Baptist Aotearoa New Zealand Aid) which was established in 1997 as a department of the New Zealand Baptist Missionary Society. In November 2019 BANZaid was closed and in 2022 Develop Together was established to oversee, finance and run all the development and aid work of New Zealand Baptist Missionary Society, including what was previously done under BANZaid.

28. Develop Together continues the support and funding role over overseas humanitarian aid and development projects primarily in Bangladesh, India, Papua New Guinea, and Samoa. The projects focus on education and literacy, economic development, healthcare, human rights and gender equality and environmental care.

[3] *Guidelines for using the Cabinet criteria for overseas donee status*, endorsed by Cabinet in 2009 – CBC Min (09) 12/2 refers.

The Limapela Foundation

29. The Limapela Foundation works primarily in Zambia. It provides education and support to children and teenagers in poorer communities. The Foundation runs two schools in Zambia, which supports over 700 pupils in education and development, as well as providing outreach and medical funds for struggling children in local areas. The Foundation aims to build up vulnerable communities through long-lasting support in education and self-sufficiency.

The Make My Name Count NZ Charitable Trust

30. The Make My Name Count NZ Charitable Trust (MMNC) primarily focuses on providing the basics of life for currently 172 orphaned children at the Orphanage of Hope in Uganda, a nationally recognised orphanage and charity. Within the same community in which the orphanage operates, MMNC also provides development aid in the form of creating community facilities, and providing financial support for local businesses and farmers.

Specific comments about the recommended charities

31. As part of our analysis of the charities discussed in this report, we have not identified any significant risks or concerns with their activities. The charities recommended in this report have adequate donor support to carry out their purposes. However, we note:

Two of the charities are motivated by religious purposes	**Develop Together:** Develop Together was established to continue the work of BANZaid (Baptist Aotearoa New Zealand Aid). BANZaid was established in 1997 as a department of the New Zealand Baptist Missionary Society (NZBMS). While BANZaid was directly attached to an organization with religious purposes, the humanitarian aid and development work was kept separate from any religious work conducted by the wider NZBMS. This separation from religious activity remains with Develop Together. Develop Together trustees have also noted that the presence of any religious purposes within their development projects can be detrimental to the work that they conduct overseas as they aim to provide aid within communities which are largely non-Christian. We are satisfied that the Trust's purposes are solely for the relief of poverty and the advancement of economic development, and not religious proselytization. **The Limapela Foundation:** The Foundation is motivated by faith but explicitly states that their aid work does not involve the promotion of religion upon the communities which they work with. Both schools run by the foundation teach the national Zambian curriculum. Copies of this curriculum has been provided by the foundation which show that no religious studies or activities are taught at the schools. We are satisfied that the Trust's purposes are solely for the relief of poverty and the advancement of education and development, and not religious proselytization.
One of the charities has recently started operating	**The Make My Name Count NZ Charitable Trust** has been operating informally since 2015 but has only recently (April 2022) created a legal structure to further its charitable purposes. s 18(c)(i) [redacted] We would, however, like to review the trust again in 2026-2027. For this reason, we recommend that MMNC's donee status apply for a limited (probationary) period and end 31 March 2028. We consider that this period should allow the trust to complete several capital projects it has currently scheduled for Uganda.

Overseas donee status: Removals from Income Tax Act

32. We recommend the charities below be removed from schedule 32 of the Income Tax Act.

Charity name	Reason for removal
Akha Rescue Ministry Charitable Trust	The charity has ceased activity and wound up on 16 August 2009.
Astha Childrens Home (Nepal/New Zealand)	This charity has ceased activity and wound up on 30 November 2022. It has no residual assets.
Bangladesh Flood Appeal Trust	This charity ceased activity and wound up in mid-1999. The Trust was established in October 1998 to provide relief to those effected by serious flooding in Bangladesh that year and was wound up within three months of its public appeal. Inland Revenue does not hold information about the charity or the responsible officers; there is no evidence of recent donation activity for this charity.
Nelson Mandela Trust (New Zealand)	This charity was given overseas donee status in 1996 in respect of activities in South Africa. It has ceased activity and wound up in 2008. There is no evidence of recent donation activity for this charity
Operation Hope (Aid Ship to Africa)	This charity was given overseas donee status in the mid-1980s. It has ceased activity and wound up in 1992. Inland Revenue does not hold information about the charity or the responsible officers; there is no evidence of recent donation activity for this charity.

Legislative vehicle and application date

33. Amendments adding the three organisations, and the five removals, recommended in this report to the list of overseas donee organisations in schedule 32 of the Income Tax Act 2007 should be included in the next omnibus taxation bill, which is scheduled for introduction in May 2023.

34. The additions should apply from 1 April 2023. Monetary donations received from that date will be eligible for tax benefits. The recommended application date gives the charities certainty for marketing and fund-raising purposes.

35. Inland Revenue's systems can work with an application date of 1 April 2023, as individuals will be able to claim the donations tax credit for receipted monetary donations as part of Inland Revenue's 2023–24 return cycle, starting on 1 April 2024. Companies and Māori authorities will be allowed deductions for monetary donations made during the 2023–24 income year.

36. The charities we recommend be removed from the list should apply from the date the relevant amendment bill is enacted.

Financial implications

37. The estimated financial implications of adding the three charities recommended in this report over the forecast period 2022-23 to 2026-27 is $1.204 million. The financial implications will be treated as a forecasting change and reflect the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations. The revenue estimates are based on projections made by the charities about the monetary donations they expect to receive for the forecast period. There is no impact on the Tax Policy Scorecard.

	$m – increase/(decrease)				
Vote Revenue	**2022–23**	**2023–24**	**2024–25**	**2025–26**	**2026–27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.284)	(0.296)	(0.307)	(0.317)
Total change in Revenue	**(0.000)**	**(0.284)**	**(0.296)**	**(0.307)**	**(0.317)**

38. The table above is reproduced below to show the revenue implications for each charity that we recommend be given overseas donee status:

	Effect on tax revenue ($millions)				
	2022–23	**2023–24**	**2024–25**	**2025–26**	**2026–27 & outyears**
Develop Together Trust	0.000	0.147	0.150	0.153	0.156
The Limapela Foundation	0.000	0.093	0.096	0.100	0.103
The Make My Name Count NZ Charitable Trust	0.000	0.044	0.050	0.054	0.058
Total	**0.000**	**0.284**	**0.296**	**0.307**	**0.317**

39. The overall revenue effect of giving donee status to the three charities below plus the earlier three charities we reported to you on 28 September 2022, (IR2022/450 refers), for inclusion in the next taxation bill, is $1.304 million over the forecast period.

Consultation

40. The Treasury, the Ministry of Foreign Affairs and Trade (Partnerships, Humanitarian and Multilateral Division) and the Department of Internal Affairs – Charities Services have been consulted in the preparation of this report. The New Zealand Police's vetting service was also used in connection with the trustees/officers of the charities recommended in this report.

41. s 18(c)(i) [redacted]

Doc 10

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Bright-line test – main home exclusion and construction delays**

Date:	23 February 2023	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2023/042

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	9 March 2023
Minister of Revenue	**Agree** to recommendations	9 March 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
Peter Frawley	Policy Lead	s 9(2)(a) [redacted]
Melissa Siegel	Senior Policy Advisor	s 9(2)(a) [redacted]

23 February 2023

Minister of Finance
Minister of Revenue

Bright-line test – main home exclusion and construction delays

Purpose

1. This report seeks your agreement to amend the previous five-year bright-line test for residential land regarding how the main home exclusion should operate while the property is being constructed.

2. If you agree to a legislative solution, the proposed amendment could be included in the next omnibus tax bill scheduled for introduction in May 2023.

Background

3. The bright-line test taxes disposals of residential land made within a certain period. For residential land acquired between 29 March 2018 and 26 March 2021, the bright-line test was five years ("previous five-year bright-line test"). For residential land acquired on or after 27 March 2021, the bright-line test is 10 years unless the property qualifies for a shorter five-year period as a "new build."

4. An exclusion is available under the bright-line test when the property is used as the person's main home. The current main home exclusion looks at the actual use of the property as the owner's main home and apportions any gain between main home use and non-main home use.

5. Under the previous five-year bright-line test, the main home exclusion applied on an all-or-nothing basis and requires that the property was predominantly used as the owner's main home for more than 50% of the bright-line period.

6. We have identified a transitional issue impacting taxpayers subject to the previous five-year bright-line test who bought off the plan or built their own home.

Issue

7. The main home exclusion for the previous five-year bright-line test does not contain an allowance or deeming rule for the construction period. This means that the construction period does not qualify as main home use, even if the owner only uses the property as their main home.

8. Before COVID-19, this was unlikely to prevent people from qualifying for the main home exclusion. For example, if construction took 12 months and the person then used the property as their main home for two years before selling, they still satisfied the "more than 50%" requirement and the main home exclusion applied.

9. With disruptions to the construction sector because of COVID-19 lockdowns, labour shortages, and supply-chain issues, there is a concern that taxpayers subject to the previous five-year bright-line test could be caught out over the next few years.

10. The bright-line test mainly impacts taxpayers who are unable to hold their property beyond the bright-line period to avoid taxation. With the downturn in the housing market and rising interest rates, some people may need to sell their property within the bright-line period.

11. Even if they only used the property as their main home, it is possible the main home exclusion would not apply because of longer construction timeframes.

12. This concern arises in two situations:

    12.1 Where someone purchases a property "off the plan" in a development because their bright-line period starts on the date they enter into the contract rather than on settlement when the title is transferred to them; and

    12.2 Where someone already owns the land and builds their main home.

> **Example**
>
> In December 2019, Ben entered into an agreement to purchase a residential property "off the plan" in a new development. Construction was due to be completed in early 2021 but due to delays, settlement does not occur until June 2022. Ben moved into the property in June 2022 and due to a change in his circumstances, he is required to sell the property in December 2023.
>
> Ben's bright-line period starts in December 2019 because he purchased off the plan and ends in December 2023. He does not qualify for the main home exclusion because he used the property as his main home for less than 50% of his total bright-line period. He lived in the property for approximately 18 months, but the "off the plan" construction period was 30 months.

13. We recommend ignoring the construction period when determining whether the main home exclusion applies to a person's main home under the previous five-year bright-line test. This would ensure that when someone sells within the bright-line period, a longer construction period due to COVID-19 delays would not prevent them from qualifying for the main home exclusion.

14. We recommend that the proposed amendment be made retrospective for residential property acquired on or after 29 March 2018 and before 27 March 2021, regardless of whether the property has already been disposed of. Some impacted taxpayers may have already sold the relevant residential property within the bright-line period and incorrectly claimed the main home exclusion.

15. We do not consider an amendment to the original two-year test settings to be necessary as it was unlikely to be an issue with the shorter bright-line period.

16. The issue does not arise in relation to residential property acquired on or after 27 March 2021, because the main home exclusion now applies on an apportionment basis with a deeming rule for the construction period.

Financial implications

17. The likely extent of the issue is hard to quantify, but the proposed amendment would have a small fiscal cost of $0.2m per year as follows:

	$m – increase/(decrease)			
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(1.200)	(0.200)	(0.200)	-

18. The higher initial fiscal cost in 2023/24 reflects the proposed retrospective application date.

19. As a transitional issue, the final year of the fiscal impact would be 2025/26 because the last taxpayers impacted would be those who acquired their property on 26 March 2021 and sell within five years.

20. We recommend that this proposed amendment be managed against the Tax Policy Scorecard.

21. If you agree to the policy decisions in this report and to manage them against the Scorecard, there will be no impact on the Between-Budget Contingency or future Budget allowances. However, there will be a small impact on the operating balance and net debt from the change.

Consultation

22. The Treasury has been consulted on this report and agrees with its recommendations. In particular, Treasury agrees that the changes proposed in this report are consistent with Ministers' criteria for the Scorecard. There is no risk that the Scorecard may exceed its limits as a result of these changes.

Next steps

23. If you agree to a legislative solution, the amendment could be included in the omnibus tax bill scheduled for introduction in May 2023.

Recommended action

We recommend that you:

24. **agree** to amend the main home exclusion in the bright-line test to ignore the period during which the person's main home is constructed;

Agreed/Not agreed Agreed/Not agreed

25. **agree** that this proposed amendment should apply to residential land subject to the previous five-year bright-line test (i.e., residential land acquired on or after 29 March 2018 and before 27 March 2021);

Agreed/Not agreed Agreed/Not agreed

26. **agree** to include the proposed amendment in the omnibus tax bill scheduled for introduction in May 2023;

Agreed/Not agreed Agreed/Not agreed

27. **agree** that the fiscal implications resulting from this change will be managed through the Tax Policy Scorecard;

Agreed/Not agreed Agreed/Not agreed

28. **note** the net fiscal impact of the proposed change on the Tax Policy Scorecard is as follows:

	$m – increase/(decrease)			
Vote Revenue **Minister of Revenue**	**2023/24**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(1.200)	(0.200)	(0.200)	-

Noted

Noted

s 9(2)(a)

Peter Frawley
Policy Lead
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2023

Hon David Parker
Minister of Revenue
/ /2023

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

MEASURES FOR INCLUSION IN THE 2023 OMNIBUS TAXATION BILL

Proposal

1 This paper seeks the Cabinet Economic Development Committee's agreement to three general policy measures that require changes to tax legislation.

2 If approved, I propose including the necessary legislative amendments in the next omnibus taxation bill, scheduled for introduction in May 2023.

Relation to Government Priorities

3 The measures in this paper promote Government priorities by maintaining the integrity of the tax system and making it easier for taxpayers to meet their obligations.

Executive Summary

4 I recommend amendments to the Income Tax Act 2007 and the Tax Administration Act 1994 to give effect to the following three policy proposals, for inclusion in the 2023 omnibus taxation bill:

4.1. Setting annual rates for the 2023–2024 tax year.

4.2. Charities recommended for overseas donee status.

4.3. ACC and MSD backdated lump sum payments.

5 These items have been covered in the same paper for efficiency.

6 The proposal giving certain charities overseas donee status would be funded through a forecasting adjustment and the ACC and MSD backdated lump sum payments proposal would be funded through the Tax Policy Scorecard mechanism (the Scorecard).

7 The Scorecard is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. Use of the Scorecard requires joint Minister of Finance and Minister of Revenue agreement. The Minister of Finance and I have agreed to use of the Scorecard for the ACC and MSD backdated lump sum payments proposal.

Setting annual rates for 2023–24

8 The Income Tax Act 2007 requires the rates of income tax to be set in legislation each tax year.

9 I propose that the 2023 omnibus taxation bill set the annual rates of income tax for the 2023–24 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007.

10 This will not have any fiscal or administrative implications.

Charities recommended for overseas donee status

Background

11 New Zealand charities that support activities overseas and want their donors to be eligible for tax benefits (such as the donation tax credit) must be approved for overseas donee status and listed in schedule 32 of the Income Tax Act 2007. Monetary donations to organisations listed in Schedule 32 entitle individual New Zealand taxpayers to a tax credit of 33 1⁄3% of the amount donated, up to the amount of their taxable income. Companies and Māori Authorities are eligible for tax deductions for monetary donations to the listed charities, up to the level of their net income.

12 Generally, tax benefits are available in relation to donations to charities with New Zealand purposes only. Overseas donee status is therefore an established exception for a specific class of charity. Giving overseas donee status requires legislative change by adding the charity to the list of overseas donee organisations in Schedule 32 of the Income Tax Act 2007. Advice from the Legislative Design and Advisory Committee in 2016 has confirmed that the use of legislation to implement decisions to grant overseas donee status is appropriate.

13 Cabinet has established criteria for granting overseas donee status:

The basic criteria for adding an organisation to the list of approved "overseas" charities:

(i) the funds of the charity should be principally applied towards:

the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or

the economy of developing countries; or*

raising the educational standards of a developing country;*

(ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify.

[CM 78/14/7 refers]

Charities to be granted overseas donee status

14 I recommend that the six charities named in paragraphs 16 to 24 be granted overseas donee status. The purposes of the recommended charities come within the criteria in paragraph 13. The charities have adequate procedures to support the accountability of funds applied to projects and can demonstrate a track record of activity. They are all registered under the Charities Act 2005.

15 The recommended charities are seeking overseas donee status to grow their New Zealand donor bases and increase the scope and scale of their in-country activities.

Butterfly Trust

16 Butterfly Trust works primarily in Vanuatu. It supports indigenous initiatives in health and education throughout the archipelago. It was established in 2008 and works with local and central government agencies in Vanuatu to improve health and education outcomes.

Develop Together

17 Develop Together was established in 2022 to oversee, finance and run the development and aid work of the New Zealand Baptist Missionary Society. This includes work previously carried out by Baptist Aotearoa New Zealand Aid (BANZAid), a department of the New Zealand Baptist Missionary Society established in 1997.

18 BANZAid was closed in November 2019 and Develop Together continues their work to support and fund overseas humanitarian aid and development projects in Bangladesh, India, Papua New Guinea, and Samoa. The projects concern education and literacy, economic development, healthcare, human rights, gender equality and environmental care.

Ekal Vidyalaya Foundation of New Zealand

19 Ekal Vidyalaya Foundation of New Zealand raises funds to support Ekal Vidyalaya Foundation of India, an organisation that works to bring literacy, digital literacy, health services, and skills training to remote rural villages in India. Using in-country networks in India and Nepal, they run one-teacher schools that provide free education to children in over 80,000 remote rural villages.

20 I recommend that Ekal Vidyalaya Foundation of New Zealand have overseas donee status for a time-limited period, ending 31 March 2028. The charity has recently restructured its trust governance arrangements following a period of inactivity. I have asked Inland Revenue to review the operations of the trust in 2027 to assess its ongoing viability.

Pasifika Safe Shelter Trust

21 Pasifika Safe Shelter Trust was established to collect non-perishable food and material items to distribute to people in the Pacific impacted by natural disasters. Most recently, they sent farming equipment and tractors to Tonga to assist in rebuilding the agricultural industry which was impacted following the volcanic eruption and tsunami on 15 January 2022.

The Limapela Foundation

22 The Limapela Foundation provides education and support to children and teenagers from vulnerable communities in Zambia primarily. The Foundation runs two schools in Zambia, supporting the education and development of over 700 pupils, and provides outreach and medical funds for children in need.

The Make My Name Count NZ Charitable Trust

23 The Make My Name Count NZ Charitable Trust (MMNC) primarily focuses on providing the basics of life to orphaned children at the Orphanage of Hope in Uganda. The Orphanage is a nationally recognised orphanage and charity and 172 children currently reside there. MMNC also provide development aid in the community where the Orphanage is located, creating community facilities and providing financial support for local businesses and farmers.

24 I recommend that MMNC have overseas donee status for a time-limited period, ending 31 March 2028. While the New Zealand resident individuals involved with supporting the Orphanage of Hope have been involved with this work since 2015, they have only recently formalised the charitable activity by settling a trust (MMNC) in 2022. I have asked Inland Revenue to review the operations of the trust in 2027 to assess its ongoing viability.

Application date

25 I recommend that the six charities be given overseas donee status with effect from 1 April 2023, with Ekal Vidyalaya Foundation of New Zealand, and The Make My Name Count NZ Charitable Trust's overseas donee status time limited until 31 March 2028.

ACC and MSD backdated lump sum payments

Background

26 Generally, payments of employment type income are taxed on a cash basis (i.e., when they are received). This allows tax to be deducted by the payer (employer) when paid in the current tax year. This principle reduces compliance costs and is simple and easy to understand.

27 However, taxing on a cash basis may give rise to a fairness issue for a subset of employment-related payments that are paid in a later tax year but relate to two or more previous tax years.

28 This issue has been raised repeatedly over several years for Accident Compensation Corporation (ACC) and Ministry for Social Development (MSD) payments in complaints to the Commissioner of Inland Revenue, Ministerial correspondence, media articles and Select Committee submissions.

Problem Definition

29 A person may be required to pay a higher amount of tax if an amount is paid in a lump sum in one tax year rather than being paid over multiple years. This is because, for most individual taxpayers, income is derived when it is received. This can be seen as unfair when the person was entitled to receive the payment in earlier years.

30 Receipt of the lump sum can "artificially" push people into a higher tax bracket for a single year. This compounds the disadvantage suffered by the affected person who, in addition to having had a delay in receiving their entitlement, also receives a smaller net amount than if the amount had been paid over multiple years (i.e., when it should have been paid).

31 A fairness issue arises when all the following occur:

31.1. The amount is significant enough to move the taxpayer into a higher tax bracket.

31.2. If spread over the relevant tax years, the taxpayer would have had a lower tax liability in relation to that amount.

31.3. A backdated (or remedial) lump sum payment (BLSP) is made relating to two or more tax years.

31.4. The delay or error has been caused by an action or inaction by the Crown.

32 I consider the payments that fit within the problem definition are backdated ACC compensation payments and backdated entitlements of MSD payments.

ACC compensation payments

33 ACC pays different types of compensation or reimbursement payments depending on the situation. In some cases, whether a person is entitled to ACC compensation may be the subject of dispute or delay in awarding compensation and making payment to the person.

34 Around 1,200 BSLPs are made annually by ACC with an average payment of around $48,000. The large size of these payments means they are often raised as an example of unfair tax treatment.

MSD backdated entitlements

35 Backdated payments of MSD entitlements may also give rise to an increased tax liability if they are paid in a subsequent tax year. BLSPs are paid out by MSD where, for example, there has been a past system error, or where incorrect or incomplete information was provided at the time of an assessment. They tend to be smaller amounts (under $1,000) than the ACC BLSPs referred to above.

36 MSD BLSPs are paid “net of tax” (with tax already deducted). MSD determine how much the recipient is entitled to in their hand and then gross up that amount for the tax payable. MSD calculate the tax to withhold as if the payments had been made on time (by reference to previous years).

37 Since Inland Revenue tax the BLSP in the year of receipt, this may result in a higher amount of tax payable for the recipient. For some recipients of MSD entitlements, there is a tax write off available for the difference in tax (between what was deducted and the tax owing). However, for those who receive Working for Families or those who are no longer on a benefit, these differences will be payable.

Proposed Solutions

38 Due to the way each type of payment is calculated, I propose two separate solutions for ACC and MSD BLSPs.

ACC compensation payments

39 For ACC BLSPs, I propose that Inland Revenue apply the recipient’s average tax rate over the previous four years to the BLSP. This rate would apply to the BLSP separately from the person’s annual income calculation in the year the BLSP is received. This approach would take into account short-term changes in the recipient’s marginal tax rate.

40 Inland Revenue would calculate this rate based on the income information it holds. Under the proposal, ACC could request the recipient's average tax rate before the BLSP is made and then apply that as the withholding rate. This would mean no additional amount of tax should be payable for the BLSP (assuming the recipient's circumstances do not change).

41 Under this approach, the lowest average tax rate that would apply would be 10.5%. A "lower of" test would also apply to ensure recipients are not worse off under the alternative tax treatment compared to the status quo. For example, if the recipient has had a higher tax rate in the four years prior to the BLSP, but has a lower tax rate in the year the BLSP is paid, the current tax treatment would apply.

MSD backdated entitlements

42 For MSD BLSPs, I propose that Inland Revenue assume the tax deducted by MSD is correct and ignore the BLSP for the purpose of the person's income tax liability. The BLSP would still be considered for social policy entitlements.

Application dates

43 Due to the complexity of system changes involved and the fact these changes affect the employer information return, these proposals would apply for BLSPs made on or after 1 April 2024.

Financial Implications

44 The proposal *charities recommended for overseas donee status* would be funded through a forecasting adjustment and the proposal *ACC and MSD backdated lump sum payments* would be funded through the Tax Policy Scorecard mechanism (the Scorecard).

45 The Scorecard is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. The Minister of Finance and I have agreed to use of the Scorecard for the *ACC and MSD backdated lump sum payments* proposal.

Charities to be granted overseas donee status

46 The estimated financial implications of adding the six charities recommended in this paper are shown in the table below. Over the forecast period (2023-24 to 2026-27) the expected financial impact is $1.304 million. The financial implications will be treated as a forecasting change and reflect the increasing cost of the policy to allow tax benefits for donations to New Zealand-based overseas aid charitable organisations. The revenue estimates are based on projections made by the charities about the monetary donations they expect to receive for the forecast period.

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022-23**	**2023-24**	**2024-25**	**2025-26**	**2026-27 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.311)	(0.318)	(0.331)	(0.344)

ACC and MSD backdated lump sum payments

47 The cost associated with the proposed tax treatment for ACC payments will have the following changes to tax revenue, with a corresponding impact on the operating balance and net debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26 & outyears**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	-	(1.900)	(8.100)	(8.500)	(8.900)

48 The fiscal cost associated with the alternative tax treatment of MSD BLSPs is within the margin of error of the fiscal cost of the ACC BLSP proposal. Therefore, no additional amount needs to be accounted for in respect of the MSD BLSP proposal.

Legislative Implications

49 Implementing these proposals requires changes to the Income Tax Act 2007 and the Tax Administration Act 1994.

50 If approved, I propose including the legislative changes resulting from these proposals in the next omnibus taxation bill, scheduled for introduction in May 2023.

Impact Analysis

Regulatory Impact Assessment

51 For *charities recommended for overseas donee status* the Treasury's Regulatory Quality team has determined that this proposal to approve New Zealand charities for overseas donee status is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

52 The Quality Assurance panel at Inland Revenue has reviewed the *Taxation of backdated lump sum payments* Regulatory Impact Statement prepared by Inland Revenue and considers that the information and analysis summarised in the Regulatory Impact Statement **meets** the quality assurance criteria.

Climate Implications of Policy Assessment

53 For both initiatives the Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

54 The recommended changes in this paper are not expected to have any undue implications for specific demographics in New Zealand.

Charities recommended for overseas donee status

55 New Zealand's strategy for overseas development is underpinned by four development principles: effectiveness, inclusiveness, resilience and sustainability. The charities I am recommending be given overseas donee status exhibit these principles by carrying out activities that directly respond to poverty, provide essential medical services to isolated or impoverished communities, and develop economic or educational capacity in developing countries.

56 Each of these charities specifically target development and aid for communities in the Pacific, Asia and Africa. Each charity has a particular focus on promoting economic development, health, and education.

57 The Butterfly Trust, Develop Together, and Pasifika Safe Shelter Trust have a particular focus in the Pacific, providing relief in Vanuatu, Papua New Guinea, Samoa, and Tonga, aiding in education and development at a grass roots/rural and national level, and providing relief from natural disasters. They work closely with local and national Governments, including their respective health and education agencies. Strong relationships in the Pacific are an important aspect of New Zealand's diplomatic and development strategy.

Human Rights

58 There are no human rights implications associated with the changes recommended in this paper.

Consultation

59 In addition to the specific consultation undertaken for each of the policy initiatives as outlined below, the Treasury and Department of the Prime Minister and Cabinet were consulted on the contents of this Cabinet paper.

Charities recommended for overseas donee status

60 The Treasury, Ministry of Foreign Affairs and Trade (Pacific and Development Group) and the Department of Internal Affairs – Charities Services were consulted as part of our analysis of the six charities recommended in this paper.

ACC and MSD backdated lump sum payments

61 The Treasury, Ministry of Social Development and the Accident Compensation Corporation were consulted as part of the policy process. Targeted consultation was also undertaken during the policy process with relevant external stakeholders.

Communications

62 I will make an announcement regarding the proposals in this paper when the omnibus tax bill containing the proposals is introduced (currently scheduled for May 2023). A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a Tax Information Bulletin after the Bill is enacted.

Proactive Release

63 I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers until after the introduction of the omnibus taxation bill containing these proposals. The expected introduction date for this bill is May 2023.

Recommendations

The Minister of Revenue recommends that the Committee:

Annual Rates for 2023–24

1. Agree to set the annual rates of income tax for the 2023–24 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007.

Charities recommended for overseas donee status

2. Agree that the following charities be given overseas donee status and listed in schedule 32 of the Income Tax Act 2007, with effect from 1 April 2023:

    2.1. Butterfly Trust;

    2.2. Develop Together;

    2.3. Ekal Vidyalaya Foundation of New Zealand (for a time-limited period, starting 1 April 2023, and ending 31 March 2028);

    2.4. Pasifika Safe Shelter Trust;

    2.5. The Limapela Foundation; and

    2.6. The Make My Name Count NZ Charitable Trust (for a time-limited period, starting 1 April 2023, and ending 31 March 2028).

3. Note the following changes to tax revenue as a result of recommendation 2, with a corresponding impact on the operating balance and net debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022-23**	**2023-24**	**2024-25**	**2025-26**	**2026-27& outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.311)	(0.318)	(0.331)	(0.344)

ACC and MSD backdated lump sum payments

4. Agree to provide alternative tax treatment for ACC backdated lump sum payments based on the recipients' average tax rate for the four years prior to the year of receipt of the backdated payment.

5. Agree to provide alternative tax treatment for MSD backdated payments by ignoring those payments for the purposes of calculating the recipient's tax liability but not their social policy obligations.

6. Note that the proposals in recommendation 4 and 5 will apply to backdated lump sum payments made on or after 1 April 2024.

7. Note the following changes to tax revenue as a result of recommendation 4 with a corresponding impact on the operating balance and net debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26 & outyears**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	-	(1.900)	(8.100)	(8.500)	(8.900)

Next steps

8. Agree that the above recommendations be included in the omnibus taxation bill scheduled for introduction in May 2023.

9. Agree to delegate authority to the Minister of Revenue to make minor technical changes to the policies included in this paper before introduction of the omnibus tax bill.

10. Agree to defer the proactive release of this Cabinet paper, associated minutes, and key advice papers until after the introduction of the omnibus taxation bill containing these proposals.

Authorised for lodgement

Hon David Parker

Minister of Revenue

Cabinet Economic Development Committee

Minute of Decision

Measures for Inclusion in the 2023 Omnibus Taxation Bill

Portfolio **Revenue**

On 8 March 2023, the Cabinet Economic Development Committee:

Annual rates for 2023–24

1 **agreed** to set the annual rates of income tax for the 2023–24 tax year at the same rates currently specified in Schedule 1 of the Income Tax Act 2007;

Charities recommended for overseas donee status

2 **agreed** that the following charities be given overseas donee status and listed in schedule 32 of the Income Tax Act 2007, with effect from 1 April 2023:

2.1 Butterfly Trust;

2.2 Develop Together;

2.3 Ekal Vidyalaya Foundation of New Zealand (for a time-limited period, starting 1 April 2023, and ending 31 March 2028);

2.4 Pasifika Safe Shelter Trust;

2.5 The Limapela Foundation;

2.6 The Make My Name Count NZ Charitable Trust (for a time-limited period, starting 1 April 2023, and ending 31 March 2028);

3 **noted** the following changes to tax revenue as a result of paragraph 2 above, with a corresponding impact on the operating balance and net debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022-23**	**2023-24**	**2024-25**	**2025-26**	**2026-27& outyears**
Crown Revenue and Receipts: Tax Revenue	(0.000)	(0.311)	(0.318)	(0.331)	(0.344)

ACC and MSD backdated lump sum payments

4 **agreed** to provide alternative tax treatment for ACC backdated lump sum payments based on the recipients' average tax rate for the four years prior to the year of receipt of the backdated payment;

5 **agreed** to provide alternative tax treatment for Ministry of Social Development backdated payments by ignoring those payments for the purposes of calculating the recipient's tax liability but not their social policy obligations;

6 **noted** that the proposals in paragraphs 4 and 5 above will apply to backdated lump sum payments made on or after 1 April 2024;

7 **noted** the following changes to tax revenue as a result of paragraph 4 above, with a corresponding impact on the operating balance and net debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/24**	**2024/25**	**2025/26 & outyears**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax Revenue	-	(1.900)	(8.100)	(8.500)	(8.900)

Legislative implications

8 **agreed** that the above proposals be included in the next omnibus taxation bill, which is scheduled for introduction in May 2023;

9 **invited** the Minister of Revenue to issue drafting instructions to Inland Revenue to give effect to the above paragraphs;

10 **authorised** the Minister of Revenue to make minor and technical changes to the above proposals before the introduction of the omnibus tax bill.

Janine Harvey
Committee Secretary

Present:
Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Michael Wood
Hon Stuart Nash
Hon Damien O'Connor
Hon David Parker
Hon Peeni Henare
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Meka Whaitiri
Hon Dr Duncan Webb
Hon Dr Deborah Russell

Officials present from:
Office of the Prime Minister
Officials Committee for DEV
Inland Revenue

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: North Island Flood Events and Taxation Rollover Relief

Date:	6 April 2023	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2023/123

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations	20 April 2023
Minister of Revenue	**Agree** to recommendations **Refer** a copy of the draft Cabinet paper to Cabinet Office	20 April 2023 10am, Thursday 27 April 2023

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Peter Frawley	Policy Lead	s 9(2)(a) [redacted]
Geoff Leggett	Principal Policy Advisor	s 9(2)(a) [redacted]

6 April 2023

Minister of Finance
Minister of Revenue

North Island Flood Events and Taxation Rollover Relief

Executive summary

1. This report provides our advice on whether there should be rollover relief for assets destroyed or made economically useless by the January-February North Island flood events. Similar relief was provided in the case of the Canterbury and Hurunui-Kaikōura earthquakes, as part of a series of taxation assistance measures for affected businesses. It was well received. We recommend a maximum five-year rollover/deferral period, commencing from the 2022-23 income year.

2. The effect of rollover relief would be to defer the recognition of revenue account income and depreciation recovery income arising from the receipt of insurance proceeds on the relevant buildings and plant, provided there was a commitment to rebuild or replace the destroyed asset. This would provide some cash flow benefits for insured businesses severely affected by the floods, to assist them in the rebuild or replacement and would limit the windfall revenue gain that the Government would otherwise receive from the events. It is therefore anticipated to have no overall fiscal impact.

3. Some business assets will not be insured. For example, there is generally no insurance for loss of crops. In those cases, businesses will be able to separately claim deductions under existing tax legislation for both the residual book value of destroyed trees and vines and their removal costs, and the cost of the crops will also be a deductible expense.

4. We recommend that the set of amendments be included in the next omnibus Tax Bill, which is scheduled for introduction in May. This will require Cabinet approval. We have attached a draft Cabinet paper for your consideration. As that Bill is unlikely to be passed until early next year, we suggest including this reform in the Ministerial media release for the Bill would be helpful in making affected businesses aware of the rollover relief.

5. Treasury was consulted in the preparation of this report and agrees with the recommendations. Key stakeholder groups were also consulted and support rollover relief.

Recommended action

It is recommended that you:

6. **Note** that rollover relief was provided in relation to profits on revenue account land and buildings and on depreciation recovery income for assets destroyed as a result of the 2010–11 Canterbury and 2016 Hurunui-Kaikōura earthquakes, to support the regional rebuild.

   Noted Noted

7. **Agree** to provide similar rollover relief in relation to revenue account assets and depreciable property severely impacted by one or more of the North Island flood events of January-February 2023.

   Agreed / Not agreed   Agreed/Not agreed

8. **Agree** to the rollover relief being for a maximum period of five years, commencing from the 2022-23 income year.

   Agreed / Not agreed   Agreed/Not agreed

9. **Agree** there not be a requirement that the replacement buildings be located in the same affected area.

   Agreed/Not agreed   Agree/Not agreed

10. **Note** that rollover relief is expected to have no overall fiscal implications.

   Noted   Noted

s 9(2)(a)

Geoff Leggett
Principal Policy Advisor
Policy and Regulatory Stewardship
Inland Revenue

Hon David Parker
Minister of Revenue
/ /2023

Hon Grant Robertson
Minister of Finance
/ /2023

Background – Rollover relief following the Canterbury and Hurunui-Kaikōura earthquakes

11. A number of tax reliefs were provided to individuals and businesses affected by the Canterbury earthquakes, including for employer-provided welfare payments and for other types of income.

12. Of particular relevance is the measure that allowed firms to defer recognition of the profits on revenue account assets and depreciation recovery income on depreciable assets that arose from the receipt of insurance proceeds on assets irreparably damaged by the earthquakes. The rollover relief was optional.

13. A condition of the deferral was that the buildings and land be replaced with buildings and land in the Canterbury region, within five years[1]. There were no location requirements on replacement plant. Replacement assets could be either new or second-hand. The business had to provide annual notification of the intent to replace the asset and an indication of progress towards replacement.

14. The deferred income was recognised when the replacement asset was finally disposed of. If no replacement asset was purchased, a tax liability arose at the end of the deferral period or earlier if, for example, the firm was liquidated before the deferral period expired or used the funds for other purposes.

15. These provisions were replicated for the Hurunui-Kaikōura earthquakes.

16. This tax relief was provided for several reasons:

    - There were likely to be substantial amounts of revenue account profits and depreciation recovery income from destroyed buildings, plant and equipment. This would hinder reconstruction as firms would have fewer funds to rebuild after paying the tax. Rollover relief allowed there to be a strong regional focus on the rebuild.

    - The depreciation recovery income was, from taxpayers' perspective, involuntary so the taxpayer suffered an unexpected tax bill and the Government's taxation receipt was generally a windfall gain.

    - While providing relief may have been seen as unfair relative to those whose assets were only partially destroyed, those lesser-affected firms would not face a tax liability until they ultimately sold the asset, perhaps many years later. However, it was a significant difference relative to the standard treatment that applies when an insurance pay-out is received, such as when a building is destroyed by fire.

Is roll-over response appropriate?

17. There are advantages and disadvantages from the Government extending this tax treatment to assets irreparably damaged in the North Island flood events.

18. Ideally the gains on revenue account property should be taxable annually, as they accrue. However, this would entail material compliance costs so the taxing point becomes when the property is disposed of, at which point there is greater price certainty. Similarly, any gains or losses on depreciable property over its tax book

[1] This deferral period was subsequently extended to the 2023-24 income year given the pace of progress on the Christchurch rebuild.

value need to be recognised when the asset is disposed of. A disposal in effect includes when an asset is destroyed, and the asset is then deemed to be sold for the value of any insurance proceeds received, resulting in a gain or loss for tax purposes in that income year. Gains are likely if the asset is insured for replacement cost.

19. Rollover relief involves special treatment as any gains on disposal are carried forward to the replacement asset. While we do not generally recommend using the tax system to incentivise behaviour, in this case to rebuild/replace the asset, we acknowledge that the scale of major natural events can warrant this special treatment. As with the earthquakes, the flood events were unexpected, and the rollover relief is intended to simply put the business back into a similar tax position as if the events had not occurred. Similarly, it means that the Government does not receive a windfall tax gain from the event.

20. As part of our advice on whether rollover relief should be provided in the case of the Hurunui-Kaikōura earthquakes, we had noted that if the Government receiving tax from depreciation recovery in the case of wide-scale events such as earthquakes was seen as undesirable, it could be worth considering why the law currently provides for such gains to be made on isolated events, such as a factory fire. There have also been calls from stakeholders for a standard set of provisions that could be applied when there is a natural disaster. Given other priorities on the Work Programme, such projects would not be feasible at this time. However, that should not preclude interim relief being provided to businesses whose assets have been destroyed by the North Island flood events.

Should rebuilding be required in the same area?

21. For the earthquakes, there was a requirement that replacement buildings be located in the earthquake affected areas. Particularly in the Canterbury case this was to facilitate regional recovery. While this may still be relevant for buildings affected by the North Island floods, there may be less of a need in this case to specifically require that the rebuilding takes place in the same area, for several reasons:

- In many cases, it will likely occur anyway, to the extent that rebuilding in that area is feasible, given a large proportion of the businesses are SMEs. Furthermore, compared to Canterbury many of the buildings are smaller/simpler structures and the population is less concentrated.
- There is a strong possibility that some assets may not be replaced in the same location given the likelihood of floods recurring, necessitating managed retreat.
- From an economic perspective the replacement of assets should ideally take place where it is most efficient to do so, rather than requiring it to be in the same region.

22. On the other hand, the area covered by the floods covers most of the North Island so this provides material flexibility for those wanting to rebuild in a slightly different location within the combined affected areas. There may be some larger businesses that might want more flexibility. However, we have not been able to identify any that would fall into this category given the recovery phase has only just begun.

23. Although this aspect is finely balanced, we recommend that there not be a requirement that the replacement buildings be located in the same area.

Suggested changes

24. We have discussed the previous provisions with several key stakeholder groups to assess whether they are still fit for purpose. They considered the provisions to be generally still appropriate for the latest event but suggested a few minor modifications to streamline procedures.

Notification of election

25. For previous events, taxpayers who opted for roll-over relief were required to give notice to the Commissioner specifying the affected property and linking each item of replacement property with an affected class. This notice must be given when the income tax return is filed for the income year in which the insurance pay-out can be reasonably estimated. Notice must also be given in each subsequent year in which the depreciation recovery income is suspended, and an update provided on the rebuild/replacement.

26. While we consider that it is still necessary to have notification to ensure parties turn their minds to the issue annually, we want to ensure that it is as streamlined as possible. For example, we are exploring whether the notification information would be able to be provided electronically as part of My IR.

Maximum rollover period

27. As with the initial Canterbury and Hurunui-Kaikōura earthquakes provisions, we recommend that the rollover relief be for a maximum period of five years, commencing from the 2022-23 income year. This means that the deferred income will need to be brought to account in the 2026-27 income year if the asset has not been replaced by then. If an asset is rebuilt or replaced sooner, then the rollover stops in the relevant year and the deferred income is deducted from the cost of the replacement asset.

Crown purchase

28. At this stage, we do not recommend replicating the provision relating to Crown purchases. Although there has been media comment about managed retreat from certain areas that were flooded, as yet there is not an equivalent to the Christchurch Regeneration Act 2016, which enabled the Crown to purchase properties in the red zones. We will keep a watching brief on this aspect to see if an additional provision is needed to address Crown purchases.

Affected areas

29. The recently enacted Severe Weather Emergency Legislation Act 2023 refers to a series of weather events that occurred over January-February 2023:

    - Cyclone Hale, which crossed the North Island during the period commencing on 8 January 2023 and ending on 12 January 2023;
    - The heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions;
    - Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023.

30. With the affected area being any of the following regions or districts:

- The regions of Northland, Auckland, Waikato, Bay of Plenty, Gisborne, and Hawke's Bay;
- The districts of Tararua, Masterton, Carterton, and South Wairarapa.

31. The Severe Weather Emergency Recovery Legislation Bill proposes to extend the affected area to include the Manawatū and Rangitikei districts. We recommend also adopting this widened definition for the tax rollover provisions to provide regulatory consistency. This would also cover an effect on an affected area where subsequent events exacerbate the damage in that area.

Fiscal impact

32. Taxation on revenue account assets and depreciation recovered as a result of major disasters is not in the forecast baselines. Consequently, granting asset roll-over relief as a result of a major event should have minimal impact on those baselines. In the vast majority of cases, the Government would be foregoing a windfall gain that would not have arisen had the flood events not occurred.

33. A few of the properties destroyed by the flood events may have, in the absence of the floods, been destroyed by other events not subject to rollover relief such as fire. The taxation on depreciation recovered on such taxpayer specific events is implicitly in the baselines as a normal business risk with the tax being received earlier than under the proposed rollover deferral. However, this impact is considered to be minimal and unquantifiable and not sufficient to affect the forecasts.

34. Therefore, rollover relief is considered to have an overall nil fiscal impact.

Consultation

35. The Treasury were consulted in the preparation of this report and agree with the recommendations.

36. We also sought input from key stakeholders on the workability of the previous rollover provisions and the appropriateness of applying similar measures to the North Island flooding events. Stakeholders supported applying rollover relief in this case too and suggested a few minor modifications to streamline procedures.

Next steps

37. If you support providing roll-over relief, the matter would need to be considered by Cabinet within the next month. The reason for this urgency is to ensure that the amendments can be included in the omnibus taxation Bill scheduled for introduction in mid-May. This bill is likely to be the last available legislative vehicle for this change before the election, in the absence of using any overriding special flood event related legislation.

38. Accordingly, for your consideration, we have attached a suggested draft Cabinet paper for the Extreme Weather Recovery Committee (EWR) meeting on 2 May 2023. The final paper will need to be lodged with Cabinet Office by 10am on Thursday 27 April if it is to be considered at this meeting.

Doc 14

Inland Revenue
Te Tari Taake

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Draft Cabinet paper – Taxation (Annual Rates for 2023–2024 and Other Measures) Bill: Approval for introduction**

Date:	18 April 2023	**Priority:**	High
Security level:	Sensitive - Budget	**Report number:**	IR2023/083

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations **Authorise** the lodgement of the attached Cabinet paper	10am 4 May 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
Peter Frawley	Policy Lead, Inland Revenue	s 9(2)(a)
Lucy England	Policy Advisor, Inland Revenue	s 9(2)(a)

18 April 2023

Minister of Revenue

Draft Cabinet paper – Taxation (Annual Rates for 2023–24 and Other Measures) Bill: Approval for introduction

Summary

1. This report asks you to approve and lodge the attached Cabinet paper with the Cabinet Office by 10am Thursday 4 May 2023 for consideration at the Cabinet Legislation Committee meeting on Thursday 11 May 2023.

2. The Cabinet paper seeks approval to introduce the Taxation (Annual Rates for 2023–2024 and Other Measures) Bill (the Bill) on 18 May 2023 and recommends that at its first reading, the Bill is referred to the Finance and Expenditure Committee. The Bill contains the items listed below.

3. The report also seeks your agreement to four remedial changes.

Policy items approved by Cabinet

- Setting annual rates of income tax for the 2023–24 tax year (DEV-23-MIN-0017 and CAB-23-MIN-0067).
- Global Anti-base Erosion Rules for New Zealand (DEV-23-MIN-0031 and CAB-23-MIN-0111)
- ACC and MSD backdated lump sum payments (DEV-23-MIN-0017 and CAB-23-MIN-0067)
- Granting six charities overseas donee status (DEV-23-MIN-0017 and CAB-23-MIN-0067)
- Extending tax exemption for non-resident offshore oil rig and seismic vessel operators (CBC-22-MIN-0053 and CAB-22-MIN-0549)
- Aligning the trustee tax rate with the top personal tax rate at 39% for the 2024–25 and later income years (CAB-23-MIN-0142). This item is not included in the attached Cabinet paper because the necessary approvals to include it in the Bill were obtained at Cabinet on 11 April 2023.

Policy items awaiting Cabinet approval

4. An additional policy item will be going to the Cabinet Economic Development Committee on 3 May 2023 seeking policy approval for an item that will form part of Budget 2023. This item proposes that the Government make KiwiSaver employer contributions for those receiving Paid Parental Leave (PPL) payments, where that recipient is a KiwiSaver member and is making employee contributions from their PPL payments. Funding for this item has been approved from Budget 2023 [CAB-23-MIN-0139 refers].

5. Another policy item, providing rollover relief in response to the North Island flood events, will be going to the Cabinet Extreme Weather Recovery Committee on 2 May 2023 and Cabinet on 8 May 2023 and approvals will be sought at that time (IR2023/123 refers).

Remedial items approved by Minister of Revenue

6. The Bill contains a number of remedial amendments you have previously agreed to in the following reports:

   - Non-fiscal remedial items for the 2023 omnibus taxation bill (3 November 2022, IR2022/448 refers);
   - Bright-line test – main home exclusion and construction delays (23 February 2023, IR2023/042 refers).
   - Cabinet paper – Omnibus policy measures for inclusion in the March 2023 taxation bill (10 November 2022, IR2022/449 refers).

7. The remedial amendments involve:

   - extending automatic resident withholding tax exempt status to all entities registered under the Charities Act 2005;
   - extending the definition of a gift-exempt body;
   - ensuring that assets transferred to a person that is not a charity registered under the Charities Act 2005 are subject to the deregistration tax;
   - excluding technical services fees and interest and royalties connected to a third state permanent establishment from the double tax agreement source rule;
   - ensuring the provisional tax calculation works as intended for taxpayers using a year preceding the prior year to calculate their provisional tax liability;
   - minor amendments to the portfolio investment entity tax provisions;
   - clarifying rules for non-cash dividends received by a custodian from a foreign company;
   - deeming persons becoming New Zealand residents to acquire all financial arrangements with a New Zealand source held by them on the date they become a resident;
   - changing the way in which the taxation of extra pay is determined;
   - allowing the Commissioner to share information relating to deceased KiwiSaver member’s estates with KiwiSaver providers;
   - clarifying that the child support time bar does not apply to temporary exemptions;
   - clarifying the meaning of “building” for depreciation purposes;
   - amending the main home exclusion in the bright-line test to ignore the period during which a person’s main home is constructed;
   - changing the relevant period in the 10% income interest test for access to the attributable foreign investment fund income method.

Further remedial approvals sought

Extra pay remedial

8. Further approval is also sought in relation to a non-fiscal remedial item previously reported on in IR2022/448. In that report you agreed to amend the way in which the taxation of extra pay is determined to improve its accuracy.

9. Currently, to determine the marginal rate applying to an amount of extra pay, employers are required to add the amount of extra pay to the annualised value of all PAYE income payments made to the employee in the period that starts four weeks prior to the date the extra pay was paid to the employee.

10. To avoid the inaccuracies which can arise in the context of an employee termination, we had originally intended employers be required to annualise the last "complete" pay cycle, instead of reviewing PAYE payments made in the last four weeks.

11. However, our discussions with payroll providers have revealed a number of systems constraints which would make applying our initial solution challenging. Accordingly, we now recommend employers and payroll providers instead be required to annualise the last two paid pay periods prior to the payment of the extra pay.

North Island flooding events remedials

12. Approval is also sought for three remedial changes to ensure that recently enacted provisions which provide tax relief for taxpayers affected by the North Island flooding events earlier this year work as intended.

13. Specifically, three amendments are required:

    13.1 The time period allowed for employees to move to an area affected by one of the North Island flooding events to work on a "limited duration project" assisting with the recovery and rebuilding efforts in those affected areas should be changed from 6 months to 5 years after the commencement date of the relevant flood event to match the previous period allowed for projects relating to the Christchurch earthquakes.

    13.2 Cross-references in the definition of "accommodation" should be amended to include the recently enacted provisions that refer to "accommodation" for completeness.

    13.3 The definition of "North Island flooding events" should be amended to refer to the definition of "severe weather event" recently enacted in the Resource Management Act 1991 which expands on the affected areas currently included to ensure consistency across legislation.

14. These remedial amendments should apply retrospectively from the original application date for the flooding provisions to provide certainty for taxpayers.

Orders in Council Revoked

15. The Bill revokes four Orders in Council relating to the COVID-19 support payments scheme. These Orders are spent and their application periods have closed.

Departmental disclosure statement

16. A departmental disclosure statement must be lodged alongside the LEG paper in accordance with Cabinet guidelines. The statement will be finalised by Inland

Revenue with the Parliamentary Counsel Office three days before the introduction of the Bill and will be made public when the Bill is introduced. We will provide the statement to your Office ahead of lodgement.

New Zealand Bill of Rights Act 1990

17. We consider the provisions in the Bill are consistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990 (BORA). The Ministry of Justice will undertake the required BORA vetting and we will advise if any issues arise from this process.

Caucus consultation

18. We recommend that the Bill is introduced on Budget day (18 May 2023). To achieve this, caucus consultation will need to occur in advance of Cabinet's final decision.

Proactive release

19. We propose to proactively release the Cabinet paper, Cabinet minutes and key advice papers after the Bill is introduced.

Next steps

20. We have drafted the attached Cabinet paper on the basis that you agree to the recommendations in this report. Please advise if there are any changes to the paper that you wish to make.

21. To be considered at the Cabinet Legislation Committee meeting on Thursday 11 May 2023, the Cabinet paper must be lodged with the Cabinet Office by 10am on Thursday 4 May 2023. The departmental disclosure statement must also be lodged with the Cabinet Office at this time. We will provide your office with the finalised version ahead of lodgement.

22. We will also provide a final copy of the Bill to your office ahead of introduction of the Bill. We have initiated discussions with the Secretary of the Cabinet Legislation Committee to ensure Budget secrecy is maintained in relation to the Bill. In order to achieve this, the Bill will not be attached to the Cabinet paper.

23. We will liaise with your office to arrange appropriate publicity for the introduction of the Bill.

Recommended action

We recommend that you:

24. **note** the contents of this report and attached Cabinet paper;

    Noted

25. **agree** to require employers and payroll providers to annualise the last two paid pay periods prior to the payment of the extra pay;

26. **agree** that the amendment in recommendation 25 apply from the date of enactment of the omnibus taxation bill;

    Agreed/Not agreed

27. **agree** that remedial changes be made to recently enacted legislation relating to the North Island flooding events to:

27.1 Increase the time period allowed for employees to move to an area affected by one of the North Island flooding events to work on a "limited duration project" from 6 months to 5 years after the commencement date of the relevant flood event;

27.2 Correct cross-references in the definition of "accommodation" to include the recently enacted provisions;

27.3 Amend the definition of "North Island flooding events" to refer to the definition of "severe weather event" recently enacted in the Resource Management Act 1991;

Agreed/Not agreed

28. **agree** that the amendments referred to in recommendation 25 should apply retrospectively from the original application date for the flooding provisions;

Agreed/Not agreed

29. **sign** and **refer** the Cabinet paper to the Cabinet Office by 10 am Thursday 4 May 2023.

Signed and referred/Not signed and referred

s 9(2)(a)

[redacted]

Peter Frawley
Policy Lead
Policy and Regulatory Stewardship

Hon David Parker
Minister of Revenue
/ /2023

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Extreme Weather Recovery Committee

NORTH ISLAND FLOOD EVENTS AND TAXATION ROLLOVER RELIEF

Proposal

1. This paper seeks Cabinet's approval to policy proposals that would provide temporary tax relief in response to the recent North Island flood events. This relief would enable the profits and depreciation recovery income arising when insurance proceeds are received for business assets destroyed by the North Island flood events to be deferred for up to five years provided the assets are replaced.

Relation to Government Priorities

2. The proposals in this paper are focused on helping businesses recover following recent weather events in the North Island.

3. This proposal supports the Government's priorities of improving the wellbeing of New Zealanders and their families by:

   3.1 Reflecting the desire for certainty and stability.

   3.2 Providing affected New Zealand businesses greater certainty over the tax treatment of destroyed assets following the North Island flood events.

   3.3 Retaining the Government's fiscal values of long-term stability and transparency for New Zealanders and businesses.

Executive Summary

4. I propose that there should be tax rollover relief for assets destroyed or made economically useless by the February North Island flood events. Similar relief was provided in the case of the Canterbury and Hurunui-Kaikōura earthquakes, as part of a series of taxation assistance measures for affected businesses. It was well received. I propose a maximum five-year rollover/deferral period, commencing from the 2022-23 income year.

5. Normally, the receipt of insurance proceeds for a destroyed business asset gives rise to either depreciation recovery income or income on the disposal of a revenue account asset. The effect of rollover relief would be to defer the recognition of this income provided there was a commitment to rebuild or replace the destroyed buildings or plant. This would provide some cash flow benefits for insured businesses severely affected by the floods to assist them in the rebuild or

replacement and would limit the windfall revenue gain that the Government would otherwise receive from the events.

6. Some business assets will not be insured. For example, there is generally no insurance for loss of crops. In those cases, businesses will be able to separately claim deductions under existing tax legislation for both the residual book value of destroyed trees and vines and their removal costs, and the cost of the crops will also be a deductible expense.

7. I propose to include the rollover amendments in the next omnibus tax Bill, which is scheduled for introduction in mid-May.

8. Rollover relief is considered to have overall nil fiscal impact.

Background

9. The recently enacted Severe Weather Emergency Legislation Act 2023 refers to a series of weather events that occurred over January-February 2023:

    9.1 Cyclone Hale, which crossed the North Island during the period commencing on 8 January 2023 and ending on 12 January 2023;

    9.2 The heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions;

    9.3 Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023.

10. With the affected area being any of the following regions or districts:

    10.1 The regions of Northland, Auckland, Waikato, Bay of Plenty, Gisborne, and Hawke's Bay:

    10.2 The districts of Tararua, Masterton, Carterton, and South Wairarapa.

11. The Severe Weather Emergency Recovery Legislation Bill proposes to extend the affected areas to include the Manawatū and Rangitikei districts. I am proposing also adopting this widened definition for the tax rollover provisions to maintain regulatory consistency.

Provisions used in Canterbury and Hurunui-Kaikōura Earthquakes

12. For tax purposes, some assets are held on revenue account (having been bought with the intention of resale) which means that the gains and losses are taxable/deductible, while others will be held on capital account, in which case they can be depreciated each year to reflect the estimated decline in economic value. Normally, the receipt of insurance proceeds for a destroyed business asset gives rise to either depreciation recovery income or income on the disposal of a revenue account asset when the insurance proceeds cover the cost of replacing the asset.

13. One of the measures used to assist businesses severely impacted by the Canterbury and Hurunui-Kaikōura earthquakes was tax rollover relief. This relief enabled the

income that arose when insurance proceeds were received for destroyed assets to be deferred for tax purposes provided there was a commitment to rebuild or replace the destroyed buildings or plant. This rollover relief was optional.

14. A condition of the deferral was that the buildings and land had to be replaced with buildings and land in the affected regions, within five years. There were no location requirements on replacement plant. Replacement assets could be either new or second-hand. The business had to provide annual notification of the intent to replace the asset and an indication of progress towards replacement.

15. The deferred income was deducted from the cost of the replacement asset so that it was recognised when the replacement asset was finally disposed of. If no replacement asset was purchased, a tax liability arose at the end of the deferral period or earlier if, for example, the firm was liquidated before the deferral period had expired or used the funds for other purposes.

16. This tax relief was provided for several reasons:

    16.1 There were likely to be substantial amounts of revenue account profits and depreciation recovery income from destroyed buildings, plant, and equipment. Taxing the gains upfront would hinder reconstruction as firms would have fewer funds to rebuild after paying the tax. Roll-over relief allowed there to be a strong regional focus on the rebuild.

    16.2 The depreciation recovery income was, from the taxpayers' perspective, involuntary so the taxpayer suffered an unexpected tax bill and the Government's taxation receipt was generally a windfall gain.

17. While providing relief may have been seen as unfair relative to those whose assets that were only partially destroyed, those lesser-affected firms would not face a tax liability until they ultimately sold the asset, perhaps many years later. Nevertheless, it was a significant difference relative to the standard treatment that applies when an insurance pay-out is received, such as when a building is destroyed by fire.

Rollover Relief for North Island Floods Event

18. I propose that similar relief measures be applied to the North Island Flood events. There are advantages and disadvantages from this proposal.

19. Rollover relief involves special treatment as the gains on disposal are carried forward to the replacement asset. While the tax system is not normally used to incentivise behaviour, in this case to rebuild/replace the asset, I consider that the scale of major natural events can warrant this special treatment. The event was unexpected, and the rollover relief is intended to simply put the business back into a similar tax position as if the event had not occurred. Similarly, it means that the Government does not receive a windfall tax gain from the event.

20. For the earthquakes, there was a requirement that replacements buildings be located in the earthquake affected areas. Particularly in the Canterbury case this was to facilitate regional recovery. While this aspect is still relevant for the North Island flood

events, there is less of a need in this case to specifically require that the rebuilding takes places in the same area, for several reasons:

20.1 In many cases, it will likely occur anyway, to the extent that rebuilding in that area is feasible, given a large proportion of the businesses are SMEs. Furthermore, compared to Canterbury many of the buildings are smaller/simpler structures and the population is less concentrated.

20.2 There is a strong possibility that some assets may not be replaced in the same location given the likelihood of floods recurring, necessitating managed retreat.

20.3 From an economic perspective the replacement of assets should ideally take place where it is most efficient to do so, rather than requiring it to be in the same region.

21. The flood areas cover most of the North Island so this provides material flexibility for those wanting to rebuild in a slightly different location within the combined affected areas. At this stage, officials have not been able to identify any larger businesses that might want more flexibility.

22. I am therefore recommending that there not be a requirement that the replacement buildings be located in the same area.

23. For previous events, taxpayers who opted for roll-over relief were required to give notice to the Commissioner specifying the affected property and linking each item of replacement property with an affected class. This notice must be given when the income tax return is filed for the income year in which the insurance pay-out can be reasonably estimated. Notice must also be given in each subsequent year in which the depreciation recovery income is suspended, and an update provided on the rebuilt/replacement.

24. While I consider that it is still necessary to have notification to ensure parties turn their minds to the issue annually, this should be as streamlined as possible. Officials are investigating ways to achieve this.

25. At this stage, I do not propose replicating the provision relating to Crown purchases given the Government has not made decisions on purchasing properties impacted by the floods. In the Canterbury case purchased red zone properties and a rollover provision ensured that when those properties had been held for less than 10 years, there would not suddenly be a tax on any gains simply because the property had been purchased by the Crown.

Financial Implications

26. Taxation on revenue account assets and depreciation recovered as a result of major events is not in the forecast baselines. Consequently, granting asset roll-over relief as a result of a major event will not impact those baselines. Rather the Government would be foregoing a windfall gain that in most cases would not have arisen had the flood events not occurred.

Legislative Implications

27. Implementing these proposals requires changes to the Income Tax Act 2007.

28. If approved, I propose including the legislative changes resulting from these recommendations in the next omnibus Tax Bill, which is scheduled for introduction in mid-May 2023.

Impact Analysis

Regulatory Impact Assessment

29. A regulatory impact assessment is not required because it provides limited temporary exemptions or modifications to existing legislative requirements in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical, or unreasonably burdensome.

Climate Implications of Policy Assessment

30. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Population Implications

31. Due to the urgency of the response to the recent weather events, Inland Revenue officials have been unable to determine how many taxpayers would be impacted by the proposed limited tax relief measures.

Human Rights

32. The proposals comply with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Relevant Government Departments or Other Public Bodies

33. Inland Revenue consulted the Treasury and informed the Department of the Prime Minister and Cabinet of the proposals.

Relevant Private Sector Organisations and Public Consultation Processes

34. No public consultation has been undertaken regarding the tax relief for North Island flooding events. There will be opportunity to do so as the Tax Bill proceeds through the Parliamentary process. Instead, Inland Revenue officials sought input from key stakeholders on the workability of the previous rollover provisions and the appropriateness of applying similar measures to the North Island flooding events. Stakeholders supported applying rollover relief in this case too and suggested a few minor modifications to streamline procedures.

Communications

35. I will make an announcement on the contents of the Bill, including this proposal, when the Omnibus Tax Bill is introduced. A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

36. I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers in whole until the next omnibus Tax Bill which is due for introduction in May.

Recommendations

The Minister of Revenue recommends that the Committee:

1. **note** that rollover relief was provided in relation to profits on revenue account land and buildings and on depreciation recovery income for assets destroyed as a result of the 2010–11 Canterbury and 2016 Hurunui-Kaikōura earthquakes, to support the regional rebuild.

2. **agree** to provide similar rollover relief in relation to revenue account assets and depreciable property severely impacted by one or more of the North Island flood events of January-February 2023.

3. **agree** that the rebuild need not be located in the same area as the destroyed buildings.

4. **agree** to the rollover relief being for a maximum period of five years, commencing the 2022-23 income year.

5. **note** that this tax rollover relief is considered to have overall nil fiscal impact as it involves the government foregoing a windfall gain that would not have arisen had the flood events not occurred.

6. **authorise** the Minister of Revenue to make decisions on the detail of the rollover relief amendments.

7. **note** that if recommendations (2) and (4) are agreed, the Minister of Revenue proposes including the necessary legislative changes in the omnibus taxation Bill scheduled to be introduced in mid-May 2023.

Authorised for lodgement

Hon David Parker
Minister of Revenue

Item 16

EWR-23-MIN-0036

Doc 16

Cabinet Extreme Weather Recovery Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

North Island Flood Events and Taxation Rollover Relief

Portfolio **Revenue**

On 3 May 2023, the Cabinet Extreme Weather Recovery Committee, exercising its Power to Act in accordance with its terms of reference:

1 **noted** that rollover relief was provided in relation to profits on revenue account land and buildings and on depreciation recovery income for assets destroyed as a result of the 2010–11 Canterbury and 2016 Hurunui-Kaikōura earthquakes, to support the regional rebuild;

2 **agreed** to provide similar rollover relief in relation to revenue account assets and depreciable property severely impacted by one or more of the North Island flood events of January-February 2023;

3 **agreed** that the rebuild need not be located in the same area as the destroyed buildings;

4 **agreed** to the rollover relief being for a maximum period of five years, commencing in the 2022-23 income year;

5 **noted** that this tax rollover relief is considered to have overall nil fiscal impact as it involves the government foregoing a windfall gain that would not have arisen had the flood events not occurred;

6 **authorised** the Minister of Revenue to make decisions on the detail of the rollover relief amendments;

7 **noted** that the above decisions will be included in the omnibus taxation Bill scheduled to be introduced in mid-May 2023.

Janine Harvey
Committee Secretary

Present: (see over)

Present:
Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Michael Wood
Hon Damien O'Connor
Hon David Parker
Hon Barbara Edmonds

Officials present from:
Office of the Prime Minister
Officials Committee for EWR
Cyclone Recovery Unit, DPMC
Chair, Cyclone Recovery Taskforce

Budget

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

TAXATION (ANNUAL RATES FOR 2023–24, MULTINATIONAL TAX, AND REMEDIAL MATTERS) BILL: APPROVAL FOR INTRODUCTION

Proposal

1 This paper seeks the Cabinet Legislation Committee's agreement to introduce the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (the Bill) on Budget day (18 May 2023). The Bill introduces amendments to the:

1.1 Income Tax Act 2007;

1.2 Tax Administration Act 1994;

1.3 Goods and Services Tax Act 1985;

1.4 KiwiSaver Act 2006;

1.5 Child Support Act 1991;

1.6 Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023;

1.7 Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

2 The Bill also sets the rates of income tax for the 2023–2024 tax year.

Policy

3 The Bill implements the policy items listed below.

4 The Bill also implements a Budget measure previously agreed to by Cabinet [CAB-23-MIN-0142]. This measure has Cabinet approval to be included in a tax bill introduced on Budget day (18 May 2023).

5 The Bill would also implement a second Budget measure, provided it receives the necessary Cabinet approvals on 8 May 2023, including approval to be included in a tax bill introduced on Budget day (18 May 2023). Funding for this item has been approved from Budget 2023 [CAB-23-MIN-0139 refers].

Policy Items with Cabinet Approval

Setting annual rates of income tax for the 2023–24 tax year [DEV-23-MIN-0017 (8 March 2023) and CAB-23-MIN-0067 (13 March 2023)]

6 The Income Tax Act 2007 requires the rates of income tax to be set in legislation each tax year.

7 The Bill proposes that the annual rates of income tax for the 2023–24 tax year be set at the rates currently specified in Schedule 1 of the Income Tax Act 2007.

Global Anti-base Erosion Rules for New Zealand [DEV-23-MIN-0031 (29 March2023) and CAB-23-MIN-0111 (3 April 2023)]

8 The Bill introduces the Global Anti-base Erosion Rules (the GloBE rules) developed by the OECD, with an application date to be specified by Order in Council. The GloBE rules address tax base erosion risks caused by profit shifting by multinational enterprises (MNEs). These risks arise because MNEs can shift income, particularly from capital or intangible property, to countries which charge no or little tax on that income.

9 The GloBE rules address these risks by ensuring that large MNEs (those with consolidated annual revenues of €750 million or more) are subject to a tax of at least 15% on their mobile income, in every country where that income is earned. If their effective tax rate (ETR) in a country is less than 15%, they must calculate the GloBE top-up tax they have to pay to bring their ETR up to 15%.

10 To be effective, a critical mass of countries must adopt the GloBE rules. The Bill therefore provides for the GloBE rules to apply from a date to be specified by Order in Council, giving Cabinet the flexibility to align the application date of the GloBE rules with other countries.

ACC and MSD backdated lump sum payments [DEV-23-MIN-0017 (8 March 2023) and CAB-23-MIN-0067 (13 March 2023)]

11 The Bill implements alternative tax treatment for backdated ACC compensation payments and backdated entitlements of MSD payments. This would address the issue that arises when receipt of a lump sum relating to prior years pushes the recipient into a higher tax bracket for a single year. This can be seen as unfair when the person was entitled to receive the payment in earlier years but did not due to some action or inaction by the Crown.

12 The Bill implements separate solutions for ACC and MSD backdated lump sum payments as each type of payment is calculated differently. For ACC payments, Inland Revenue would apply the recipient’s average tax rate over the previous four years to the backdated lump sum payment. This rate would apply to the backdated payment separately from the person’s annual income calculation in the year the payment is received. For MSD payments, Inland Revenue would assume the tax deducted by MSD is correct and ignore the backdated payment for the purpose of the person’s income tax liability.

13 These amendments would apply for backdated payments made on or after 1 April 2024.

Granting six charities overseas donee status [DEV-23-MIN-0017 (8 March 2023) and CAB-23-MIN-0067 (13 March 2023)]

14 The Bill proposes that six New Zealand charities with overseas charitable purposes be granted overseas donee status with effect from 1 April 2023. The recommended charities have adequate procedures to support the accountability of funds applied to projects and can demonstrate a track record of activity. The purposes of each charity align with the New Zealand Government’s development objectives. They are all registered under the Charities Act 2005.

15 The Bill also proposes the removal of seven charities from the list of charities with overseas donee status, as these charities' operations have ceased.

Extending tax exemption for non-resident offshore oil rig and seismic vessel operators [CBC-22-MIN-0053 (28 November 2022) and CAB-22-MIN-0549 (5 December 2022)]

16 The Bill extends a temporary five-year exemption from income tax on the income of non-resident offshore oil rig and seismic vessel operators which is due to expire on 31 December 2024. The exemption would be extended for a further five years from 1 January 2025 until 31 December 2029.

17 The exemption removes the incentive for rigs and seismic vessels to move in and out of New Zealand waters within 183-days to ensure their income is exempt from income tax under many of New Zealand’s double tax agreements.

Policy Items awaiting Cabinet approval

18 The Bill would also provide tax relief for assets destroyed or damaged by the recent North Island flood events, provided these measures are approved by Cabinet on 8 May 2023.

19 The main effect of the tax relief would be to defer the recognition of revenue account income and depreciation recovery income arising from the receipt of insurance proceeds on buildings and plant irreparably damaged in the flood events.

20 The relief would apply from the 2022–2023 income year for a maximum period of five years.

Items Not Requiring Cabinet approval

21 The Bill contains a number of remedial amendments that do not require Cabinet approval. The amendments support the coherence and integrity of the tax system and ensure the relevant tax law is consistent with the original policy intent. They do not have any material revenue or other fiscal effects.

22 The Bill also contains various maintenance items. These correct minor faults of expression, reader’s aids, and incorrect cross-references.

23 The Bill revokes four Orders in Council relating to the COVID-19 support payments scheme because the Orders have been spent and their application periods have closed.

Impact Analysis

24 Regulatory impact statements were prepared, where required, for the policy items in the Bill. The following were submitted at the time that Cabinet Committee approval for the policy items was sought:

24.1 *OECD's Pillar Two GloBE Tax Rules,* Inland Revenue, 2 March 2023;

24.2 *Taxation of backdated lump sum payments*, Inland Revenue, 9 November 2022; and

24.3 An updated version of the 2019 Regulatory Impact Statement *Extending tax exemption for non-resident offshore oil rig and seismic vessel operators*, Inland Revenue.

Compliance

25 The Bill complies with:

25.1 the principles of the Treaty of Waitangi;

25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

25.3 the disclosure statement requirements (the draft disclosure statement is attached);

25.4 the principles and guidelines set out in the Privacy Act 1993;

25.5 relevant international standards and obligations;

25.6 the *Legislation Guidelines* (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

26 The substantive non-budget policy initiatives to which the Bill is intended to give effect were subject to public and other consultation in accordance with the Generic Tax Policy Process. There has been no public consultation on the Budget measures to which the Bill gives effect due to Budget secrecy constraints. The Budget measures were subject to limited consultation with other Government agencies and the Australian tax authorities.

Relevant Government Departments or Other Public Bodies

27 In developing the proposals set out in the Bill Inland Revenue consulted with The Treasury, the Department of the Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, Department of Internal Affairs (Charities Services), Ministry of Social Development, Accident Compensation Corporation, Ministry for the Environment and the Ministry for Business, Innovation and Employment.

Relevant Private Sector Organisations and Public Consultation Processes

28 Targeted consultation was undertaken during the policy process with relevant external stakeholders. The feedback provided by these stakeholders was taken into account when finalising policy proposals. The attached departmental disclosure statement provides further information on the various parties consulted and the form in which consultation was undertaken for the policy items in the Bill.

Binding on the Crown

29 The Income Tax Act 2007, Goods and Services Tax Act 1985, KiwiSaver Act 2006 and the Child Support Act 1991 are binding on the Crown. The amendments will follow the position of the principal Acts.

Allocation of Decision-Making Powers

30 The draft legislation does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated Regulations

31 The Bill includes a regulation making power that would allow the Governor-General to specify the dates from which components of the GloBE rules would apply in New Zealand.

Definition of Minister/Department

32 The Bill does not contain a definition of Minister, department, or chief executive.

Commencement of Legislation

33 Each provision of the Bill comes into force on the date specified in the Bill for that provision.

34 The Bill provides for the administrative changes relating to the GloBE rules and the electronic provision of Country-by-Country reports to commence on a date to be appointed by Order in Council. This flexibility is necessary because the GloBE rules will only be adopted in New Zealand if a critical mass of countries also choose to adopt the rules.

Parliamentary Process

35 The Bill should be introduced on 18 May 2023, referred to the Finance and Expenditure Committee and reported back to the House in February 2024.

36 As the Bill sets the annual income tax rates for the 2023–24 tax year, and because a number of the proposals in the Bill have an application date of 1 April 2024, the Bill should be enacted by the end of March 2024.

Communications

37 I will make an announcement about the proposals in the Bill when it is introduced. A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

38 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Recommendations

The Minister of Revenue recommends that the Committee:

1 note that the Bill sets the annual income tax rates for the 2023–24 tax year;

2 note that the Bill makes substantive, remedial, and technical amendments to the:

2.1 Income Tax Act 2007;

2.2 Tax Administration Act 1994;

2.3 Goods and Services Tax Act 1985;

2.4 KiwiSaver Act 2006;

2.5 Child Support Act 1991;

2.6 Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023;

2.7 Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

3 note that the Bill implements Budget measures that Cabinet previously approved for introduction in a tax bill on Budget day (18 May 2023);

4 authorise the Minister of Revenue, after consultation with the Minister of Finance and the Leader of the House, to introduce the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill on Budget day (18 May 2023);

5 agree that the government propose that the Bill be:

5.1 referred to the Finance and Expenditure Committee for consideration;

5.2 reported back to the House in February 2024;

5.3 enacted by 31 March 2024.

Authorised for lodgement

Hon David Parker
Minister of Revenue

Item 18

LEG-23-MIN-0056

Doc 18

Cabinet Legislation Committee

Minute of Decision

Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill: Approval for introduction

Portfolio **Revenue**

On 11 May 2023, the Cabinet Legislation Committee:

1 **noted** that the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (the Bill) sets the annual income tax rates for the 2023–24 tax year;

2 **noted** that the Bill makes substantive, remedial, and technical amendments to the:

2.1 Income Tax Act 2007;

2.2 Tax Administration Act 1994;

2.3 Goods and Services Tax Act 1985;

2.4 KiwiSaver Act 2006;

2.5 Child Support Act 1991;

2.6 Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023;

2.7 Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

3 **noted** that the Bill implements Budget measures that Cabinet previously approved for introduction in a tax bill on Budget day, 18 May 2023;

4 **approved** the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill [IRD 23491] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

5 **agreed** that the Bill be introduced on Budget day, 18 May 2023;

6 **authorised** the Minister of Revenue to approve any minor and technical changes to the Bill prior to introduction;

7 **agreed** that the government propose that the Bill be:

7.1 referred to the Finance and Expenditure Committee for consideration;

7.2 reported back to the House in February 2024;

7.3 enacted by 31 March 2024.

Rebecca Davies
Committee Secretary

Present:
Hon Grant Robertson (Chair)
Hon Michael Wood
Hon Kiri Allan
Hon Andrew Little
Hon David Parker
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Dr Duncan Webb
Tangi Utikere, MP (Chief Government Whip)

Officials present from:
Office of the Prime Minister
Officials Committee for LEG