



POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Summary of submissions and recommended changes for the officials' report for the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2): remedial amendments**

Date:	5 December 2022	Priority:	Medium
Security level:	In Confidence	Report number:	IR2022/538

Action sought

	Action sought	Deadline
Minister of Revenue	Endorse the agreement of the Parliamentary Under-Secretary to the Minister of Revenue to the recommendations in this report	15 December 2022
Parliamentary Under-Secretary to the Minister of Revenue	Agree to the recommendations Refer a copy of this report to the Minister of Revenue	15 December 2022

Contact for telephone discussion (if required)

Name	Position	Telephone
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5 December 2022

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

Recommended changes for remedial amendments in the officials' report on the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2): remedial amendments

Executive summary

1. This report seeks your approval on recommendations to be included in the officials' report to the Finance and Expenditure Committee (FEC) on the Taxation (Annual Rates for 2022–23, Platform Economy and Remedial Matters) Bill (No 2) (the Bill).
2. The Bill is currently being considered by the FEC, and the officials' report is due with the Committee by 20 January 2023.
3. The Bill received approximately 800 written submissions. Oral hearings of evidence commenced on 9 November 2022 and are scheduled to continue on 7 and 19 December 2022.
4. Most of the recommendations in this report are in response to issues raised by submitters. Subject to your approval, we will include these recommendations in the officials' report.
5. The items in this report relate to remedial amendments proposed in the Bill. A separate report relating to the policy proposals has been provided to the Minister of Finance and Minister of Revenue (IR2022/542 refers).
6. None of these proposed amendments are significant enough to require Cabinet approval.
7. None of the recommendations in this report have fiscal implications. These recommendations require approval by the Parliamentary Under-Secretary to the Minister of Revenue and endorsement by the Minister of Revenue. These recommendations are set out in the body of the report.
8. None of these changes give rise to any material compliance or administration costs, or any significant systems or technology implications.
9. Treasury has been consulted on this report.

Next steps

10. Subject to your agreement, recommendations outlined in this report will be drafted for inclusion in the officials' report. Subject to the FEC's agreement, these changes would be included in the revision-tracked version of the Bill to be reported back to the House by 2 March 2023.
11. The finalised officials' report is due to the FEC no later than 20 January 2023. We will report to you with a draft version of the officials' report for noting in the week beginning 16 January 2023.

Recommended action

We recommend that you:

Recommendations	Minister of Revenue	Parliamentary Under-Secretary to the Minister of Revenue
12. indicate in the body of this report where you agree or do not agree with the recommended amendment;	N/A	Indicated
13. note that agreed amendments will be included in the officials' report to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2);		Noted
14. refer a copy of this report to the Minister of Revenue		Referred
15. endorse the Parliamentary Under-Secretary to the Minister of Revenue's agreement to the recommendations made above;	Endorsed	N/A
16. note that the final version of the officials' report on the Bill will be sent to your office in the week beginning 16 January 2022 and then to the Finance and Expenditure Committee no later than 20 January 2023.	Noted	Noted

s 9(2)(a)

Melissa Siegel

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

17. The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) is currently being considered by the Finance and Expenditure Committee (“FEC”). The officials’ report on submissions is due to the FEC no later than 20 January 2023 to enable the Committee to report back to the House by 2 March 2023.
18. Written submissions on the Bill closed on 2 November 2022. The first hearing of oral evidence was held on 9 November 2022 and subsequent hearings are scheduled for 7 and 19 December 2022. A submitter’s oral submission should align with their written submission, so we do not anticipate new issues to arise at the two remaining hearings. However, if new issues do arise, we will co-ordinate with your offices to seek your approval where appropriate.
19. Approximately 800 written submissions were received. In addition to submissions by stakeholders such as law and accounting firms, most of the submissions relate to either the proposed exemption from FBT for public transport or the proposal to require digital platforms to collect GST on certain accommodation and transport services.
20. This report sets out recommended changes that could be included in the officials’ report to the FEC. The items in this report relate to remedial amendments proposed in the Bill. A separate report relating to the policy proposals has been provided to the Minister of Finance and Minister of Revenue (IR2022/542 refers).
21. None of the proposed amendments in this report have a fiscal impact and require approval by the Parliamentary Under-Secretary to the Minister of Revenue and endorsement by the Minister of Revenue.
22. We do not consider that the recommended changes in this report require Cabinet approval.

GST proposals which allow suppliers to rely on certain commercial information to determine if their customer is non-resident or GST registered

23. The Bill proposes to reduce compliance costs by allowing more businesses to use certain commercial information (proxies) to help them determine if their customer is non-resident or a GST-registered person.
24. PwC and the Corporate Taxpayers Group submitted that many suppliers may already have existing systems or processes for applying the relevant GST rules which may collect more accurate information than the proxies (such as directly asking if the customer is non-resident or a GST registered person). Accordingly, they consider that the proxies should be optional to use.
25. We agree with the submitters because this allows such suppliers to continue with their existing systems and processes, while other suppliers which would benefit from the proposed proxies can choose to use them to reduce their own compliance costs. This would not have a fiscal cost as it would either provide the affected taxpayers with the same GST outcome as the existing proposal in the Bill or allow them to continue with their current tax practices which are in the revenue baselines.

Recommendation

Agree that the proposed amendments in the Bill (to allow more businesses to use certain commercial information to help them determine if their customer is non-resident or a GST registered person) should be optional for these suppliers to apply.

Agreed/Not agreed

Method of calculating provisional tax

- 26. The proposed amendment clarifies which method of standard uplift is to be used when a taxpayer files a tax return for the prior year when calculating provisional tax (i.e., either 105% or 110%). It also clarifies the position when the due date for an instalment falls on a non-working day.
- 27. Submissions were generally supportive of the change, although two submissions suggested that application date of the provision may retrospectively impose penalties and interest on taxpayers who have been charged with penalties and interest on a different basis. This was not intended.
- 28. To avoid this outcome, we propose inserting a savings clause into the application of the provision so that if a taxpayer has been charged penalties and interest on a different basis than that set out in the proposed amendment, the proposed amendment will not apply to them.
- 29. There are no fiscal implications to this amendment as this change does not alter the liability of a taxpayer just, potentially, the timing of payment within the year.

<p>Recommendation</p> <p>Agree to insert a savings provision to the proposed amendments relating to the method of calculating provisional tax to preserve the position if any taxpayer has been charged with penalties and interest on a different basis than the proposed amendments.</p> <p style="text-align: right;">Agreed/Not agreed</p>
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Income of deceased persons

- 30. The proposed amendment allows taxpayers to include in their tax return to date of death any reportable income paid to the deceased person up to 28 days after their date of death to save the compliance costs of filing an estate tax return.
- 31. Submissions were generally supportive of the change, although one submission suggested that the scope of the provision should be extended beyond 28 days and include all types of income. Such an extension is out of scope and will need further policy work as the work programme permits. This submission will be declined but noted for potential further work.
- 32. After reviewing the provision, a wording change is required to the proposed amendment to make the treatment optional on the taxpayer – if they would prefer to continue filing two returns then they should be able to do that.
- 33. There are no fiscal implications to this amendment as this change only alters the particular form that an amount of income is returned in, not the taxation of the income.

<p>Recommendation</p> <p>Agree to allow taxpayers the option of returning reportable income received by the deceased person either in the taxpayer’s return to date of death or in the tax return of the estate.</p> <p style="text-align: right;">Agreed/Not agreed</p>
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Non-active trusts and estates

34. The proposed amendment in the Bill would ensure that trusts and estates that derive small amounts of income are not required to file a tax return and therefore not required to comply with the new trust disclosure requirements. We received several submissions on this remedial and intended to recommend the following changes below.
35. None of these changes have fiscal implications because these changes only relate to whether a taxpayer is required to file a tax return. The underlying income in that return is either already subject to withholding tax (as with reportable income) or is currently not taxable in any case (the under \$200 non-reportable income exemption). Neither of these changes is likely to alter the net amount of tax paid by the trust or estate.

Proposed changes

Administration fees threshold

36. The proposed amendment in the Bill allows trusts or estates which have incurred less than \$1,000 of administrative fees to still be considered non-active. This was an increase from the current \$200.
37. One submitter suggested this should be increased to \$1,500. We agree with this change as it does not materially increase the threshold but does give some additional leeway to smaller trusts to maintain their non-active status.

Threshold for distributions from testamentary trusts

38. In developing the proposals for these amendments, we undertook some targeted consultation with industry representatives on the requirements for testamentary trusts and estates to be permitted not to file a tax return. During that consultation, one of the parties suggested that a limit on the distribution amount from a trust be included within the provision.
39. The proposal in the Bill reflected that suggestion and required testamentary trusts who made distributions over \$100,000 to file a tax return. Some submissions on the Bill indicated that this is an onerous requirement that could include a number of trusts that are simply distributing assets from a will.
40. There is no distribution requirement for other trusts, so we recommend accepting the submission and removing the threshold for distributions from a testamentary trust from the Bill.

Transactions with other parties

41. A trust cannot be considered non-active if it has been a party to transactions with assets of the trust or estate that results in income in any person's hands or gives rise to a fringe benefit to an employee.
42. The Bill did not propose a change to this rule, however, several submitters pointed out that this rule is particularly wide and makes a number of trusts that generate no income file a tax return.
43. An example would be a trust that owns a family house but has no income. If they install a heat pump, they would have to file a return in that year because the purchase and installation of the heat pump would result in income to the installer's hands.

- 44. We agree that this test is set too wide and recommend an adjustment to target the requirement at higher-risk transactions related-party transactions.
- 45. We propose partly agreeing with the submission and amending the test to allow taxpayers who have transactions with non-related parties to not have to file a tax return but require those trusts who have transactions with parties related to the trust to file.

Submissions to be declined

Reportable income threshold

- 46. The Bill proposes that trusts or estates that earn less than \$1,000 of reportable income (essentially income with tax deducted at source) could still be considered non-active.
- 47. One submitter suggested this should be increased to \$5,000 in line with the proposal for testamentary trusts. We consider there is a still a distinction that should be maintained between testamentary trusts and other trusts and recommend declining the submission.

Recommendations	
Note there are no fiscal implications to these amendments	Noted
Agree to allow trusts and estates who incur less than \$1,500 of administrative and bank charges to remain non-active or non-filing trusts.	Agreed/Not agreed
Agree that the threshold for reportable income for a non-filing trust that is not a testamentary trust be set at \$1,000 as proposed in the Bill.	Agreed/Not agreed
Agree that the threshold for distributions from a testamentary trust be removed from the Bill and allow testamentary trusts to not file a tax return no matter the level of distributions from the trust.	Agreed/Not agreed
Agree that trusts or estates who have transactions with non-related parties which give rise to income in those parties' hands to not have to file a tax return if they meet the other requirements not to file.	Agreed/Not agreed

Tax treatment of distribution networks

- 48. The proposals in the Bill identify utilities distribution network operators and confirm that for tax purposes their assets are the component assets of their network rather than the network themselves.
- 49. Two submissions considered that the drafting is overly prescriptive and were concerned it would provide less flexibility for network operators already applying a component items approach. We discussed these concerns with the submitters before the Bill was introduced. We continue to consider that this approach to be appropriate and will not lead to the concerns they have suggested.

- 50. To provide additional certainty, we recommend that an additional definition be added to confirm that, for the purpose of these proposals, the term “goods and services” includes electricity, telecommunications services, gas and water.
- 51. This change should apply from 1 April 2008 to align with the earliest application date of the proposals.
- 52. There is no fiscal implication associated with this change as it is only a clarification of an item that is already included in the Bill.

Recommendations	
Agree that for the purpose of these proposals, the term “goods and services” includes electricity, telecommunications services, gas and water.	Agreed/Not agreed
Agree that this change should apply from 1 April 2008.	Agreed/Not agreed

Updating the insurance tax provisions following the adoption of IFRS 17

- 53. The current accounting standard, NZ IFRS 4, will be replaced by NZ IFRS 17 from 1 January 2023. General insurers will continue to use the accounting standard, while life insurers will use the Income Tax Act 2007 (ITA) for their Outstanding Claims Reserve (OCR) methodology. The Bill includes proposed amendments to update existing section references for insurers.
- 54. In response to submissions on the Bill, we recommend some minor amendments to clarify the operation of the provisions. These changes do not have any fiscal or operational implications as the remedials are clarificatory in character and do not give rise to costs.
- 55. In addition, you previously agreed to the inclusion of a grandparenting provision for existing spreading arrangements entered into under NZ IFRS 4 for financial life insurance (IR2022/255 refers). This grandparenting provision was not included in the Bill at introduction and we will recommend in the officials’ report that it be inserted.

Treatment of the changes to the general insurance contracts outstanding claims reserve income during the year of transition

- 56. Currently, a transitional provision provides a rule for when a general insurance OCR is eligible for a deduction. However, there is no mirroring provision to prescribe the method to apply when an insurer receives OCR income. We recommend this be rectified and a mirroring provision be inserted.

Life insurers must use the same discount rate as accounting when determining the present value of contracts for life and general insurance

- 57. While general insurers will use NZ IFRS 17 to determine their OCR, life insurers will continue to use the valuation method prescribed by the ITA for contracts of both life and general insurance. Life insurers will continue to use the same discount rate for calculating present value as they use in their financial statements. We recommend this be clarified.

Recommendations

Agree to include an OCR income provision for general insurance contracts to mirror the OCR allowable deduction provision in the transitional year for IFRS 17.

Agreed/Not agreed

Agree to clarify that life insurers should continue to use the same discount rates as used in their financial statements to determine present values within the OCR for both life and general insurance.

Agreed/Not agreed

Agree that these should apply for the 2023–24 and later income years.

Agreed/Not agreed

Financial arrangements – debt equity swaps

58. The proposed amendment would apply when an insolvent company issues shares for consideration and all or part of that consideration is used to make a payment for a financial arrangement. The amendment would treat the payment as being the market value of the shares.
59. Two submitters were concerned that the proposals would increase the compliance costs for valuing shares and would be an impediment for start-ups that were experiencing financial distress from raising additional capital. We accept that these transactions may be commercially motivated, but the lender will be subscribing for shares in an insolvent issuer for an overvalue (compared with a third party that would pay very little for those shares) and would only do so where the overvalue is used to repay debt that would not otherwise be repaid.
60. We agree with a submitter that the definition of an insolvent company in the Bill can be clarified to use the solvency test in the Companies Act 1993.
61. This change should apply from the day after the date the Bill receives the Royal assent to be consistent with the underlying proposed change.
62. There are no fiscal implications associated with this change as this is only a clarification of a point that was already included in the Bill.

Recommendation

Agree that the test for insolvency should be based on the solvency test in the Companies Act 1993.

Agreed/Not agreed

Interest rate swaps held by multi-rate Portfolio Investment Entities (PIEs)

63. Submitters were supportive of the proposed amendment to allow multi-rate PIEs to elect to follow the spreading method in Determination G27 for their interest rate swaps. This determination is available under the financial arrangements rules but cannot currently be used by PIEs.
64. We agree with a submitter that a mechanism is required for an existing PIE to transition to this election. We recommend that this election apply only to swaps entered into on or after the date of the election with the previous method continuing to apply to swaps entered into before this date until they subsequently mature.

- 65. This change should apply from the 2023–24 income year to align with the underlying proposed change.
- 66. There is no fiscal implication associated with this change as all spreading methods return the correct amount of tax over the term of the arrangement and there is no way of predicting in advance which method will accelerate or decelerate tax relative to the other methods.

Recommendations

Agree that when a PIE chooses to apply determination G27 to its swaps this should apply only to swaps entered into on or after the date they made that choice.

Agreed/Not agreed