Hon Simon Watts, Minister of Revenue

Information Release

Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Act

July 2025

Availability

This information release is available on Inland Revenue's tax policy website at:
https://www.taxpolicy.ird.govt.nz/publications/2025/ir-emergency-response-tax-bill

Documents in this information release

#	Reference	Type	Title	Date
01	IR2024/259	Inland Revenue Report	Remedial items and secondary legislation for FamilyBoost	22/08/2024
02	IR2024/274	Inland Revenue Report	Independent Earner Tax Credit and Working for Families interaction	2/09/2024
03	IR2024/186	Inland Revenue Report	Overseas donee status - NZ Memorial Museum Trust – Le Quesnoy	9/05/2024
04	IR2024/295	Inland Revenue Report	Cabinet paper - New Zealand Memorial Museum Trust – Le Quesnoy - Tax benefits for monetary donations – implementation	6/09/2024
05	BN2024/456	Inland Revenue Briefing Note	Cabinet paper New Zealand Memorial Museum Trust – Le Quesnoy Tax benefits for monetary donations for Cabinet Economic Policy Committee meeting on 20 November	8/11/2024
06	ECO-24-SUB-0275	Cabinet paper	New Zealand Memorial Museum Trust – Le Quesnoy - Tax benefits for monetary donations	06/09/2024
07	ECO-24-MIN-0275	Minute	Minute of decision – Cabinet Economic Policy Committee	20/11/2024
08	CAB-24-MIN-0458	Cabinet minute	Report of the Cabinet Economic Policy Committee Minute	25/11/2024
09	IR2024/396	Inland Revenue Report	Matters raised by officials in the departmental report on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill	22/11/2024

#	Reference	Type	Title	Date
10	IR2024/397	Inland Revenue Report	Proposed responses to submissions on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill	6/12/2024
11	IR2025/001	Inland Revenue Report	Measures for inclusion in an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill	4/02/2025
12	IR2025/066	Inland Revenue Report	Base maintenance measure for inclusion in upcoming Amendment Paper	20/02/2025
13	IR2024/481	Inland Revenue Report	Trust disclosures post-implementation review	12/12/2024
14	IR2025/048	Inland Revenue Report	Further advice on recommended trust disclosure changes	20/02/2025
15	IR2024/487	Inland Revenue Report	Tax implications of the Resale Rights for Visual Artists Act 2023	05/12/2024
16	IR2024/367	Report	Final year fees-free Implementation paper 3	18/09/2024
17	IR2025/040	Inland Revenue Report	Clarification of the application of use-of-money interest to fees free entitlements paid in error	10/02/2025

Additional information

The Cabinet paper was considered by the Cabinet Economic Policy Committee on 20 November 2024 and confirmed by Cabinet on 25 November 2024.

The regulatory impact statement attached the above Cabinet paper is published online: Regulatory Impact Statements for the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill

Further information relating to the final year fees free policy is published on the Ministry of Education website

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:

9(2)(a)	to protect the privacy of natural persons, including deceased people
9(2)(b)(ii)	to protect the commercial position of the person who supplied the information
9(2)(f)(iv)	to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions

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Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Remedial items and secondary legislation for FamilyBoost**

Date:	22 August 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/259

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations **Refer** this report to the Associate Minister of Education for their information	5 September 2024
Minister of Revenue	**Agree** to recommendations	5 September 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Maraina Hak	Policy Lead, Inland Revenue	s 9(2)(a)
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22 August 2024

Minister of Finance
Minister of Revenue

Executive summary

Purpose

1. This report seeks joint Ministers' agreement to permanently amend the FamilyBoost legislation in the upcoming Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill (the Bill) and through secondary legislation to align the law and administration of FamilyBoost with the policy intent.

Background

2. The FamilyBoost tax credit legislation was passed under urgency as part of Budget 2024. We have since identified several minor technical issues that require remedial amendment in the upcoming Bill to align the law to previous policy decisions, excepting a new recommendation regarding late payment penalties. Urgent secondary legislation is also recommended to ensure the law aligns with policy intent until the remedial amendments have been made in March 2025. This includes the use of an Order in Council and the remedial power the Commissioner has under the Tax Administration Act 1994 that temporarily exempts a provision to resolve tax legislation issues at the option of affected taxpayers.

3. The identified issues that require remedial amendment are:

   3.1 Late filers of tax returns: Self-employed persons who file their most recent tax return late cannot apply for FamilyBoost despite Inland Revenue having the necessary income information to calculate their FamilyBoost tax credit.

   3.2 Schedular payments: Persons who derive income from schedular payments may receive a reduced tax credit or no tax credit due to the current income test over-stating their income.

   3.3 Penalties and interest: the FamilyBoost legislation does not apply the appropriate treatment of penalties and interest to FamilyBoost debt.

   3.4 Clarifying the 'greater of' income test: the FamilyBoost legislation contains some ambiguity with how the income test applies to determine a person's tax credit if the person derives both "reportable income" and "other income".

Materiality

4. The recommended amendments ensure FamilyBoost provides the intended outcomes for eligible families. Without these amendments, some families may be unable to access their full tax credit or any tax credit. The secondary legislation ensures eligible families can receive their full tax credit in the interim and prevents departmental costs arising from temporary changes to systems and administrative processes.

Fiscal implications

5. There is a revenue gain of $3,000 per annum associated with progressing the debit interest remedial amendment proposed in this report. The majority of the remaining

amendments in this report carry no fiscal cost if agreed, as they address drafting errors and will bring the policy in line with the original policy intent. Otherwise, not progressing the remedials in this report would result in fewer people being eligible for the FamilyBoost tax credit, carrying a corresponding fiscal gain of $1.425 million per annum as the forecast would be decreased to account for this.

6. Any fiscal implications should be managed as a positive pre-commitment against the Budget 2025 operating allowance. However, as many of the legislative issues were identified post-build, there are operational costs associated with not progressing the proposed remedial amendments.

Next steps

7. If the Ministers of Finance and Revenue agree to the proposals, officials will include these changes in the Bill at the select committee stage and the Commissioner will progress granting a temporary exemption for the schedular payment issue.

8. If the Minister of Revenue agrees to the Order in Council, officials will send the authorised drafting instructions to the Parliamentary Counsel Office and prepare a draft LEG Cabinet paper.

9. In December 2024, officials will report back to you regarding future policy options to reduce compliance impacts and other improvements to FamilyBoost [*CAB-24-MIN-0089 refers*].

Background

10. The FamilyBoost tax credit legislation was passed under urgency following Budget 2024. The legislation supports low-to-middle income families with Early Childhood Education (ECE) costs via quarterly payments linked to a portion of those costs. The first payment can be claimed by parents and caregivers from 1 October 2024, for the period 1 July – 30 September 2024.

11. After the development and building of FamilyBoost, officials have identified several minor technical issues that require remedial amendment to align the law with the previous policy decisions, excepting one new officials' recommendation regarding late payment penalties. Approving technical, minor policy and administrative FamilyBoost design decisions is within the scope of Cabinet's delegated authority to the Ministers of Finance and Revenue [*CAB-24-MIN-0089 refers*].

12. The recommended amendments would be made through the upcoming Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill 2024/25 (the Bill) by 31 March 2025, with retrospective effect from 1 July 2024. This results in an interim period between July 2024 and March 2025 where the current legislation will not align with the policy intent. As such, pending your approval to the remedial fixes, we also recommend using urgent secondary legislation as an interim means to ensure the FamilyBoost payment functions as intended.

13. Because Inland Revenue's system and administrative processes are currently configured to reflect the original policy intent, passing secondary legislation prevents additional costs arising from requiring changes to the system build and administrative processes which would reflect current legislation. It also generally allows for the customer process of claiming FamilyBoost to remain unchanged while we progress the remedial amendments, lessening potential confusion for applicants.

14. The secondary legislation involves the Minister of Revenue authorising an Order in Council and the Commissioner using his remedial power to temporarily exempt a provision to resolve tax legislation issues at the option of affected taxpayers.

Issues to be addressed

15. The following summarises the four legislative issues including the policy intent as agreed by Cabinet, the recommended amendment to achieve that policy intent, and if applicable, the recommended secondary legislation as an interim fix.

Late filers of tax returns

Policy intent – use the most recent income information

16. To calculate a person's FamilyBoost tax credit, Inland Revenue needs a person (and their partner's) income information. For many individuals, their income information is directly sent to Inland Revenue from third parties – such as employers or banks. However, self-employed individuals must declare their income information to Inland Revenue by filing an annual tax return. If no income is reported or filed, and Inland Revenue has no information which indicates the individual is likely to have income which is not taxed at source, we will assume the taxpayer has no income for the period. This highlights a risk whereby a self-employed customer may deliberately

not file their tax return, or file their tax return late, to claim a higher amount of FamilyBoost.

17. It was intended the legislation require a person (and their partner) to file the "relevant tax return"[1] to be eligible for FamilyBoost. This would have resulted in those who had not filed the "relevant tax return" being declined for that FamilyBoost claim until they file. This would ensure Inland Revenue is using the most recently available income information and incentivises meeting filing obligations.

Issue – late filers are denied payments

18. The FamilyBoost legislation requires a person (and their partner) to have filed their tax return by the required dates to be able to apply for FamilyBoost. For most self-employed taxpayers, a tax return is due by 7 July (i.e. approximately 3 months after the end of the tax year) or, if they have an extension of time to file, by 31 March of the following year (i.e. a year after the end of the tax year).

19. This means that if an individual's tax return is overdue, they will not be able to claim their FamilyBoost payment, even when that late tax return is later filed. This is despite Inland Revenue now having the necessary income information to calculate their FamilyBoost tax credit. We estimate that approximately 980 families may be impacted by this issue per year.

20. The obligation to file on time applies to each quarterly claim. For example, if the person (or their partner) is late in filing the most recent tax return up to the start of the quarter, they will be unable to apply for that quarter's FamilyBoost. They can still apply for next year's payments if they file their next year's tax return on time.

21. This is an overreach of the policy intent as it restricts an eligible family from being able to access FamilyBoost payments even once the tax return is filed. The legislation also uses the words "most recent return of income" which allows tax returns from more than two years before the start of the claimed quarter to be used to determine income. This is inconsistent with the policy intent as outdated tax returns may not accurately reflect a taxpayer's income situation for the claim.

Recommended remedial – allow late filers to still apply for FamilyBoost

22. We recommend amending the legislation to allow those who have filed late to access FamilyBoost once they have filed the "relevant tax return". However, the policy intent is to still decline an applicant's claim if the "relevant tax return" is overdue. Declining an application if the relevant tax return is overdue has the effect of both ensuring relevant income information is filed and that tax returns from no more than two years before the start of the quarter are used to determine FamilyBoost entitlements. This better reflects the taxpayer's current income situation.

> **Example 1: Intended legislative outcome**
>
> *Michael is a self-employed builder. His child attends ECE for 40 hours each week. Michael has trouble tracking down some paperwork from his building contracts and does not file his tax return that was due on 7 July 2024. In October 2024, Michael applies for his first quarterly FamilyBoost payment for the July – September period. Because he has an outstanding return, his claim is declined. After filing his tax return in December, he applies again for FamilyBoost for the July – September period, his claim is accepted, and he receives his payment.*

[1] The "relevant tax return" depends on a person's filing obligations, e.g. whether they have an extension of time to file. The relevant return could be at most two years before the start of the claimed quarter. Otherwise, the most recently filed return up to the start of the quarter should be used.

23. If Ministers decide not to progress this remedial amendment, there would be a fiscal saving of $1.36 million per annum to be added to the 2025 budget allowance, reflecting the estimated 980 families who would no longer be able to claim FamilyBoost. However, there would be a cost to Inland Revenue as the system and administrative processes are configured to reflect original policy intent and would need to be reconfigured to reflect the current legislated outcome.

Recommended interim solution – Order in Council to amend filing dates

24. For Inland Revenue to administer FamilyBoost according to the policy intent until the above remedial takes retrospective effect, we are recommending the use of section 226 of the Tax Administration Act 1994 to extend the due date for customers to file their tax return (noting the extension is only for the purpose of allowing individuals to apply for FamilyBoost and should not impact other tax obligations).

25. The extension to file should be limited to the end of March 2025 (when the remedial amendment takes effect). The extended date should be limited to only apply to individuals claiming FamilyBoost and not all tax return filers.

26. Officials recommend the Minister of Revenue approve the Parliamentary Counsel Office to draft an Order in Council that extends the due date to file an annual tax return, only for individuals claiming FamilyBoost, to 31 March 2025. We recommend this Order in Council to take effect as soon as possible to allow Inland Revenue to align the law with the policy intent and the current build of the FamilyBoost product.

Schedular payments

Policy intent – use recent taxable income for income test

27. Inland Revenue calculates a person's FamilyBoost payment based on their 'tax credit income', which is the greater of their reportable income[2] or a quarter of the income from their most recent tax return. It was intended that the tax credit income of people who receive schedular payments[3] would be their income after claiming any expenses (rather than the amounts reported before expenses).

Issue – gross income used for schedular payments rather than taxable income

28. Reportable income includes schedular payments but does not account for expenses incurred. The current legislation uses this reportable income to determine a person's tax credit income rather than account for the expenses disclosed to Inland Revenue when the person's tax return is finalised. This means a person who receives schedular payments will have overstated income, reducing their FamilyBoost tax credit. This treatment does not align with general expectations around the assessment of income for other tax credits,[4] and may result in increased contact from impacted customers. We estimate that approximately 415 families may be impacted by this issue per year.

Recommended remedial – exclude schedular payments from the reportable income definition for FamilyBoost purposes

29. It was intended that taxable income after expenses from schedular payments would be used to calculate a person's FamilyBoost tax credit. To achieve this, a remedial amendment is needed to exclude schedular payments from reportable income for

[2] Reportable income is income information that Inland Revenue receives regularly from a third party (for example, an employer, a bank, etc) for an individual and a tax year.
[3] Schedular payments are payments made to contractors who perform certain activities. In previous reports, officials referred to schedular payments as 'schedular income' in error.
[4] For example, for Working for Families tax credits, the amount included as income for someone receiving schedular payments is the gross amount earned less expenses incurred.

the purposes of FamilyBoost. This would align the treatment of schedular payments to other income types where a deduction against that income is allowable, such as self-employed income.

30. If Ministers decide not to progress this amendment, there will be a fiscal savings of $65,000 per annum to be added to the budget allowance. However, there is a small system cost and medium administrative cost to Inland Revenue from the additional resources required to manage the customer confusion regarding the FamilyBoost income test and the differing treatment of schedular payments for this tax credit.

Recommended interim solution – temporarily exclude schedular payments from reportable income under Commissioner's discretion

31. The Tax Administration Act 1994 contains remedial powers that provide flexibility to temporarily alter the effect of a provision of an Inland Revenue Act where there has been an error. These remedial powers can be used to resolve issues with tax legislation temporarily at the option of affected taxpayers.

32. Pending the Ministers' approval of the schedular payment amendment above, we will use the Commissioner's remedial power under section 6E of the Tax Administration Act 1994 to temporarily exempt the application of the current law to align with the purpose of that amendment. This is the best mechanism to quickly address the schedular payments issue until the amendment takes effect through the Parliamentary process.

33. Additionally, the remedial power can only be used if the Commissioner is satisfied that the circumstances meet the statutory criteria for an exemption. The criteria are: negligible or no fiscal implications, consistent with the intended purpose of the law, a six-week public consultation process[5], and the ability for taxpayers to opt-in or opt-out of the exemption. The Commissioner's reasons for granting an exemption, and how the exemption complies with the above criteria, must be published with the exemption.

34. This exemption is secondary legislation and can still be scrutinised by the Regulations Review Committee. This may occur because of the novelty of this power and because it operates outside of Parliament, despite the power being a legal temporary remedy to give effect to the longer-term remedial amendment that we are seeking agreement to by Ministers.

Consultation

35. Following Ministers' approval of the remedial amendment, public consultation on the draft exemption will occur. We expect the exemption to be supported by taxpayers and tax practitioners as it is largely taxpayer friendly and aligns with the way schedular payments are treated for the purpose of calculating other tax credits. The exemption may be of interest to the legal profession as it would be the first use of the Commissioner's remedial power since it was enacted in 2019.

Penalties and interest

Policy intent - apply standard penalties and interest rules to debt

36. FamilyBoost was designed as a 'full and final' payment by default (with limited grounds for reassessments) to avoid generating debt for most claims. However, in cases of fraud or genuine error, the claimant incurs a debt equal to the amount of the tax credit they should not have received. We recommended in an earlier report

[5] This period can be shortened depending on the degree of urgency.

to apply the generic penalties and interest rules to that debt (*IR2024/065 FamilyBoost: Technical and Administrative Policy Settings refers)*. This was to avoid any delays and additional costs associated with designing and building bespoke penalties and interest rules.

37. When setting the rule to allow up to four years to submit a claim, officials did not intend to apply credit interest to FamilyBoost payments as it may incentivise families to delay claiming FamilyBoost to receive credit interest in addition to their payment. Encouraging backdated claims did not align with the policy objective of supporting households to meet recent ECE costs. Backdated claims are also generally more difficult for Inland Revenue to verify and tend to present a greater risk of fraud. Instead, allowing backdated claims was intended to support people who needed additional time to file an income tax return. The estimated fiscal cost of credit interest for FamilyBoost is between $221k to $558k per annum.

Issue – there is no standard approach and legislation does not achieve appropriate outcomes

38. As FamilyBoost has been developed, we have concluded there is no standard application of penalty and interest rules, with each tax or tax credit payment having different combinations. Currently, the FamilyBoost legislation does not apply penalties and interest to FamilyBoost debt appropriately. Debit interest should apply to FamilyBoost debt, as the purpose of debit interest is to compensate the Crown for not having the use of its funds, rather than late payment penalties. Credit interest should not be payable for backdated FamilyBoost payments. Shortfall penalties will still be applied if appropriate.

Recommended remedials – clarify which penalties and interest rules should apply

39. To allow Inland Revenue to impose and collect debit interest on overpayments of FamilyBoost, we recommend linking the FamilyBoost section to the penalties section of the Tax Administration Act 1994 by including a cross-reference and amending the wording to denote overpaid FamilyBoost as a ‘credit of tax’ rather than as ‘income tax payable’.

40. To exclude late payment penalties from applying to FamilyBoost debt, we recommend adding an excluding provision to the penalty rules in the Tax Administration Act 1994. We have deviated from our original recommendation because it has become apparent during the implementation process that it is not substantially more difficult or expensive to exclude FamilyBoost from late payment penalties.

41. Removing late payment penalties ensures a social policy payment designed to assist with alleviating the cost of living does not put people into further debt. In 2023, Cabinet’s tool *A framework for debt to government* recommended that penalties should not generally be applied to overpayments of government support[6]. The Commissioner will still retain the power to pursue payment of a FamilyBoost debt when it occurs, and debit interest will still act as an incentive to encourage the repayment of overdue amounts.

42. Finally, to clarify that credit interest is not payable to taxpayers for FamilyBoost payments, we recommend inserting a provision in the Tax Administration Act 1994 to deem there to be no interest payable by the Commissioner on an amount of FamilyBoost tax credit. This would align the treatment of credit interest for FamilyBoost with other tax credits, such as the Donations Tax Credit.

[6] Debt to government framework: policy-framework-for-debt-to-government.pdf (ird.govt.nz)

Fiscal implications

43. If Ministers decide to progress the debit interest remedial amendment, there will be a tax revenue increase of $3k per annum to be added to budget allowance. By not progressing the recommended remedials, there is a small system cost and small administrative cost to Inland Revenue, which will be met within baselines. This cost is associated with the administrative impact of reassessing claims and compliance activity.

Clarifying the 'greater of' income test

Policy intent – the most appropriate measure of income should apply when there is a mix of income types

44. When a person has both reportable income (such as salary and wages) and non-reportable income (such as self-employed income), the legislation chooses the 'greater of' the two to determine FamilyBoost entitlements. This method best reflects a person's income situation using the available information at the time of the claim. This is not intended to over-inflate the income used for the FamilyBoost assessment, but to produce a fairer calculation of tax credit income when a customer may have multiple income types or sources. The intent is to ensure reportable income is tested against self-employed income, and the higher income is used for the assessment.

Issue – the timing of the test is unclear

45. The current FamilyBoost legislation applies the income test based on Inland Revenue's knowledge of whether a person derives reportable income and/or other income "in the quarter". However, Inland Revenue does not know if a person has derived other income "in the quarter" until they file a tax return at the end of the relevant tax year. While Inland Revenue can administer this part of the legislation as intended by making inferences as to whether a person derives other income from previous filing behaviour, a remedial clarification is recommended.

Recommended remedial – clarify the intent of the test

46. The intention of the 'greater of' test is that a FamilyBoost claimant is assessed on the higher of two potential income bases for the quarter, if there are two possible ways to calculate their income.

47. The following examples show how the 'greater of' test is intended to apply:

Example 2: Applying the greater of test for combined income types

Mikayla works part time at Flynn's Café, but also runs a wholesale baking business supplying to other cafés and restaurants. This means some of her income is reportable (filed each week by Flynn's Café with Inland Revenue), and she also files a tax return at the end of each tax year to declare her self-employed income. Mikayla's twin daughters attend ECE for 30 hours each week. In October 2024, Mikayla applies for her first quarterly FamilyBoost payment. For this claim, Inland Revenue looks back at her reportable income for 1 July 2024 – 30 September 2024, which totals $6,100. Because she also has self-employed income in the previous tax year, the reportable income is compared to her latest tax return. Mikayla's return for the period 1 April 2023 – 31 March 2024 showed her total taxable income as $70,000 ($24,400 in wages and $45,600 in self-employed income). As $70,000 is $17,500 per quarter, this figure is used under the 'greater of' test. This is the better representation of her income for her FamilyBoost claim.

Example 3: Applying the greater of test if shifting to salary

Vikrant was self-employed for the tax year 1 April 2023 – 31 March 2024, contracting periodically as a coach for tech businesses in Auckland. This year, a company has asked him to become their full-time in-house specialist and he's now employed on a salaried contract. Vikrant and his wife have their three-year-old in daycare part time. In October 2024, Vikrant applies for the family's first quarterly FamilyBoost payment. For this period, Vikrant was paid $40,000. Inland Revenue compares this to his last tax return, where he earned $140,000 over the year ($35,000 for each quarter). Because his more recent earnings are higher, the figure of $40,000 is used to assess Vikrant's FamilyBoost claim.

48. The remedial will clarify how Inland Revenue applies the income test to determine a person's tax credit if they earn "reportable income" and "other income".

Financial implications

49. There is a revenue gain of $3,000 per annum associated with progressing the debit interest remedial amendment proposed in this report. The majority of the remaining amendments in this report carry no fiscal cost if agreed, as they address drafting errors and will bring the policy in line with the original policy intent. Otherwise, not progressing the remedials in this report would result in fewer people being eligible for the FamilyBoost tax credit, carrying a corresponding fiscal gain of $1.425 million per annum as the forecast would be decreased to account for this.

50. Any fiscal implications should be managed as a positive pre-commitment against the Budget 2025 operating allowance. However, as many of the legislative issues were identified post-build, there are operational costs associated with not progressing the proposed remedial amendments.

Consultation and next steps

51. The Treasury have been consulted on this report.

52. If Ministers agree to the proposed amendments, officials will include these changes in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill at the select committee stage. The Commissioner will progress the granting of a temporary exemption in relation to the schedular payment remedial.

53. If the Minister of Revenue agrees to the Order in Council, officials will send the authorised drafting instructions to the Parliamentary Counsel Office and prepare a draft LEG Cabinet paper.

54. In December 2024, officials will report back to you regarding future policy options to reduce the compliance impact on parents and other potential improvements to the current FamilyBoost design [*CAB-24-MIN-0089 refers*].

Recommended actions

We recommend that you:	Minister of Finance	Minister of Revenue
1. **Note** that officials have proposed several amendments to the FamilyBoost legislation to be included in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill, and have also proposed the use of secondary legislation, and that these changes generally align the legislation with the policy decisions made to date;	Noted	Noted
2. **Note** that there are operational costs associated with **not** progressing the remedial decisions in this report due to changes to systems and administrative processes;	Noted	Noted
3. **Refer** a copy of this report to the Associate Minister of Education for their information;	Referred	
Late filers of tax returns		
4. **Note** that there was a drafting error in the legislation resulting in late filers of tax returns being unable to access FamilyBoost;	Noted	Noted
Amend the drafting error:		
4.1 **Agree** to allow a person (or partner) who has filed their relevant tax return late to apply for FamilyBoost once they have subsequently filed, to apply with retrospective effect on and from 1 July 2024;	Agreed / Not agreed	Agreed / Not agreed
4.2 **Note** that there will be no fiscal impact from the policy change in recommendation 4.1 above as it corrects a drafting error;	Noted	Noted
4.3 **Agree** the Parliamentary Counsel Office draft an Order in Council that extends the due dates set out in Tax Administration Act 1994 to 31 March 2025 for the purpose of a person applying for a FamilyBoost tax credit;		Agreed / Not agreed
If you do not agree to amend the drafting error, then:		
4.4 **Note** that retaining current policy settings may result in up to 980 families not being able to apply for the FamilyBoost payment;	Noted	Noted
4.5 **Note** the following forecast changes to appropriations to give effect to **not** progressing recommendation 4.1 above, with a corresponding impact on the operating balance and/or net core Crown debt;	Noted	Noted

	$m – increase/(decrease)			
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Benefits or Related Expenses: FamilyBoost Tax Credit PLA	(1.360)	(1.360)	(1.360)	(1.360)
Total Operating	**(1.360)**	**(1.360)**	**(1.360)**	**(1.360)**

4.6 **Agree** that the decrease in expenditure under recommendation 4.5 above be managed as a positive pre-commitment against the Budget 2025 operating allowance;	Agreed / Not agreed	Agreed / Not agreed
Schedular payments		
5. **Note** that there was a drafting error in the legislation resulting in those who receive schedular payments potentially having a reduced or no FamilyBoost tax credit;	Noted	Noted

We recommend that you:	Minister of Finance	Minister of Revenue
Amend the drafting error		
5.1 **Agree** to exclude schedular income from the definition of "reportable income" for the purpose of a person applying for a FamilyBoost tax credit, with retrospective effect on and from 1 July 2024;	Agreed / Not agreed	Agreed / Not agreed
5.2 **Note** that there will be no fiscal impact from the policy change in recommendation 5.1 above as it corrects a drafting error;	Noted	Noted
5.3 **Note** that if you agree to the amendment, the Commissioner will continue the process of granting an exemption to the effect of that amendment;	Noted	Noted
5.4 **Note** that the Commissioner's exemption is open to scrutiny by the Regulations Review Committee;	Noted	Noted
If you do not agree to amend the drafting error, then:		
5.5 **Note** that retaining current policy settings will result in 415 families potentially receiving a reduced or no FamilyBoost tax credit;	Noted	Noted
5.6 **Note** the following forecast changes to appropriations to give effect to <u>**not**</u> progressing recommendation 5.1 above, with a corresponding impact on the operating balance and/or net core Crown debt;	Noted	Noted

	$m – increase/(decrease)			
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Benefits or Related Expenses: FamilyBoost Tax Credit PLA	(0.065)	(0.065)	(0.065)	(0.065)
Total Operating	**(0.065)**	**(0.065)**	**(0.065)**	**(0.065)**

5.7 **Agree** that the decrease in expenditure under recommendation 5.6 above be managed as a positive pre-commitment against the Budget 2025 operating allowance;	Agreed / Not agreed	Agreed / Not agreed
Penalties and interest		
Debit interest		
6. **Agree** to amend the Tax Administration Act 1994 to apply debit interest to FamilyBoost debt, with retrospective effect on and from 1 July 2024;	Agreed / Not agreed	Agreed / Not agreed
7. **Note** the increase in tax revenue as a result of recommendation 6 above with a corresponding impact on the operating balance and/or net core Crown debt;	Noted	Noted

	$m – increase/(decrease)			
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	0.003	0.003	0.003	0.003
Total Operating	**(0.003)**	**(0.003)**	**(0.003)**	**(0.003)**

We recommend that you:	Minister of Finance	Minister of Revenue
8. **Agree** that the increase in tax revenue under recommendation 7 above be managed as a positive pre-commitment against the Budget 2025 operating allowance;	Agreed / Not agreed	Agreed / Not agreed
Credit interest		
9. **Agree** no credit interest be payable by the Commissioner on an amount of FamilyBoost tax credit, with retrospective effect on and from 1 July 2024;	Agreed / Not agreed	Agreed / Not agreed
10. **Note** that there will be no fiscal impact from the policy change in recommendation 9 above as it corrects a drafting error;	Noted	Noted
Late payment penalties		
11. **Note** that officials' recommendation around the application of penalties has changed to not applying late payment penalties to overpayments of FamilyBoost;	Noted	Noted
12. **Agree** to exclude late payment penalties from applying to FamilyBoost debt, with retrospective effect on and from 1 July 2024;	Agreed / Not agreed	Agreed / Not agreed
13. **Note** that there will be no fiscal impact from the policy change in recommendation 12 above;	Noted	Noted
14. **Note** that retaining current policy settings (i.e., **<u>not</u>** progressing recommendation 12 above) will apply late payment penalties to FamilyBoost overpayment debt, which may result in increased debt balances for some recipients;	Noted	Noted
Clarifying the income test		
15. **Agree** to clarify how the income test applies for those deriving both "reportable income" and "other income", with retrospective effect on and from 1 July 2024**;**	Agree / Not agreed	Agree / Not agreed
16. **Note** that there will be no fiscal impact from the policy change in recommendation 15 above as it corrects a drafting error.	Noted	Noted

s 9(2)(a)

Maraina Hak
Policy Lead
Policy
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Independent Earner Tax Credit and Working for Families interaction**

Date:	2 September 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/274

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	16 September 2024
Minister of Revenue	**Agree** to recommendations	16 September 2024

Contact for telephone discussion (if required)

Name	Position	Telephone
Maraina Hak	Policy Lead, Inland Revenue	s 9(2)(a)
Paul Young	Principal Policy Advisor, Inland Revenue	s 9(2)(a)

2 September 2024

Minister of Finance
Minister of Revenue

Independent Earner Tax Credit and Working for Families interaction

Executive summary

1. You sought further advice on resolving the interaction between the Independent Earner Tax Credit and Working for Families that resulted in a small number of families becoming worse-off after Budget 2024 (IR2024/214 refers). This issue was noted to be pre-existing, with income inflation and the Budget 2024 changes only increasing the extent of this interaction.

2. Officials previously advised of an increase in the number of families who are expected to be better off if they received the Independent Earner Tax Credit rather than Working for Families following the Budget 2024 reforms - from approximately 600 families to between 1,000 – 2,000 families. Among these impacted families are 200 or fewer families that are expected to be worse off overall as a result of Budget 2024.[1]

3. This issue arises from the different entitlement calculations used for the Independent Earner Tax Credit and Working for Families. Working for Families uses family income to determine entitlement whereas the Independent Earner Tax Credit only uses an individual's income.

4. This report outlines two options to address the interaction between the Independent Earner Tax Credit and Working for Families. These are:

   4.1 Option one – An end-of-year square-up process from the 2025/26 year that will top up Working for Families recipients to the amount of Independent Earner Tax Credit they otherwise would have received.

   4.2 Option two – Retain the status quo and consider this issue as part of Inland Revenue's stewardship work on Working for Families (officials' preferred option).

5. The earliest option one can be delivered is from the 2025/26 tax year due to the system development and legislation changes required. This option would incur relatively high administration costs and would only benefit a small number of people. Inland Revenue would require additional funding to deliver this option. Taking this funding decision as part of Budget 2025 would still allow delivery for 2025/26.

6. Option two would retain the status quo (as updated with the small legislative change set out in paragraph 7) but officials would consider this issue as part of Inland Revenue's stewardship work on Working for Families.

7. A legislative change is recommended irrespective of the option chosen by Ministers. There is a misalignment between the current legislation and policy intent for the Independent Earner Tax Credit's eligibility. While resolving the misalignment does not address the interaction issue, officials recommend resolving it as following the legal interpretation would be operationally challenging. A legislative amendment could be included in the Taxation (Annual Rates 2024–25, Emergency Response, and Remedial Measures) Bill at the Finance and Expenditure Committee stage.

[1] Based on modelling of the effects of the changes for the 2027 income year.

Independent Earner Tax Credit and Working for Families interaction

Purpose

8. As part of Budget 2024, Ministers were advised that 200 or fewer families were expected to be worse off following the Budget 2024 tax package (IR2024/214 refers), and subsequently sought further advice to address this specific issue.

9. This report sets out the tensions between the policy settings of Working for Families and the Independent Earner Tax Credit and the subsequent issue. With this information as context, the report sets out options in relation to this issue.

Background

10. The different objectives of Working for Families and the Independent Earner Tax Credit result in differences between their respective policy settings, such as their eligibility criteria and entitlement calculation. The issue arises from these differences, particularly due to the different units of entitlement each scheme uses.

Independent Earner Tax Credit eligibility

11. The Independent Earner Tax Credit was introduced to provide some government support to low-to-middle-income salary and wage earners who were not entitled to any other core government assistance. Therefore, recipients of main benefits and other specified benefits including Working for Families recipients (and partners of Working for Families recipients) are not eligible for the Independent Earner Tax Credit.

12. The amount of Independent Earner Tax Credit that a person is entitled to is calculated using the *individual's* income.

Working for Families settings

13. Working for Families aims to provide support based on the recipient's *family* circumstances. Currently, it is made up of multiple tax credits: the Family tax credit, In-work tax credit, Minimum Family tax credit and Best Start tax credit.

14. Working for Families assesses a family as a collective using a concept called "Family Scheme Income". This is a wider definition of "income" that is used for the purpose of determining entitlement as it accounts for not only all the individual incomes of adult family members, but also non-taxable income such as non-beneficiary trust distributions.

15. The wider scope of Family Scheme Income reflects the intention to better understand the amount of disposable income a family has available to support their day-to-day living needs.

16. Inland Revenue will not have Family Scheme Income information unless taxpayers apply to receive Working for Families, as it is not collected for any other purpose.

Family Scheme Income vs individual unit of income

17. Some people's income and circumstances are such that they could be eligible for either payment - a taxpayer whose taxable income falls within scope of the Independent Earner Tax Credit entitlement, may also belong to a family whose Family Scheme Income falls within Working for Families entitlement.

18. As the Independent Earner Tax Credit rules exclude those who are entitled to receive Working for Families, these taxpayers should, under current law, claim

Working for Families even if they would be better off receiving the Independent Earner Tax Credit.

Example 1

Kabita and Raunak are a family with one school-aged child. Kabita and Raunak both work part-time and earn $44,000 per annum each.

Before Budget 2024 changes

Kabita and Raunak's family income was above the abatement threshold for Working for Families. They would have been individually entitled to the maximum Independent Earner Tax Credit entitlement of $520 each, or $1,040 as a family.

After Budget 2024 changes

Kabita and Raunak are now entitled to receive $363 of Working for Families. They lose their Independent Earner Tax Credit entitlement of $1,040 as a family. They would be better-off by $677 if they were able to receive the Independent Earner Tax Credit instead of Working for Families.

19. Issues arising from this tension between the use of Family Scheme Income and individual income are not limited to this interaction. There are other equity concerns, such as where an individual receives the maximum Independent Earner Tax Credit entitlement despite their family having abated out of Working for Families eligibility due to their high-income earning partner. Meanwhile, two low-to-middle income earners are ineligible for the Independent Earner Tax Credit as their family is entitled to a potentially smaller Working for Families amount.

Example 2

Harry and Andrew are also a family with one school-aged child. Harry earns $120,000 per annum while Andrew earns $36,000 per annum, earning a combined income of $156,000 ($68,000 more than Kabita and Raunak).

As Harry and Andrew's family income is above the Working for Families abatement threshold, they will not be entitled to any Working for Families. Therefore, while Harry will be ineligible for the Independent Earner Tax Credit as he earns above the Credit abatement threshold, Andrew will be individually entitled to the maximum Credit amount of $520 ($157 more than Kabita and Raunak's Working for Families amount).

The impact of Budget 2024 changes

20. The Budget 2024 tax package expanded eligibility for both the Independent Earner Tax Credit and Working for Families.

21. For the Independent Earner Tax Credit, the abatement threshold increased from $44,000 to $66,000 and the threshold where taxpayers are no longer eligible to receive it increased from $48,000 to $70,000.

22. For Working for Families, the settings for the In-Work tax credit and Minimum Family tax credit changed. The base maximum weekly entitlement of the In-Work tax credit for families with three or fewer children increased from $72.50 to $97.50. The Minimum Family tax credit threshold increased from $35,204 to $35,316 after tax per annum to retain the threshold at $41,483 before tax per annum.

23. These changes increased the number of families who would be better off receiving the Independent Earner Tax Credit than they would be receiving Working for Families from approximately 600 families to between 1,000 and 2,000. The 200 or

fewer families expected to be worse-off following Budget 2024 are within this new cohort.

Example 3

Lucy and Sam are a family with two school-aged children. Lucy and Sam both work full-time and earn $55,000 each per annum for a combined family income of $110,000.

Before Budget 2024 changes

Lucy and Sam's family income was above the abatement threshold for Working for Families. Their individual incomes were also above the Independent Earner Tax Credit abatement threshold. They were entitled to neither Working for Families nor the Independent Earner Tax Credit.

After Budget 2024 changes

Lucy and Sam are now entitled to receive $578.05 of Working for Families so they are better off following Budget 2024. However, if they were not entitled to Working for Families, they would have been entitled to $520 of the Independent Earner Tax Credit each following Budget 2024, and therefore $1,040 as a family. They would be better-off by $461.95 if they were able to receive the Independent Earner Tax Credit instead of Working for Families.

24. As illustrated in Figure 1 and the above examples, impacted families do not share the same set of income or family characteristics. These situations occur across a wide number of family income bands (due to families having different levels of entitlement to Working for Families depending on the number of children in the family) where the combined family income is close to the point where the family's Working for Families entitlement is fully abated.

*Figure 1: Estimated number of families (with children) better off on the Independent Earner Tax Credit in the 2024–25 tax year**

Family Income Band ($)	Number of families
50,000 - 60,000	76
60,000 - 70,000	179
70,000 - 80,000	42
80,000 - 90,000	137
90,000 - 100,000	149
100,000 - 110,000	87
110,000 - 120,000	327
120,000 - 130,000	44
130,000 - 140,000	113
140,000 - 150,000	32
150,000+	55
All	1,241

* This is based on existing Working for Families customers and their Family Scheme Income.

25. As noted in the initial reporting for Budget 2024 (IR2024/214 refers), the increase in the impacted families and the emergence of the 200 or fewer families who are worse off post Budget 2024 is not an outcome arising from a new issue. The interaction is a pre-existing issue that has become more prevalent with the Budget 2024 changes and increases in individual and family income.

26. The complexity resulting from the differing policy settings of the Independent Earner Tax Credit and Working for Families is the reason why the interaction between the two schemes has not previously been resolved.

Options

27. We have identified two options for your consideration.

Option one – end of year top up

Context

28. At the end of every tax year or when a taxpayer files their end of year return, Inland Revenue runs an end of year square up for income tax and Working for Families. This determines a person's end of year tax position, such as whether they paid the right amount of tax and received the right amount of tax credits. This includes a calculation of their Independent Earner Tax Credit or Working for Families entitlements.

Solution

29. During the annual square up, Inland Revenue would identify existing Working for Families recipients whose families would have been better off receiving the Independent Earner Tax Credit.

30. Once identified, they would receive a top up that would bring them to the total tax credit amount they would have received had they been eligible for the Independent Earner Tax Credit.

31. The maximum top up amount a taxpayer can be entitled to is the maximum Independent Earner Tax Credit a taxpayer can be entitled to in a year, i.e. $520 – though more than one family member could be entitled to the top up. Only those who are affected by the interaction issue and who would be entitled to Working for Families would be eligible for the top up amount.

Advantages

32. This option would allow Inland Revenue to identify taxpayers affected by this issue and compensate them rather than leaving that obligation on customers. Calculating Working for Families entitlements in advance is challenging due to fluctuating factors such as family income and relationship status.

33. Working for Families recipients would continue receiving their Working for Families payments throughout the year (for example, weekly) and would receive a top up payment if entitled. They would not have to choose between the Independent Earner Tax Credit or Working for Families based on what they expected would entitle them to more.

Challenges

34. This option is challenging and costly to implement in Inland Revenue's START system. The cost to develop, implement and communicate the changes is likely to be disproportionately large compared to the benefit passed on to the impacted families. Recipients may also find further difficulty understanding the changes given the already complex scheme.

35. This option would further strain resources during Inland Revenue's busiest time of the year, i.e. during the annual square-up where a high volume of processes take place. Identifying eligible families and calculating entitled top up amounts will need to occur concurrently with the square up process. While this will mostly be an automatic process, there will be complex situations that may be difficult to resolve, particularly where there has been a change in relationship during the year (due to the combination of individual and family entitlements a taxpayer may receive). Working for Families recipients are generally more likely to contact Inland Revenue.

36. The top up would only be paid after the end of the year. Therefore, this option would not result in people being paid the right amount during the year.

37. The top up only resolves the issue in one direction – that is, for registered Working for Families recipients who would be better off receiving the Independent Earner

Tax Credit. Inland Revenue would not be able to identify families who are receiving the Independent Earner Tax Credit and who would be better off receiving Working for Families unless they apply or register for Working for Families.

38. This option may have some additional impacts. For example, tax agents may no longer be able to calculate their clients' tax credit entitlements if they receive Working for Families.[2]

Costs

39. The forecasted cost of this option is an additional $450,000 from 2025/26 onwards. This is the earliest that Inland Revenue could implement this option.

Figure 2: Rounded fiscal impact of families receiving the Independent Earner Tax Credit instead of Working for Families where they would receive a higher entitlement, by June year ($million)

	$ million increase / (decrease)			
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2027/27**	**2027/28 & Outyears**
Tax Revenue: Other persons	0	(0.450)	(0.450)	(0.450)
Total operating	**0**	**0.450**	**0.450**	**0.450**

40. The system changes to deliver this option would be likely to have an initial cost of $1 million. This is to cover the development of the solution and the testing to ensure the solution works. Inland Revenue would also need to communicate the changes to impacted taxpayers and anticipate increased customer contact.

41. Once implemented, the ongoing administrative costs have been estimated to be small (this is defined as $0.5 million or less) with primarily end-of-year impacts.

42. This option would require additional funding which could be provided via Budget 2025 if you are happy to delay taking the decision until the Budget process. If you wish to take the decision earlier, the funding could be provided from the between-Budget contingency established as part of Budget 2024, or as a pre-commitment against the Budget 2025 operating allowance. We note that the Tax Policy Scorecard cannot be used for social policy changes.

Implementation

43. This option would not be available for the 2024/25 tax year given the system and legislative changes required. The earliest the system changes can be developed and implemented for taxpayers would be for the March 2025-26 tax year. This would mean the earliest taxpayers could receive a top-up amount based on their entitlement for the 2025-26 tax year is in mid-to-late 2026.

Option two – retain the status quo and consider issue as part of stewardship work on Working for Families (officials' preferred option)

44. The interaction issue will persist and likely grow as incomes increase over time. Ultimately, any change made without a wider review into Working for Families and

[2] Tax agents do not calculate Working for Families entitlements as they do not have enough information. Therefore, they will be unable to calculate the amount nor whether the client would receive a top up, as it requires a comparison between the Independent Earner Tax Credit amount the client would have received and the Working for Families amount received by the client's family.

its relationship with the Independent Earner Tax Credit will be a reactive remedy to a permanent issue rather than being preventative.

45. Possible solutions to evaluate could involve repealing the Independent Earner Tax Credit and replacing it with a new tax credit compatible with the Working for Families regime, or increasing different parts of the Working for Families package that share similar objectives of assisting those who are in work.

46. Officials are currently undertaking stewardship work on Working for Families (BN2024/348 refers). This includes considering what income support delivered through the tax system could look like in the future. It considers the entire tax credit system from a policy and delivery perspective. We recommend retaining the status quo and considering this issue as part of Inland Revenue's stewardship work on Working for Families.

47. While 1,000 – 2,000 families may benefit more from the Independent Earner Tax Credit than Working for Families payments, most are better off overall after the Budget 2024 package. As illustrated in Example 3, families previously ineligible for both schemes could now receive Working for Families due to Budget 2024 changes. This makes them better-off than they were before the Budget 2024 changes, even though they could benefit more from the Independent Earner Tax Credit.

48. We identified that 200 or fewer families would be worse-off after the Budget 2024 changes. This is a small fraction of the Working for Families population (approximately 340,000 families), and the additional amount that would be paid to them is small compared to the administrative costs likely to be incurred to deliver any changes.

Discounted option – allow taxpayers to opt-in/out of Working for Families

49. We also considered allowing taxpayers to opt-out of Working for Families so they could choose to receive the Independent Earner Tax Credit instead. While the system and administrative changes required for implementation were considered, we discounted it as a viable option.

50. The primary challenge with this option is that people will not necessarily know whether they would be better off receiving Working for Families or the Independent Earner Tax Credit in the future. Any changes in their circumstances would have an impact and could mean that they made the wrong choice for their circumstances. Making a decision that does not fit well with their circumstances going forward would mean that customers may become worse off than the status quo.

51. Any efforts to empower taxpayer choice by education and communication are likely to be inadequate, as payments made throughout the year are based on estimations of what their Family Scheme Income would be for that entire year. This can be volatile as taxpayers may have changes to factors such as relationship status, working hours and level of pay (IR2024/284 refers).

52. Allowing taxpayers to opt-out of Working for Families could also be an integrity risk because customers may be able to avoid being assessed to have received a Working for Families overpayment by opting-out of Working for Families just before a substantial income increase from a new source of income, such as a change in job or second earner returning to work.

53. This option does not solve the issue and may give rise to additional problems.

Amendment required to align legislation with policy intent and operational practice

Current law and practice

54. Currently, taxpayers who are *entitled* to or are within a family who is *entitled* to Working for Families are ineligible for the Independent Earner Tax Credit. Recent internal legal advice confirms that this means that families who are entitled to Working for Families payments cannot choose to receive the Independent Earner Tax Credit, even if they would receive more Independent Earner Tax Credit than they would Working for Families. The recent legal advice, however, also confirms that an application is not required to be considered "entitled" to Working for Families.

55. Inland Revenue has been treating people as ineligible for the Independent Earner Tax Credit if they are being **paid** Working for Families as, this means, they have applied for Working for Families and meet other eligibility criteria.

56. Therefore, there are likely to be taxpayers who would be entitled to Working for Families payments but have not applied and therefore are not receiving them and instead, are automatically receiving the Independent Earner Tax Credit. This is not an outcome that is allowable under the current law. However, Inland Revenue cannot avoid this situation arising because there is no way to know whether someone is entitled to Working for Families unless they make an application. Inland Revenue does not collect or hold Family Scheme Income and other required information for all taxpayers to do this.

57. The policy intent of the Independent Earner Tax Credit was to exclude those in families **receiving** Working for Families payments from eligibility for the Independent Earner Credit. It was not to exclude those families who just meet the relevant eligibility criteria for Working for Families (regardless of whether they *received* Working for Families payments) from being eligible for the Independent Earner Credit.

Aligning the law with policy intent

58. While the word "entitled" aligns with other references to Working for Families throughout the Income Tax Act 2007, the outcome is a mismatch with the original policy intent when the legislation was enacted.

59. For operational practices to change to reflect the law, Inland Revenue would need to collect and assess Family Scheme Income and other family information for every family in New Zealand to determine who would be entitled to Working for Families payments. This would not be possible with Inland Revenue's current operational resourcing and would put an unnecessary compliance cost burden on families who are not eligible.

60. Officials recommend legislative amendments that more clearly reflect the original policy intent. This would ensure Inland Revenue's practices are aligned with the legislation and facilitate any operational change to the Independent Earner Tax Credit in future.

Costs

61. As the legislative change would reflect current operational practices, no system changes would be required. There would be minor content changes (for example, on the Inland Revenue website) and a small group of taxpayers may contact Inland Revenue in situations where there is a small entitlement but they choose not to receive it. However, it is unlikely that there would be any additional ongoing administrative impacts greater than the status quo. For this reason, no funding is being sought in respect of this change.

Implementation

62. The earliest legislative vehicle available to include the amendment would be the Taxation (Annual Rates 2024–25, Emergency Response, and Remedial Measures) Bill. While the Bill has already been introduced, officials could propose the amendments be incorporated in the Bill via the Departmental Report at the Finance and Expenditure Committee stage.

Treasury consultation

63. The Treasury was consulted on this report and agree with our recommendations.

Next steps

64. We will action your decisions as appropriate.

Recommended action

<table>
<tr><th>We recommend that you:</th><th>Minister of Finance</th><th>Minister of Revenue</th></tr>
<tr><td>1. Agree to <u>one</u> of these options:

1.1 Option 1 – An end of year square-up process that will top up Working for Families recipients to the amount of Independent Earner Tax Credit they otherwise would have received;

1.2 Option 2 – Retain the status quo and consider the issue as part of stewardship work on Working for Families (officials' preferred option)</td><td>Agreed /
Not agreed

Agreed /
Not agreed</td><td>Agreed /
Not agreed

Agreed /
Not agreed</td></tr>
<tr><td>2. Note that agreeing to recommendation 1.1 (Option 1) will incur a fiscal cost of $3.35 million over the forecast period (which excludes operational costs for the 2024/25 year as the option will not be deliverable by that year);

<table>
<tr><th></th><th colspan="3">$ million increase / (decrease)</th><th></th></tr>
<tr><th>Vote Revenue
Minister of Revenue</th><th>2024/25</th><th>2025/26</th><th>2027/27</th><th>2027/28
& Outyears</th></tr>
<tr><td>Tax Revenue:
Other persons</td><td>0</td><td>(0.450)</td><td>(0.450)</td><td>(0.450)</td></tr>
<tr><td>Total operating</td><td>0</td><td>0.450</td><td>0.450</td><td>0.450</td></tr>
<tr><td>Total administrative</td><td>-</td><td>1.000</td><td>0.500</td><td>0.500</td></tr>
<tr><td>Total operating and administrative</td><td>0</td><td>1.450</td><td>0.950</td><td>0.950</td></tr>
</table>
</td><td>Noted</td><td>Noted</td></tr>
<tr><td>3. Note that agreeing to recommendation 1.1 (Option 1) will require a legislative change.</td><td>Noted</td><td>Noted</td></tr>
</table>

We recommend that you:	Minister of Finance	Minister of Revenue
4. If recommendation 1.1 (**Option 1**) is agreed to, **direct** officials to prepare a Cabinet paper that seeks Cabinet approval for the expenses incurred as outlined in recommendation 2 to be funded via one of these three options:		
4.1 Budget 2025;	Directed / Not directed	Directed / Not directed
4.2 As a charge against the between Budget contingency established as part of Budget 2024;	Directed / Not directed	Directed / Not directed
4.3 As a pre-commitment against the Budget 2025 operating allowance;	Directed / Not directed	Directed / Not directed
5. **Direct** officials to prepare a legislative amendment to align the eligibility criteria for Independent Earner Tax Credit to the original policy intent and existing practices;	Directed / Not directed	Directed / Not directed
6. If officials are directed under recommendation 5, then **agree** to include the required legislative amendment in the Taxation (Annual Rates 2024-25, Emergency Response, and Remedial Measures) Bill via an Amendment Paper at the select committee stage;	Agreed / Not agreed	Agreed / Not agreed
7. **Note** that there are operational and administrative costs associated with **not** agreeing to recommendation 5 arising from the need to significantly change operational practices to align with the current legislation.	Noted	Noted

s 9(2)(a)

Paul Young
Principal Policy Advisor
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **Overseas donee status: NZ Memorial Museum Trust – Le Quesnoy**

Date:	09 May 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/186

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	07 June 2024
Minister of Revenue	**Agree** to recommendations	07 June 2024

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)

9 May 2024

Minister of Finance
Minister of Revenue

Overseas donee status: NZ Memorial Museum Trust – Le Quesnoy

Executive summary

1. You have received a letter from Sir Don McKinnon, the former Chair of the New Zealand Memorial Museum Trust – Le Quesnoy (the Trust), seeking your agreement to grant the Trust permanent overseas donee status. The Trust's donee status ends 31 March 2025.

2. "Overseas donee status" is used to describe certain New Zealand charities that have purposes outside New Zealand and whose donors are eligible for tax benefits, such as the donation tax credit. Decisions to grant overseas donee status are assessed against Cabinet criteria set in 1978 and implemented by way of amendments to the Income Tax Act 2007. The Trust was granted temporary overseas donee status as a special case as its purposes were outside the criteria as set out in the annex.

3. This report recommends that you decline the Trust's request.

The NZ Memorial Museum Trust – Le Quesnoy

4. The Trust is a registered charity set up to own and operate a memorial museum in Le Quesnoy, France. The trustees' vision for the memorial museum is to establish a permanent war memorial museum at Le Quesnoy, in remembrance of the New Zealanders who fought in Europe during the First World War. The museum (Te Arawhata)[1] includes a visitor experience created by Wētā Workshop. Te Arawhata is a private endeavour.

5. The Trust selected Le Quesnoy as the base for a memorial museum as the town's liberation was the last major action by the New Zealand Division in the closing weeks of the war. The Trust considers the story of the town's liberation by the New Zealand Division is compelling as it was achieved without the loss of any civilian lives and without material damage to the township itself.

6. The Rt Hon Helen Clark and the Rt Hon Sir Don McKinnon are patrons of the Trust.

Response to the letter

7. We recommend that you discuss the Trust's request with the Minister of Finance, the Minister of Foreign Affairs and Trade, the Minister for Culture and Heritage, and the Minister of Revenue. This is because:

   7.1 the high-profile nature of the individuals involved with the Trust,

   7.2 the unique purposes of the Trust as an offshore war memorial museum, and

   7.3 accepting the Trust's request has Budget implications from the 2026 and later financial years.

[1] Translates as "The Ladder" and reflects that the capture of the town was achieved using ladders against the town's 17th century fortifications.

8. As such, the report considers two options:

8.1 Option 1 – Decline the Trust’s request for permanent overseas donee status.

8.2 Option 2 – Agree to the Trust’s request for permanent overseas donee status. This option requires amending the Income Tax Act.

9. No other options are considered in this report as the Trust is not seeking alternative financial assistance from the government for example, by way of grants.

10. We recommend that the Trust’s request be declined (Option 1). Cabinet’s decision in 2018 to grant the Trust overseas donee status was on an exception basis and was time-limited to assist with the completion of Te Arawhata only. Granting the Trust temporary overseas donee status was intended to be the government’s full and final contribution to the project. The Trust has achieved its goal of creating the memorial museum, and it is now seeking permanent overseas donee status to assist with the on-going operation and maintenance of Te Arawhata. We do not see any good tax policy reasons for granting the Trust permanent overseas donee status.

11. We recognise that Option 1 may mean that the Trust ceases to be attractive to potential New Zealand donors, particularly high-wealth donors, and that this outcome could affect its financial viability if donations decrease after 31 March 2025.

12. If Ministers want to support the Trust’s operations beyond 31 March 2025 we consider granting the Trust permanent overseas donee status (Option 2) would be preferable to granting it overseas donee status for another time-limited period, as has been the previous practice. Amending legislation to implement Option 2 should ideally be included in the next taxation bill scheduled for introduction in August 2024, and have effect from 1 April 2025. For any amendments to be included in that bill for its introduction, Cabinet support for Option 2 should be obtained in June.

13. Option 2 is a change in policy as it signals a change in the government’s support of the Trust. The current policy is to support the development of Te Arawhata to its completion. Option 2 means that the government is agreeing to use the tax system to support Te Arawhata’s ongoing operation and maintenance now that it has been completed. This option also has Budget implications. We continue to have concerns regarding the precedent created by Option 2, and the future viability of Te Arawhata.

Financial implications

14. Tax benefits for monetary donations received by the Trust have been funded for the 2025-26 financial year (to cover donations made on and up to 31 March 2025) and are already in existing baselines. Agreeing to grant the Trust permanent overseas donee status (Option 2) will have fiscal implications for the 2026-27 and later financial years. The Trust plans to raise about $1 million a year from its current donor base of 600. This roughly equates to a fiscal cost of $0.330 million each year ($0.660 over the forecast period to 2024-25 to 2028-29).

15. Subject to discussions with the Minister of Finance, this financial cost could be met as a pre-commitment to Budget 2026, and we will report again in June seeking your agreement to how Option 2 is funded.

Consultation

16. The Treasury, the Ministry of Foreign Affairs and Trade, and the Ministry for Culture and Heritage were consulted as part of the preparation of this report. The views of these agencies are reflected throughout this report. They agree with the report’s conclusions and recommendations. The Ministry of Defence was informed.

17. We also sought additional information from the Trust in support of its request, and their views are reflected in this report.

Next steps

18. Decisions on the recommendations in this report should be made following the end of this year's Budget moratorium. We recommend in the meantime that you discuss with your fellow Ministers your preferred response. Subject to those discussions, we will prepare a paper to go to Cabinet in June seeking its agreement to your preferred option. Subject to Cabinet's decision, we will prepare a letter for the Minister of Revenue informing the Trust about the outcome of its request.

19. A copy of this report should be referred to the Minister of Foreign Affairs and Trade, and the Minister for Culture and Heritage. A copy of the report should also be referred to the Department of the Prime Minister and Cabinet for their information.

Recommended action

We recommend that you:

		Minister of Finance	Minister of Revenue
(a)	**Discuss** the content of this report with the Minister of Finance, the Minister of Foreign Affairs and Trade, the Minister for Culture and Heritage, and the Minister of Revenue.	Discussed/ Not discussed	Discussed/ Not discussed
(b)	After the end of this year's Budget moratorium (on or after 31 May 2024) **either**:		
	(i) **Agree** to decline the NZ Memorial Museum Trust – Le Quesnoy's request for permanent overseas donee status (Option 1 Inland Revenue's preferred option).	Agreed/ Not agreed	Agreed/ Not agreed
	OR		
	(ii) **Agree** to give the NZ Memorial Museum Trust – Le Quesnoy permanent overseas donee status, with effect from 1 April 2025 (Option 2, the Trust's preferred option).	Agreed/ Not agreed	Agreed/ Not agreed
(c)	**Note** that granting the NZ Memorial Museum Trust – Le Quesnoy overseas donee status on a permanent basis would have financial implications for the 2026/27 and later financial years and funding would be required to meet the expected cost of those tax benefits. We will report again in June with funding options if you choose to accept the Trust's request.	Noted	Noted

		Minister of Finance	Minister of Revenue
(d)	**Note** that we will prepare a paper to go to Cabinet in June seeking its agreement to your preferred option.	Noted	Noted
(e)	**Refer** a copy of this report to the Minister of Foreign Affairs and Trade, and the Minister for Culture and Heritage.	Referred/ Not referred	Referred/ Not referred
(f)	**Refer** a copy of this report to the Department of the Prime Minister and Cabinet for their information.	N/A	Referred/ Not referred

s 9(2)(a)

Brandon Sloan
Principal Policy Advisor
Policy and Regulatory Stewardship

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Purpose of this report

20. You have received a letter from the former Chair of the NZ Memorial Museum Trust – Le Quesnoy (the Trust), seeking a permanent extension to the Trust's overseas donee status.[2] A copy of this letter is attached to this report [REDACTED].

21. The Trust is a registered charity set up to own and operate a memorial museum and accommodation complex in Le Quesnoy, a small town in France. The trustees' vision for the Trust is to establish a permanent war memorial museum (Te Arawhata) in Le Quesnoy, in remembrance of the New Zealanders who fought in Europe during the First World War. It includes a visitor experience created by Wētā Workshop.

22. The Trust is not part of any government initiative relating to the First World War centenary programme (WW100). It is a private endeavour.

23. The Rt Hon Helen Clark and the Rt Hon Sir Don McKinnon are patrons of the Trust. The Chair of the Trust is David McLean. The initiative also has the support of several other high profile New Zealanders s 9(2)(a) [redacted][3]

24. This report recommends that the request be declined. However, we recognise that the government may for non-tax reasons want to financially support the Trust using the tax system in the form of providing tax benefits to the Trust's donors.

25. There is a fiscal cost attached to the decision to give the Trust overseas donee status. As such we suggest that you discuss the Trust's request with your colleagues before deciding your preferred option.

"Overseas donee status"

26. "Overseas donee status" is used to describe certain New Zealand charities that have purposes outside New Zealand and whose donors are eligible for tax benefits. These benefits include:

    26.1 the donation tax credit of $33^1/_3$% of the value of any monetary donations made by a New Zealand resident individual taxpayer, capped to the amount of their taxable income; and

    26.2 tax deductions if the monetary donation is from a New Zealand resident company or Māori authority, capped to the amount of their net income.

27. Providing tax benefits for monetary donations to charities is intended to foster a culture of charitable giving in New Zealand by reducing the donor's marginal cost of donating.[4] Supporting donors through the tax system can be a useful way of furthering social or government objectives. Donations can be an effective indicator of when extra goods and services should be provided that might otherwise not exist in commercial market conditions– for example, the creation of Te Arawhata.

28. Overseas donee status for the most part applies to New Zealand charities that meet Cabinet's approval criteria (CM 78/14/7, see annex). Cabinet's approval criteria reflect the decision in 1962 to make tax benefits available, on a case by case basis,

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[2] A similar letter was also sent to the Deputy Prime Minister, the Minister of Finance, the Minister for the Community and Voluntary Sector, the Minister of Revenue, and Hon Andrew Bayly in his capacity as the member for Port Waikato.
[2] CAB-18-MIN-0353 refers, 29 October 2018.
[3] It is likely that the Rugby World Cup, and the upcoming Paris Olympic games would have, or will, increase the number of New Zealanders travelling to France and who may therefore visit Te Arawhata.
[4] For example, the cost to individuals of donating $100 is $66.67 (subject to the income caps).

to charities with a focus on international aid, and humanitarian development in developing countries.

Previous government decisions concerning the Trust and overseas donee status

29. In 2018 the Trust was granted overseas donee status by Cabinet as a special case (CAB-18-MIN-0535 refers). It was treated as a special case as the Trust's purposes were outside Cabinet's approval criteria.

30. Being a special case, the Trust's overseas donee status was time limited (ending March 2021) with the intention that providing tax benefits for monetary donations to the Trust would be the government's full and final contribution to the memorial museum project.

31. The decision to grant overseas donee status recognised the one-off and historic nature of the Trust's purpose to commemorate 100 years since the end of the First World War.

32. In 2021 the Patron and the Chair of the Trust requested an extension to the end date of the Trust's overseas donee status. The request was granted (CAB-21-MIN-0221 refers) in recognition that the Trust's ability to fundraise had been affected by the pandemic and that the Trust's main donors (being high wealth individuals) wished to pay promised donations over a three to four year period.

33. The Trust's donee status ends 31 March 2025.

34. These government decisions have been interpreted by the trustees and donors that the government endorses the project, and it is prepared to support the project to its completion.

35. As previous governments have decided to treat the Trust as a special case deserving overseas donee status, the tax benefits to donors to the Trust have been funded from Budget allowances.

36. For the period 2018-19 to 2025-26 financial years, tax revenue estimates have been adjusted downwards by $8.9 million to make provision for the tax benefits attached to monetary donations to the Trust.[5] This amount reflects estimates from the Trust about the amount of monetary donations required to develop and complete the memorial museum.[6]

37. The government's expectation was that granting the Trust donee status as a special case would not involve additional future contributions (CAB-21-MIN-0221, paragraph 11).

38. Other than granting the Trust overseas donee status, there has been no further financial assistance from the government. Technical engineering support has been provided to the memorial museum by the NZ Defence Force, and the Ministry for Culture and Heritage has provided curation advice to the trustees.

39. s 9(2)(b)(ii) [redacted]

[5] The take up of tax benefits for donations is at the discretion of the donor. As such the revenue estimate should not be seen as an absolute cost to the government. The amount is therefore a provision to reflect the decision to grant the Trust overseas donee status as a special case.
[6] The revenue impact was based on estimates from the Trust that $23 million was needed to complete Te Arawhata. The revenue estimate was not a ceiling or floor in terms of the government's contribution, the tax benefits are therefore a function of the successful efforts of the Trust's fundraising.

s 9(2)(b)(ii) [redacted] As such, Te Arawhata is an entirely private endeavour.[7]

The Chair's request for permanent overseas donee status

40. We have discussed the Trust's request dated 22 February 2024 with the former Chair, and the Trust's legal advisors. The Trust asserts that:

40.1 Overseas donee status is crucial to its fundraising strategy as it cements the government's commitment to the project and gives it a level of official endorsement, which raises donor confidence.

40.2 Many of the potential donors it is targeting are tax-sensitive and ensuring they have access to the donation tax credit is critical to their willingness to support the museum.

s 9(2)(b)(ii)

41. [redacted]

42. [redacted]

43. [redacted]

Merits of the Memorial Museum project

44. The Trust contends that Te Arawhata is the only purpose-built memorial site to commemorate the 100,000 New Zealanders who served in the First World War, and the 12,500 who lie buried in France and Belgium. As noted in paragraph 5, the Trust considers that story of the liberation of Le Quesnoy is compelling in terms of the town being the site of a memorial museum:

44.1 The liberation of the town was a decisive and successful victory for the NZ Division, which by that time had its own identity that was separate from British Dominion Forces.

44.2 The Le Quesnoy Communal Cemetery Extension contains the remains of 50 New Zealanders.

44.3 There are long-held cultural connections between New Zealand and Le Quesnoy, such as the town twinning with Cambridge, street names in the town connected with New Zealand, the New Zealand Memorial Wall, Peace Garden, Ngā Tapuwae trail signs, and annual Anzac Day services organised with the New Zealand Embassy in Paris.

[7] Memorials completed by Australia and Canada, such as the Sir John Monash Centre, at Villers-Bretonneux, which is adjacent to the Australian National Memorial, and the Canadian National Vimy Memorial and visitors centre, were funded by direct government contributions and supported by private donations.

45. The Trust intends Te Arawhata to be a place where New Zealanders visiting France (and Europe) can commemorate those who lost their lives during the First World War on the Western Front, and learn about New Zealand's role in that war. It also provides a place for visitors from France and elsewhere to learn about New Zealand. Te Arawhata showcases the work of New Zealand artist/designers, such as Wētā Workshop.

46. Te Arawhata was completed and opened in October 2023. s 9(2)(b)(ii) [redacted]

47. The Mayor of Le Quesnoy supports, and is an advocate of, Te Arawhata.

Our analysis of the Trust's request

48. We have considered the Trust's request in the context of information it has supplied in support of its request.

49. In 2018, and again in 2021, we advised against making the Trust a special case for overseas donee status, because:

    49.1 The Trust's purposes are outside the scope of Cabinet's approval criteria, and would create a precedent.

50. 9(2)(b)(ii) [redacted]

51. s 9(2)(g)(i) [redacted]

Precedent risk

52. The Trust considers that its purposes and activities are genuinely exceptional. For this reason, granting it permanent overseas donee status should not be viewed as creating an unhelpful or inappropriate precedent.

Inland Revenue's view

53. For the most part, previous governments have not departed from Cabinet's approval criteria. s 9(2)(f)(iv) [redacted]

54. When exceptions have been made from the criteria they have been made on very rare occasions and when a strong public policy case exists, such as the charity or organisation furthers government objectives. Until the recent decision about the Trust (which was time-limited), exceptions to Cabinet's approval criteria have been largely historic. For example:

    54.1 s 9(2)(f)(iv) [redacted]

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[8] This period includes the official opening events of the Te Arawhata, and the period of the 2023 Rugby World Cup in France.

54.2 s 9(2)(f)(iv) [redacted]

55. The risk with exceptions is that they:

55.1 affect the predictability of how Cabinet's approval criteria are applied, and

55.2 raise expectations in the charitable sector that special cases will be made.

56. Notwithstanding the Trust's comments to the contrary, if exceptions to Cabinet's approval criteria become embedded, further extensions to the criteria can become harder to decline and undermine the framework that supports consideration of overseas donee status requests.

57. Exceptions also raise questions around fairness for those charities that have been previously declined overseas donee status on the basis their purposes are outside the scope of Cabinet's approval criteria (paragraph 53).

58. From a tax policy perspective, we consider that there is nothing compelling about the Trust's purposes that warrants it being treated as an exception.

9(2)(b)(ii) [redacted]

s 9(2)(b)(ii)

63. [redacted]

64. [redacted]

65. [redacted]

66. We also note that Te Arawhata is not the only memorial of the events of 1918 in Le Quesnoy, and in the immediate region. For example, the following memorials and acknowledgements mark the events at Le Quesnoy:

66.1 New Zealand’s relationship with Le Quesnoy is already marked by the Memorial Wall unveiled in July 1923 and is located near where New Zealand soldiers scaled the town ramparts with ladders in 1918.

66.2 Le Quesnoy prominently featured in the WW100 centenary project – Ngā Tapuwae Heritage Trails – which includes a physical sign opposite the Memorial Wall, gifted by the New Zealand Government.

66.3 A plaque gifted by the New Zealand Government commemorating the centenary was unveiled next to the Town Hall on 4 November 2018 (the centenary of the town’s liberation by the New Zealand Division).

66.4 There is a Peace Garden Legacy initiative (under the French Association Art and Gardens – Hauts-de-France and French First World War Centenary Partnership Programme project) which acknowledges the New Zealand Division’s contribution to liberating the town.

66.5 The Le Quesnoy Cemetery Annex (where 50 New Zealand soldiers of the New Zealand Division are buried) and memorial, maintained by the Commonwealth War Graves Commission.

9(2)(b)(ii)

[redacted]

Government policy on memorials

67. We have consulted with the Ministry of Culture and Heritage about the proposal, and specifically, the government's policy with respect to memorials. They note:

    67.1 The government is responsible for memorials and museums that the government has built and not for memorials built by others. Government funding is currently directed at the support of the Museum of New Zealand Te Papa Tongarewa, and National Services Te Paerangi. s 9(2)(f)(iv) [redacted]

    67.2 New Zealanders who were killed on the Western Front in the First World War are commemorated in Commonwealth War Graves Commission (CWGC) cemeteries in France. As a member of the CWGC, the New Zealand government contributes to the maintenance of these cemeteries.

    67.3 Like Australia, Canada, and other allied countries, New Zealand built battlefield memorials shortly after the First World War at significant battle sites such as the Somme, Passchendaele, Messines, Le Quesnoy (memorial wall), and Gallipoli.

    67.4 Due to the smaller number of New Zealanders who visit the Western Front, compared to Australians and Canadians, the approach has been for many years to leverage existing infrastructure and look to improve New Zealand's presence at existing museums and visitors centres such as Passchendaele. The Wellington Tunnels at Arras is a good example of this strategy.

Options

68. We consider there are two options to respond to the Trust's request. Either the request is granted; or it is not. While there are other options that would provide direct government support to the Trust, such as grants, the Trust has previously signalled it is not seeking this form of assistance.

Option 1: Decline the Trust's request

69. We have previously advised against granting the Trust overseas donee status as an exception in 2018 and 2021 because of concerns about the viability of the museum project, and the precedent the exception creates.

70. Previous government decisions have been based on supporting the museum project to the point of its completion (which has now happened), but no further.

71. Under this option, monetary donations received by the Trust on and after 1 April 2025 would not be eligible for tax benefits. There are no financial implications under this option, although is it possible that the Trust may approach Ministers for alternative sources of funding. This option does not have any administrative implications for Inland Revenue.

s 9(2)(f)(iv)

[redacted]

s 9(2)(f)(iv)

[redacted]

Option 2: Provide the Trust with permanent overseas donee status

77. Under this option, an amendment would be made to the Income Tax Act 2007 to remove the sunset provision that applies to the Trust's overseas donee status, and the Trust would be added to schedule 32 of that Act.

78. This option recognises that:

78.1 The Trust, and Te Arawhata in particular, has wider public policy purposes that merit the government providing on-going support via the tax system beyond the initial completion of the memorial museum. The purposes include the commemoration of New Zealand's service in Europe during the First World War.

78.2 Those purposes warrant granting the Trust overseas donee status on an exceptions basis.

79. This option shifts the government's objectives from facilitating the creation of Te Arawhata, to one where it is supporting its operations on a permanent basis.

80. We note that Ministers may want to choose to time limit this support, as was the choice of the previous government. We consider this approach is no longer valid now that Te Arawhata has been completed and operational. The Trust, for planning purposes, does not need the uncertainty of periodic approval for overseas donee status.

81. This option has financial implications as the revenue cost attached to the tax benefits for donations beyond 2025-2026 is not funded, reflecting the cautious approach the previous governments took in respect to its financial commitment to the Trust and the memorial museum project.

82. We would recommend that any amending legislation be included in the next taxation bill scheduled for introduction in August 2024, with effect from 1 April 2025. This would provide the Trust and its donors certainty regarding the tax benefits attached to donations made on an after 31 March 2025.

Financial implications

83. The revenue cost attached to the tax benefits for monetary donations received by the Trust is estimated to be $330,000 each year. This figure is based on donation forecasts by the Trust (around $1 million each year). The expected fiscal cost to the end of the forecast period is $0.66 million. While the Trust's overseas donee status end 31 March 2025, provision has been made for the 2025/26 financial year for later filing taxpayers.

	$m – increase/(decrease)				
Vote Revenue	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue	($0.000)	($0.000)	($0.000)	($0.330)	($0.330)
Total change in Revenue	**$0.000**	**$0.000**	**$0.000**	**$0.330**	**$0.330**

84. If you agree to Option 2 we will report again in June on options to fund the Trust's permanent overseas donee status. At this stage, the financial cost could be meet as a precommitment to Budget 2026. This is because:

84.1 The decision to extend the Trust's overseas donee status would amount to a policy change (as Cabinet previously agreed to provide time-limited support only) and so it would not be consistent with the financial management approach for the cost to flow through as a forecasting change.

84.2 The limited funds available on the scorecard would be best reserved for initiatives which improve coherence, efficiency, and fairness of the tax system.

84.3 The change does not affect the Crown's operating balance in the 2024-25 financial year, and so does not need to be charged against the Between-Budget Contingency.

Assessment

85. From a tax policy perspective, we consider that there are no compelling arguments for giving the Trust permanent overseas donee status. Our preferred option is that the request be declined (Option 1). Te Arawhata is a private venture by the Trust, and the government has previously communicated that its support of the project was limited to its development and time limited to 31 March 2025. As noted in paragraph 67 the government already supports several memorials connected to the service of New Zealanders during the First World War.

86. However, if the government wants to change its policy from supporting the development of Te Arawhata, to a policy of supporting the Trust's continuing operations *in perpetuum*, doing so via tax benefits for donations is an efficient means of doing so as the support is subject to the successful efforts of the Trust to raise funds (Option 2).

87. There are, however, non-tax considerations with Option 2:

87.1 The priority of the Trust and Te Arawhata as a Budget initiative.

87.2 Ensure that the trustees understand that the government's support of the Trust is limited to providing support through the tax system (by granting it permanent overseas donee status), and no further financial assistance would be provided.

87.3 Manage perceptions that the decision to grant overseas donee status as a special case is not a change in the government's policy to not fund the on-going operational costs of local New Zealand museums.

88. Officials can provide you with additional advice on these non-tax considerations.

Consultation

The Treasury

89. The Treasury has been consulted as part of the preparation of this report and agrees with its recommendations.

The Ministry of Foreign Affairs and Trade

90. The Ministry of Foreign Affairs and Trade (MFAT) notes that while the work of the Trust can help enhance people-to-people links and support the New Zealand – France bilateral relationship, there are no significant foreign policy benefits if the tax changes are agreed or not.

91. s 6(c) [redacted]

92. MFAT is not resourced to deliver oversight of, or support for the Trust and the museum, either directly or indirectly or through the New Zealand Embassy in Paris.

The Ministry for Culture and Heritage

93. The Ministry for Culture and Heritage has been consulted and its comments are reflected in this report. The Ministry has two primary concerns:

93.1 A decision to grant the Trust overseas donee status should not been seen as providing the Trust with a preference that is not available to other onshore private museums and galleries. s 9(2)(f)(iv) [redacted]

93.2 s 9(2)(f)(iv) [redacted]. Many of the artefacts associated with the liberation of Le Quesnoy will be over 50 years old and are of significance to New Zealand. These artefacts would be considered protected New Zealand objects and subject to the export provisions of the Protected Objects Act 1975. Owners of the artefacts would need to apply for permission to export any such object, with no guarantee that export permission would be granted. s 9(2)(f)(iv) [redacted]

94. As such, MCH would suggest that any communications to the Trust about a decision in their favour is caveated on the basis that the government's support is limited to the tax benefits to the Trust's donors only, and this is the same as for any local New Zealand museum that is a registered charity under the Charities Act 2005.

The Ministry of Defence

95. The Ministry of Defence has been informed about the content of this report.

Process

96. Decisions on the Trust's request for permanent overseas donee status should be made once the Budget moratorium has ended (on and after 31 May 2024). Subject to your decision, we will report again in June 2024, with a paper to go to Cabinet:

    96.1 seeking its agreement to your preferred option,

    96.2 to obtain funding if the decision is to grant the Trust permanent overseas donee status, and

    96.3 seek, subject to paragraph 96.2, its agreement to include any relevant amendments to the Income Tax Act for inclusion in the taxation bill scheduled for introduction in August 2024, with effect from 1 April 2025.

97. Once Cabinet has reached a decision on the Trust's request, we will prepare a letter for the Minister of Revenue's signature informing the Chair of the Trust of the decision.

Next steps

98. We recommend that you discuss the Trust's request with your colleagues.

99. A copy of this report should be referred to the Minister of Foreign Affairs and Trade, and the Minister for Arts, Culture and Heritage for their information.

100. A copy of this report should also be referred to the Department of the Prime Minister and Cabinet.

Annex

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*

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;

**developing countries recognised by the United Nations.*

[CM 78/14/7 refers]

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.

As noted in an earlier report IR2024/098, dated 9 April 2024, the criteria reflect the decision in 1962 to add (on a case by case basis) charities to a statutory list in the Income Tax Act if those charities furthered overseas development objectives, or other specific government policy. There are currently 169 organisations with overseas donee status listed on schedule 32 of the Income Tax Act. The statutory list was created as the Income Tax Act generally limits tax benefits for monetary donations to New Zealand charities that have purposes in New Zealand. As such, the organisations listed on schedule 32 are an exception to that limitation.

s 9(2)(f)(iv) [redacted]

[redacted]

[redacted]

[redacted]

9(2)(f)(iv) [redacted]

s 9(2)(g)(i)

s 9(2)(g)(i)

Inland Revenue
Te Tari Taake

POLICY/TAUKAEA

Tax policy report:	**Cabinet paper: New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations – implementation**

Date:	6 September 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/295

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	18 September 2024
Minister of Revenue	**Agree** to recommendations **Approve** and **lodge** the attached paper to Cabinet Office	10am, Thursday 19 September 2024

Contact for telephone discussion (if required)

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

6 September 2024

Minister of Finance
Minister of Revenue

Cabinet paper: New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations – implementation

Purpose

1. This report discusses options to implement your decision to grant the New Zealand Memorial Museum Trust – Le Quesnoy (the Trust) overseas donee status. This report follows our earlier advice in May (IR2024/186, dated 9 May 2024 refers) about possible responses to the Trust's request for permanent overseas donee status.

2. Specifically, implementation decisions are sought in respect of:

   2.1 Options to fund the tax benefits attached to granting the Trust overseas donee status. These options affect the timing for when legislative amendments can be made to confirm the Trust's donee status; and.

   2.2 If the decision is to implement the Trust's donee status by way of an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (which was recently introduced into Parliament), approve the attached draft paper that seeks Cabinet's approval for the change.

New Zealand Memorial Museum Trust – Le Quesnoy: Request for overseas donee status

3. In May 2024 we reported to you on options to respond to a request from the Patron (then Chair) of the Trust for an extension to a sunset clause that applies to its overseas donee status, which ends 31 March 2025. The Trust operates the New Zealand Liberation Museum (Te Arawhata) at Le Quesnoy, France. It is seeking permanent overseas donee status to support its fundraising because it would allow donors tax benefits for monetary donations made to the Trust.

4. You agreed to support the Trust by using the tax system to encourage donations to the Trust from 1 April 2025 onwards.

5. Granting the Trust overseas donee status has financial and legislative implications that require a decision. We note that the Trust is sensitive to the timing of these decisions because its temporary donee status ends on 31 March 2025. To preserve donor commitments to the Trust, the trustees are seeking early confirmation and legislation that the Government is prepared to support the Trust and the future of Te Arawhata beyond 31 March 2025.

Financial implications

6. As discussed with the Chair of the Trust and its advisor, the trustees seek to raise about $1 million each year from New Zealand donors to assist with meeting the operational costs of Te Arawhata.

7. Agreeing to extend the Trust's overseas donee status has the financial implications shown in the table below in terms of the tax benefits that would attach to those donations. The financial implications for the Trust's current overseas donee status for 2024/25 and 2025/26 financial years are already in existing baselines (CAB-21-MIN-0221). This outcome is because of the overlap of the tax year with the Government's financial year.

8. The fiscal cost is expected to be $0.330 million each year (based on the Trust's estimation that it will be seeking annual donations of $1 million). The cost over the current forecast period is $0.660 million.

	$m – increase/(decrease)			
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue – Other Persons	-	-	(0.330)	(0.330)
Total Operating	**-**	**-**	**0.330**	**0.330**

9. Funding by way of a Budget allocation is needed to support the tax benefits associated with the Trust's overseas donee status because:

   9.1 Granting the Trust overseas donee status on a permanent basis would be a policy change (as Cabinet previously agreed to provide only time limited support). As such, it would not be consistent with the Government's financial management approach for the cost to flow through as a forecasting change.

   9.2 The Trust's purposes are outside Cabinet's usual approval criteria (CM 78/14/7 refers), so granting the Trust overseas donee status would be as a special case.

10. Other funding options have also been considered, but dismissed. On these dismissed options, we note:

    10.1 The conditions for the use of the Tax Policy Scorecard mean that this policy is not suitable because it does not improve the tax system (BN2023/290, dated 20 December 2023 refers).

    10.2 s 9(2)(b)(ii) [redacted]

11. We seek your agreement to one of the two options below:

Option 1: Defer Cabinet's decision for Budget 2025 consideration

12. The Treasury recommends that final Cabinet's consideration about granting the Trust overseas donee status is a Budget 2025 matter and should be deferred and prioritised against other Government commitments. Decisions made as part of Budget 2025 could then be included as part of Budget night legislation, or included in one of the government's regular omnibus taxation Bills (most likely to be introduced in August 2025 and enacted March 2026).

13. Inland Revenue notes that Option 1 would be unacceptable to the Trust because it would cause an interruption in donor entitlements in respect of any donations made to the Trust. For example:

13.1 Donations received between the period 1 April 2025 (when the Trust's current statutory donee status ends) and the enactment of amending legislation (for example, March 2026 in the case of the enactment of the omnibus taxation Bill), would not be eligible for tax benefits and donor donation tax credit claims would go into error.

13.2 While retrospective legislation (for example, backdating the donee status to 1 April 2025), would restore those entitlements, this would require donors to request that Inland Revenue recalculate tax benefit entitlements. This rework would create the need for additional taxpayer contacts, and tie up Inland Revenue resources.

13.3 The Trust notes that Option 1 frustrates donor commitments and the Trust's donation fundraising efforts. Te Arawhata's development and growth is at a stage when donor support can provide an important fillip to fully and sustainably establish the Te Arawhata's operations.

Option 2: Charge the financial cost against the between-Budget contingency

14. This option would involve seeking Cabinet agreement, as part of Cabinet's consideration of the Trust's request, to fund the tax benefits through the between-Budget contingency established as part of Budget 2024. Legislation implementing the decision could then be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

15. The Treasury notes that the matter is a suitable candidate to be managed against the between-Budget contingency. However, the Treasury considers that this decision would reduce the funding available for other priorities and would recommend against Option 2 so that the Trust's request can be considered alongside and ranked against the Government's other priorities.

16. Inland Revenue notes that the Trust's preference is for Cabinet to decide as soon as practicable, with correspondence from Ministers confirming a commitment to legislative change so as to preserve arrangements with current donors and assist with fundraising beyond 1 April 2025. The Trust's preference would be met under Option 2.

17. Inland Revenue considers that Option 2 best achieves Ministers' intentions and the Trust's objectives.

Legislative vehicle

18. If you agree with Option 2, granting the Trust overseas donee status requires amendments to the Income Tax Act 2007. Advice received from the Legislative Design and Advisory Committee to Inland Revenue in 2016 confirmed that the use of legislation is appropriate to implement overseas donee status decisions. This is because:

18.1 determining overseas donee status has (or might have) a political and moral dimension; and

18.2 it ensures decision-making transparency and promotes a bipartisan approach.

19. These points are particularly pertinent in the current case because it involves making a special case in favour of the Trust.

20. Inland Revenue's preference is for the relevant amendments to be included in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill by way of an Amendment Paper because this would ensure:

20.1 the law is enacted before 31 March 2025; and

20.2 maintain continuity of the Trust's donee status for the purposes of administering any donation tax credits or tax deduction entitlements to the Trust's donors.

21. The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill already contains overseas donee status approval for six humanitarian aid charities.

22. Depending on when Cabinet decides on the Trust's donee status, the relevant Amendment Paper could be included in the Bill at:

22.1 The Bill's Committee of the whole House stage, subject to Cabinet decisions being made by February 2025. The standard practice is that Amendment Papers are released and included in Bills at this stage. This would be our preferred approach. Previous legislative changes in favour of the Trust in 2018 and 2021 have been implemented at this stage of the Parliamentary process.

22.2 The Bill's Parliamentary Finance and Expenditure Committee (FEC) stage, subject to Cabinet decisions being made by September 2024. We note that Amendment Papers may be referred to Select Committees if the Government considers it desirable to receive public submissions on the amendment, particularly if the legislative change is material or technical. The legislation to implement the extension to the Trust's overseas donee status is a simple and bespoke measure so the benefit of public submissions (via the FEC process) is likely to be limited.

Draft Cabinet paper

23. Attached to this report is a draft Cabinet paper for your review. It has been prepared on the basis that you agree with Option 2. The paper asks Cabinet to:

23.1 Agree to grant the New Zealand Memorial Museum Trust – Le Quesnoy overseas donee status from 1 April 2025 and beyond.

23.2 Agree that the fiscal cost be charged to the between-Budget contingency established as part of Budget 2024.

23.3 Authorise the Minister of Revenue to release an Amendment Paper to give effect to the proposal in paragraph 23.1 for inclusion in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

23.4 Authorise the Minister of Revenue to inform the Chair of the Trust about Cabinet's decision, and discuss with the Trust its opinion about the long-term financial sustainability of Te Arawhata that does not involve additional direct or indirect contributions from the Government.

24. We are available to make changes and edits to the attached paper as you require.

25. For the paper to be considered at Cabinet Economic Policy Committee's meeting on 25 September 2024, the paper should be lodged with the Cabinet Office by 10am, Thursday, 19 September.

Proactive release considerations

26. Subject to your agreement to the attached draft Cabinet paper, we recommend that the paper (without redaction), associated minutes, and key advice papers should be proactively released following the release of the Amendment Paper to the

proposed Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

Consultation

27. The Treasury has been consulted as part of the preparation of this report. For the reasons stated in Inland Revenue's May 2024 report, the Treasury does not support extending the Trust's overseas donee status.

28. The Ministry of Foreign Affairs and Trade and the Ministry for Culture and Heritage have also been informed about this report and were consulted on the attached Cabinet paper. The Ministry of Defence, Department of Internal Affairs – Charities Services, and Department of the Prime Minister and Cabinet have been informed in respect of the advice that has been provided to Ministers about the Trust.

29. Inland Revenue has kept the Trust informed about the status of its request (but not the outcome of any decisions), and this report reflects their views where they have been provided to us.

Referral to other Ministers, and the Department of the Prime Minister and Cabinet

30. A copy of this report should be referred to the Minister of Foreign Affairs and Trade, and the Minister for Culture and Heritage.

31. A copy of the report should also be referred to the Department of the Prime Minister and Cabinet for their information.

Recommended action

We recommend that you:

(a) **Note** you agreed to grant the New Zealand Memorial Museum Trust – Le Quesnoy overseas donee status from 1 April 2025 and beyond. This entitles donors to tax benefits for monetary donations made to the Trust

Noted Noted

(b) **Note** the following forecast changes to tax revenue as a result of recommendation (a) above, with a corresponding impact on the operating balance and/or net debt;

	$m – increase/(decrease)			
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28 & outyears**
Crown Revenue and Receipts: Tax Revenue – Other Persons	-	-	(0.330)	(0.330)
Total Operating	**-**	**-**	**0.330**	**0.330**

Noted Noted

(c) **Indicate** your preferred implementation option, **either**:

(i) **Agree** to defer Cabinet's approval for recommendation (a) for Budget 2025 consideration (Option 1).

Agreed/Not agreed Agreed/Not agreed

OR

(ii) **Agree** to seek Cabinet's approval for recommendation (a) this year, **and** charge the associated reduction in tax revenue in recommendation (b) against the between-Budget contingency established as part of Budget 2024 (Option 2).

Agreed/Not agreed Agreed/Not agreed

(d) If you agree with recommendation (c)(ii), **agree** to an Amendment Paper to the Taxation Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill to give effect to recommendation (a).

Agreed/Not agreed Agreed/Not agreed

(e) If you agree to recommendation (c)(ii), **approve** and **lodge** the attached paper to the Cabinet Economic Policy Committee.

Approved and lodged

(f) If you agree to recommendation (c)(ii), **agree** to delay the release of the attached Cabinet paper (without redaction), and associated minutes, and key advice papers, until the Amendment Paper containing the legislative changes giving effect to the recommendations in that paper is released.

Agreed/Not agreed

(g) **Refer** a copy of this report to the Minister of Foreign Affairs and Trade, and the Minister for Culture and Heritage.

Referred/Not referred

(h) **Refer** a copy of this report to the Department of the Prime Minister and Cabinet for their information.

Referred/Not referred

s 9(2)(a)

[redacted]

Brandon Sloan
Principal Policy Advisor
Policy, Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Inland Revenue
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Briefing note

Reference:	BN2024/456
Date:	13 November 2024
To:	Revenue Advisor, Minister of Revenue – Angela Graham Private Secretary, Minister of Revenue – Helen Kuy
From:	Brandon Sloan
Subject:	**Cabinet paper "New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations" for Cabinet Economic Policy Committee meeting on 20 November 2024**

1. This briefing note follows our earlier report IR2024/295, dated 6 September 2024, which provided a draft paper for Cabinet's consideration about a request from the New Zealand Memorial Museum Trust – Le Quesnoy (the Trust) for permanent overseas donee status.

Updated paper

2. Attached is an updated paper to support the Cabinet Economic Policy Committee's consideration of the Trust's request for its meeting on 20 November 2024.

3. The fiscal implications of the Trust's request have been updated to reflect that the forecast period has been extended to five years (instead of four) since the October baseline update. A new column has been added for the financial year 2028/29 (recommendation 3). As such, the fiscal impact in paragraph 33 has also been updated to $0.990 million over the forecast period. Previously, the amount was $0.660 million.

Speaking notes

4. We understand that the Deputy Prime Minister is, in the Minister of Revenue's absence, leading the discussion on the paper for the November meeting. To assist Minister Peters, we have also attached to this briefing note is a set of speaking notes that should be forwarded to his office. We are happy to work with the office for both Ministers on this matter.

Consultation with the Treasury

5. The Treasury was informed about this briefing note.

Brandon Sloan
Principal Policy Advisor
s 9(2)(a)

s 9(2)(g)(i)

[redacted]

In Confidence

Office of the Minister of Revenue

Cabinet Economic Policy Committee

New Zealand Memorial Museum Trust – Le Quesnoy: Tax benefits for monetary donations

Proposal

1 Decide if the New Zealand Memorial Museum Trust – Le Quesnoy (the Trust), a New Zealand-based registered charity set up for the purpose of holding and operating the New Zealand Liberation Museum (Te Arawhata) in Le Quesnoy, France, should be granted overseas donee status for tax purposes as a special case.

2 Granting the Trust overseas donee status would allow monetary donations from New Zealand taxpayers to the Trust to be eligible for tax benefits.

Relation to Government priorities

3 The proposal considered in this paper relates to the Government's revenue strategy in terms of maintaining a stable and predictable revenue system.

Executive summary

4 This paper asks Cabinet to decide if the Government should support the New Zealand Memorial Museum Trust – Le Quesnoy through the tax system by granting it permanent overseas donee status as a special case. The Trust is supported by a number of high-profile New Zealanders (paragraph **15**). The Trust's overseas donee status ends on 31 March 2025. The Trust is seeking a continuation of its donee status beyond that date.

5 In 2018 the Government gave the Trust temporary overseas donee status to assist with the development and completion of Te Arawhata, (which translates as "The Ladder"). The Trust's time-limited status was in response to the Trust's purposes falling outside Cabinet's usual approval criteria (CM 78/14/7 refers).

6 It is therefore timely to consider if the Government wants to continue its indirect financial support of the Trust via the tax system by providing tax benefits for monetary donations to the Trust. This proposal would represent a change in the Government's policy from supporting the Trust's development and construction of a war memorial museum at Le Quesnoy, to supporting the Trust's ongoing operation and maintenance of Te Arawhata. Officials have reservations about the Trust's request (paragraphs **45** to **60**).

7 Granting the Trust permanent overseas donee status on and after 1 April 2025 would achieve this policy change, and continue to recognise and commemorate New Zealand's contribution and service during the First World War.

8 The Trust notes that without overseas donee status it will likely face difficulties in raising the necessary funds from donors to support Te Arawhata's operations. This may affect the viability of Te Arawhata, and lead to the Trust suffering financial failure.

9 Agreeing to grant the Trust overseas donee status as a special case departs from existing Cabinet criteria and has both fiscal and legislative implications (paragraphs **33** to **35**). If Cabinet agrees to grant the Trust overseas donee status, I seek Cabinet's authority to prepare an Amendment Paper to give effect to the proposal for inclusion the current Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

The New Zealand Memorial Museum Trust – Le Quesnoy

10 The Trust is a registered charity (CC54965) that has been established to tell the history of New Zealanders who served on the western front during the First World War. Its purpose is to hold and manage the war memorial museum "Te Arawhata" located at Le Quesnoy. It is a private endeavour and was not part of any Government initiative relating to the First World War Centenary Programme (WW100).

11 Te Arawhata was completed and opened in October 2023. By June 2024, after eight months of operation, the Trust reports that the museum had welcomed approximately 4,300 visitors. Entry to Te Arawhata for adults is €15

12 The Trust contends that Te Arawhata is the only purpose-built memorial site to commemorate the 100,000 New Zealanders who served in the First World War, and the 12,500 who lie buried in France and Belgium. The Trust considers that the story of the liberation of Le Quesnoy is compelling in terms of the town being the site of a war memorial museum.

13 The liberation of Le Quesnoy on 4 November 1918 was the last battle of the New Zealand Division during the First World War. It was achieved without the loss of any civilian lives and material damage to the town itself. Today, the town of Le Quesnoy maintains links with New Zealand and a special connection exists between New Zealand and the people of Le Quesnoy. The township of Le Quesnoy is located in Northern France (12 km from the Belgium border) and the current population is approximately 5,000. The Trust advises that the Mayor of Le Quesnoy supports, and is an advocate of, Te Arawhata.

14 The Trust intends Te Arawhata to also provide an opportunity to showcase the work of New Zealand artists and designers, such as Wētā Workshop. It is not, however, the only war memorial of the event of 1918 at Le Quesnoy, and these other memorials are described in the Regulatory Impact Statement that accompanies this Cabinet paper.

15 The Rt Hon Sir Don McKinnon led the project, as Trustee then Chair of the Trust, from inception through to Te Arawhata's opening (2014 to 2024). He and the Rt Hon. Helen Clark are now patrons of the Trust, and the Chair of the Trust is now David McLean. The initiative has the support of several other high profile New Zealanders s 9(2)(a) [redacted]

Policy: Tax benefits for monetary donations

16 Providing tax benefits for monetary donations to charities is intended to foster a culture of charitable giving in New Zealand by reducing the cost to donors. For example, the cost to an individual of donating $100 is reduced to $66.67 (via the donation tax credit and subject to the taxpayer's relevant income caps). Supporting donors through the tax system can be a useful way of furthering social or Government objectives:

16.1 donations can be an effective indicator on an "successful efforts" basis for when extra goods and services should be provided in commercial market conditions that might otherwise not exist; and

16.2 benefits to society (externalities) from the work carried out by the charity may be over and above the value of the tax benefit received by the donor.

17 The trade-off for these benefits is the open-ended revenue cost for as long as the charity is on Inland Revenue's list of approved donee organisations.

18 Monetary donations to listed organisations entitle individual New Zealand taxpayers to a tax credit of $33^{1}/_{3}\%$ of the amount donated, up to the level of their taxable income. Companies and Māori authorities are eligible for a deduction for cash donations up to the level of their net income.

19 Generally, the availability of tax benefits for donations is limited to charities with New Zealand charitable purposes only. New Zealand charities that primarily support activities overseas and want their donors to be eligible for tax benefits require Cabinet approval, and are specifically listed in schedule 32 of the Income Tax Act 2007. Cabinet has established criteria for approving overseas donee status (see **annex**). The Trust's purposes are outside the scope of Cabinet's criteria.

Previous Cabinet consideration

20 In 2018 the Trust was granted overseas donee status by Cabinet as a special case (CAB-18-MIN-0535 refers). Being a special case, the Trust's overseas donee status was time limited (ending March 2021) with the intention that providing tax benefits for monetary donations to the Trust would be the Government's full and final contribution to the New Zealand Liberation Museum project.

21 The decision to grant overseas donee status recognised the one-off and historic nature of the Trust's purpose to commemorate 100 years since the end of the First World War and was timed to facilitate fundraising ahead of the commemorations at Le Quesnoy on 4 November 2018. Cabinet's decision acknowledged the role that New Zealanders played in liberating the town of Le Quesnoy.

22 In 2021 the Trust requested, and was granted, an extension to the end date of the Trust's overseas donee status. The Trust's donee status ends on 31 March 2025. Cabinet's decision to accept the request (CAB-21-MIN-0221 refers) recognised that the Trust's ability to fundraise had been affected by the COVID 19 pandemic.

23 The Government's expectation was that granting the Trust donee status as a special case would not involve additional future contributions (CAB-21-MIN-0221, paragraph 11).

24 In addition to granting the Trust overseas donee status, the following support has been provided to the Trust by the following government agencies:

24.1 The New Zealand Defence Force has provided technical engineering support to Te Arawhata.

24.2 The Ministry for Culture and Heritage has provided advice to the trustees with the aim that Te Arawhata complements and dovetails into existing memorials in the area, rather than replicating or replacing these.

24.3 The Ministry of Foreign Affairs and Trade, through the New Zealand Embassy in France, has supported Te Arawhata with the Ambassador attending key events, accompanying a New Zealand Minister to the museum, and promoting Te Arawhata on the Embassy's social media accounts.

Problem definition

25 The Trust has approached the Government seeking permanent overseas donee status. Timing is important to the Trust, and it has asked for a decision to be made as soon as possible to ensure continuity of donor commitments post 31 March 2025.

s 9(2)(b)(ii)

26 [redacted]

27 [redacted]

28 [redacted]

29 [redacted]

30 [redacted]

s 9(2)(b)(ii)

Options

31 My officials have worked with the Trust and its advisors on possible options in response to the Trust's request. The options that have been considered are set out below and are covered in more detail in the Regulatory Impact Statement that accompanies this Cabinet paper:

31.1 Agree to the Trust's request for overseas donee status for overseas donee status. For the reasons set out in paragraphs **12** and **21** this is my preferred option.

31.2 Decline the Trust's request for overseas donee status. For the reasons set out in paragraphs **47** to **51**, Inland Revenue advises that its preferred option is that the Trust's request be declined.

31.3 Agree to grant the Trust overseas donee status for a further time-limited period. Neither Inland Revenue nor the Trust support this option because it requires the commitment of resources to prepare and analyse the case for a future extension in the Trust's donee status. The Trust notes, that while this option may negatively affect the continuity of donor commitments, it is preferable to declining its request.

Proposal

32 I recommend that the Trust be granted overseas donee status as a special case, with effect from 1 April 2025 and later years. This proposal would dovetail into the Trust's existing temporary overseas donee status, and ensure the continuity of donor commitments in support of Te Arawhata post 31 March 2025.

Fiscal implications

33 Granting the New Zealand Memorial Museum Trust – Le Quesnoy overseas donee status as a special case has fiscal implications through foregone tax revenue from the tax benefits attaching to monetary donations to the Trust. The Trust indicates that it will be seeking about $1 million a year in donations from its current donor base of 600. The fiscal impact of the tax benefits is therefore estimated to be $0.330 million each year, and the expected fiscal cost over the forecast period 2024/25 to 2028/29 is $0.990 million.

34 The cost of these tax benefits would be charged against the between-Budget contingency established as part of Budget 2024. This would reduce the funding available for other priorities. Other funding options have been considered but dismissed, including the use of the Tax Policy Scorecard. The nature of this proposal means that it is not a suitable candidate to be charged against the Scorecard.

35 While the Trust's overseas donee status ends on 31 March 2025, earlier provision of the fiscal cost has been made for the 2025/26 financial year for later filing taxpayers, CAB-21-MIN-0221, paragraph 7 refers. The provision made for the 2025/26 financial year is sufficient to meet the cost of the tax benefits created by this proposal.

Legislative implications

36 Agreeing to grant the Trust overseas donee status will require a legislative amendment to the Income Tax Act. The Legislative Design and Advisory Committee in 2016 has advised Inland Revenue that legislation to implement decisions to give overseas donee status is appropriate. This is particularly important when the decision involves making a special case.

37 The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill before Parliament contains overseas donee status approvals for six humanitarian aid charities (CBC-24-MIN-0065 paragraphs 26 to 28 refers). If Cabinet agrees to grant the Trust overseas donee status, including the proposal in that Bill by way of an Amendment Paper would be appropriate.

38 The amendments would apply on and from 1 April 2025, as requested by the Trust. I therefore seek Cabinet's authority to release the necessary Amendment Paper to implement this change to the Bill.

Cost of living implications

39 The proposal in this paper does not have cost of living implications.

Impact analysis

Regulatory Impact Statement

40 The Quality Assurance review panel at Inland Revenue has reviewed the Regulatory Impact Statement (RIS) prepared by Inland Revenue and considers that the information and analysis summarised in the RIS meets the Quality Assurance criteria.

41 The significance of the decision in this RIS is dependent on the degree of sensitivity that donors have to tax benefits on their decision whether to donate. The Trust has advised that its potential donors are sensitive to tax effects, but Inland Revenue has no way of testing this. This is noted as a Constraint on Analysis and the panel considers it has been presented as well as could be expected; however, it still limits the reliance that can be placed on the analysis.

Climate implications of policy assessment

42 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, because the threshold for significance is not met.

Population implications

43 The proposal in this paper does not have population implications.

Human rights

44 Decisions to grant overseas donee status are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

45 The Treasury, Ministry for Culture and Heritage, and Ministry of Foreign Affairs and Trade have been consulted as part of Inland Revenue's analysis of the Trust. The Department of Internal Affairs – Charities Services, New Zealand Defence Force, and Department of the Prime Minister and Cabinet were informed about the content of this paper.

46 Officials note that Te Arawhata has reputational and financial risks for the Crown. As a war memorial museum, Te Arawhata represents New Zealand and the New Zealand Government. Therefore, there is a risk that the Crown may be asked to contribute further if the Trust is unable to raise sufficient funds to maintain Te Arawhata's operations.

Inland Revenue comment

47 Both in 2018 and again in 2021, Inland Revenue recommended against granting the Trust overseas donee status as a special case. Inland Revenue considers the Trust should not be given overseas donee status because:

47.1 s 9(2)(b)(ii) [redacted] and

47.2 the Trust's purposes are outside the normal policy parameters for approving overseas donee status (see **annex)**.

48 s 9(2)(b)(ii) [redacted]

49 [redacted]

[1] CBC Min (09) 12/2 *Guidelines for using Cabinet Criteria for Overseas Donee Status* refers.

[2] s 9(2)(b)(ii) [redacted]

[3] Inland Revenue understands that many visitors to the northern region of France base themselves in cities such as Arras (population 42,000) or Amiens (population 132,000), both have highly developed tourism and accommodation infrastructure. Arras is the site of a local government-funded project, La Carrière (the Wellington Quarry), which consists of a visitor centre and underground museum experience founded in memory of the British Army and Dominion Forces. La Carriere predominantly tells the story of the New Zealand Tunnelling Company. Entry to the Wellington Quarry is €9.80 (adult).

50 s 6(b)(ii) [redacted]

51 Lastly, a decision to grant the Trust overseas donee status as a special case could affect the coherency of the frameworks used for making decisions about overseas donee status. It may raise expectations that the Government will look more favourably on future requests from charities whose purposes are not directed at overseas development than it has historically. There is also a question of fairness. Other charities that have sought overseas donee status on an exception basis, s 9(2)(f)(iv) [redacted]

Ministry for Culture and Heritage comment

52 The Ministry for Culture and Heritage (MCH) has identified some potential benefits from Te Arawhata, including affording New Zealanders an opportunity to commemorate and learn more about New Zealand's role in the First World War, and the chance to showcase the work of New Zealand artists and designers internationally, through the Trust's collaboration with Wētā Workshop.

53 However, MCH has also identified two primary concerns:

53.1 A decision to grant the Trust overseas donee status should not be seen as providing the Trust with a preference that is not available to other onshore private museums and galleries. s 9(2)(f)(iv) [redacted]

53.2 s 9(2)(f)(iv) [redacted]. Many of the artefacts associated with the liberation of Le Quesnoy will be over 50 years old and are of significance to New Zealand. These artefacts would be considered protected New Zealand objects and subject to the export provisions of the Protected Objects Act 1975. Owners of the artefacts would need to apply for permission to export any such object, with no guarantee that export permission would be granted. s 9(2)(f)(iv) [redacted]

54 MCH suggests that any communications to the Trust about a decision in their favour is caveated on the basis that the Government's support is limited to the tax benefits to the Trust's donors only (this is the same as for any local New Zealand museum that is a registered charity under the Charities Act 2005).

[4] s 9(2)(b)(ii) [redacted]

[5] CM 78/14/7 refers.

[6] EDC Min (06) 5/11 refers.

[7] EGI/15/MIN.0002 refers.

55 MCH is not resourced to deliver oversight of, or support for, the Trust or Te Arawhata, directly or indirectly, or through the New Zealand Embassy in Paris.

Ministry of Foreign Affairs and Trade comment

56 The Ministry of Foreign Affairs and Trade (MFAT) notes that while the work of the Trust can help enhance people-to-people links and support the New Zealand–France bilateral relationship, there are no significant foreign policy benefits if the Trust is granted overseas donee status.

57 s 6(c) [redacted]

58 MFAT is not resourced to deliver any ongoing oversight of, or support for the Trust and Te Arawhata, directly or indirectly, or through the New Zealand Embassy in Paris.

The Treasury comment

59 The Treasury considers the Trust should not be given overseas donee status because of the fiscal impact, and the reasons identified by Inland Revenue. However, if Ministers want to support the Trust in this way, the Treasury considers that decisions should be deferred for consideration as part of Budget 2025 so that the priority of the initiative can be ranked alongside other commitments.

60 The Treasury has been informed by Inland Revenue that deferring consideration of the Trust's request for Budget 2025 would break donor tax benefit entitlements, and this would have negative practical implications for Inland Revenue's administration of the donation tax credit system if Cabinet later agrees to the Trust's request. The Treasury notes that this matter is a suitable candidate to be managed against the between-Budget contingency established as part of Budget 2024.

Use of external resources

61 No external resources were used in the analysis of the Trust's request, or the preparation of this paper.

Communications

62 Once Cabinet has made its decision on granting the Trust overseas donee status, I will write to the Chair informing him of the outcome.

Proactive release

63 I propose to delay the proactive release of this Cabinet paper (without redaction), associated Cabinet minutes, and key advice papers until the release of the Amendment Paper containing the necessary amendments to give effect to the proposal.

Recommendations

The Minister of Revenue recommends that the Committee:

1 **Note** that Cabinet previously granted the New Zealand Memorial Museum Trust – Le Quesnoy overseas donee status on a time-limited basis in 2018 [CAB-18-MIN-0535, paragraph 6], and that this status is due to end on 31 March 2025 [CAB-21-MIN-0221, paragraph 6].

2 **Agree** that the New Zealand Memorial Museum Trust – Le Quesnoy be granted overseas donee status as a special case, with effect on and from 1 April 2025.

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

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28s**	**2028/29 & outyear**
Crown Revenue and Receipts: Tax Revenue – Other Persons	-	-	(0.330)	(0.330)	(0.330)
Total Operating	**-**	**-**	**0.330**	**0.330**	**0.330**

4 **Agree** that the reduction in tax revenue in recommendation 2 be charged against the between-Budget contingency established as part of Budget 2024.

5 **Authorise** the Minister of Revenue to release an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill that would give effect to recommendation 2.

6 **Agree** to the Minister of Revenue informing the Trust about the outcome of its request.

Authorised for lodgement

Hon Simon Watts
Minister of Revenue

Annex: Cabinet's approval criteria 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*

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;*

** developing countries recognised by the United Nations.*

[CM 78/14/7 refers]

Inland Revenue notes that Cabinet decisions to grant overseas donee status generally complements the Government's overseas development efforts.

ECO-24-MIN-0275

Cabinet Economic Policy Committee

Minute of Decision

New Zealand Memorial Museum – Le Quesnoy: Tax Benefits for Monetary Donations

Portfolio **Revenue**

On 20 November 2024, the Cabinet Economic Policy Committee:

1 **noted** that in 2018, the previous government granted the New Zealand Memorial Museum Trust – Le Quesnoy overseas donee status on a time-limited basis [CAB-18-MIN-0535], and in 2021 agreed to grant the Trust overseas donee status ending on 31 March 2025 [CAB-21-MIN- 0221];

2 **agreed** that the New Zealand Memorial Museum Trust – Le Quesnoy be granted overseas donee status as a special case, with effect on and from 1 April 2025;

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

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28s**	**2028/29 & outyear**
Crown Revenue and Receipts: Tax Revenue – Other Persons	-	-	(0.330)	(0.330)	(0.330)
Total Operating	-	-	0.330	0.330	0.330

4 **agreed** that the reduction in tax revenue in paragraph 2 above be charged against the between-Budget contingency established as part of Budget 2024;

5 **authorised** the Minister of Revenue to release an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill to give effect to the decision in paragraph 2 above;

6 **agreed** that the Minister of Revenue inform the Trust about the outcome of its request.

Rachel Clarke
Committee Secretary

Present (see over)

Present:
Rt Hon Winston Peters
Hon David Seymour
Hon Brooke van Velden
Hon Chris Bishop (Chair)
Hon Paul Goldsmith
Hon Louise Upston
Hon Mark Mitchell
Hon Matt Doocey
Hon Penny Simmonds
Hon Chris Penk
Hon Nicola Grigg
Hon Mark Patterson

Officials present from:
Office of the Prime Minister
Officials Committee for ECO

Cabinet

Minute of Decision

Report of the Cabinet Economic Policy Committee: Period Ended 22 November 2024

On 25 November 2024, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 22 November 2024:

Not in scope

Not in scope

ECO-24-MIN-0275	**New Zealand Memorial Museum – Le Quesnoy: Tax Benefits for Monetary Donations** Portfolio: Revenue	CONFIRMED

Not in scope

Rachel Hayward
Secretary of the Cabinet

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Matters raised by officials in the departmental report on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill**

Date:	22 November 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/396

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations **Note** the contents of this report	6 December 2024
Minister of Revenue	**Agree** to recommendations **Note** the contents of this report	6 December 2024

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Joshua Fowler	Bill Manager	s 9(2)(a)	☒
Damien Mancer	Bill Coordinator	s 9(2)(a)	☐

22 November 2024

Minister of Finance
Minister of Revenue

Matters raised by officials in the departmental report on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill

Executive summary

1. This report seeks your approval on issues that could be included as "matters raised by officials" in the departmental report to the Finance and Expenditure Committee (FEC) on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill).

2. As you will recall, the Bill is currently before the FEC, and Inland Revenue's departmental report is due with the Committee by 17 January 2025.

3. While some of the issues outlined in this report are related to amendments in the Bill, others are unrelated to existing amendments in the Bill. These issues have recently been brought to our attention as requiring an urgent fix and cannot be delayed until the next omnibus taxation Bill.

4. While none of these amendments are material enough to require Cabinet approval, they require approval from the Minister of Revenue and, when there are fiscal implications, the Minister of Finance. Only two of the recommended changes have fiscal implications and these would be funded through the Tax Policy Scorecard.

5. None of these changes give rise to any material compliance or administration costs, or any significant systems or technology implications.

6. Treasury has been consulted on this report and 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

7. If you agree to the changes in this report, these will be drafted for inclusion in the departmental report. Subject to the FEC's agreement, these changes will be included in the revision-tracked version of the Bill to be reported back to the House in early February 2025.

8. Written submissions on the Bill closed on 9 October 2024. Oral hearings were held on 23 October 2024 and 6 November 2024. We will report to you in early December 2024 with a summary of submissions and our proposed recommendations to be included in the departmental report.

9. The finalised departmental report is due to the FEC no later than **17 January 2025**. This will allow the Bill to be progressed in line with the FEC's current timetable, reporting back to the house by 28 February 2025. We will report to you with a draft version of the departmental report for noting in or before the week beginning **12 January 2025**.

Recommended action

We recommend that you:

1. **Indicate** in the body of this report where you agree or do not agree with the recommended amendment.

   Indicated　　　　　　　　　　Indicated

2. **Indicate** in the body of this report where you agree with the fiscal implications resulting from the recommended change.

   Indicated　　　　　　　　　　Indicated

3. **Agree** that the fiscal implications resulting from these changes will be managed through the Tax Policy Scorecard.

   Agreed/Not agreed　　　　　　　　　　Agreed/Not agreed

4. **Note** the net fiscal impact of the proposed changes on the Tax Policy Scorecard is as follows:

	$m – increase/(decrease)				
	2024/25	**2025/26**	**2026/27**	**2027/28**	**2028/29 & Outyears**
Total operating	0.400	(1.400)	(1.400)	(1.400)	(1.400)

   Noted　　　　　　　　　　Noted

5. **Note** that agreed amendments will be included in the departmental report to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

   Noted

   Noted

s 9(2)(a)

[redacted]

Joshua Fowler
Bill Manager
Policy | Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Background

11. The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Bill) is currently being considered by the Finance and Expenditure Committee (FEC). Inland Revenue's departmental report on submissions is due to the FEC no later than 17 January 2025.

12. This report sets out recommended changes that could be included as "matters raised by officials" in the departmental report to the FEC. This report additionally recommends the removal of a remedial item to allow further work to be undertaken.

13. We do not consider that the recommended changes in this report require Cabinet approval. Two changes in this report have fiscal implications, and subject to your agreement, would be managed through the Tax Policy Scorecard.

Further reports

14. At this stage, we anticipate providing you with two further reports on submissions on the Bill. These reports will seek your approval to recommend changes to the Bill as introduced in response to submitters' comments. These reports will be divided as follows:

    14.1 _QROPS proposal:_ Matters related to the "Qualifying Recognised Overseas Pension Schemes" (QROPS) proposal will be directed to the Minister of Finance only (due to the conflict of interest identified by the Minister of Revenue); and

    14.2 _Other matters:_ All other matters arising from submissions will be provided to the Minister of Finance and the Minister of Revenue for consideration (where appropriate).

Items with fiscal implications (Minister of Finance and Minister of Revenue)

15. The following two remedials relate to the flat-rate credit scheme under the new GST rules for the platform economy. The fiscal impact of these two remedial amendments is linked because there is some overlapping effect.

Reducing incorrect claims for flat-rate credit to prevent revenue leakage

16. The new GST rules for the platform economy include a flat-rate credit scheme. This applies to persons providing services **through** online marketplaces (sellers), who are provided with a "credit" of 8.5% of the value of the services provided. The flat-rate credit is only intended for sellers who are not registered for GST. This is because the flat-rate credit is meant to compensate them for the input tax deductions they could claim if they were registered for GST.

17. Currently, online marketplace operators can claim an input tax deduction for the flat-rate credit, which they must pass on to the seller if the seller has not notified the marketplace operator that they are registered for GST.

18. This has resulted in unintended revenue leakage because some marketplace operators are claiming input tax deductions for flat-rate credits and passing them on to GST-registered sellers that neglect to notify the marketplace operator they are in fact registered for GST (so should not receive the flat-rate credit).

19. We recommend an amendment that would only allow the marketplace operator an input tax deduction for the flat-rate credit if the seller notifies the marketplace operator that they are not registered for GST, in line with the original policy intent.

20. We recommend that the proposed amendment apply for taxable periods beginning on or after 1 April 2025. In the interests of informing marketplace operators of this proposed change as soon as practicable so that they have time to make any necessary systems changes, we are also seeking your agreement for us to communicate this change to marketplace operators before the Bill is reported back by the FEC.

Disclosure of GST registration status to listing intermediaries

21. There are several exceptions to the confidentiality rules in the Tax Administration Act 1994. These exceptions (referred to as "permitted disclosures") allow the disclosure of information held by Inland Revenue in certain circumstances.

22. One such permitted disclosure (which applies for the purpose of the GST platform economy rules) allows the Commissioner to disclose a seller's GST registration status to an operator of an online marketplace. The purpose of this disclosure is to enable the marketplace operator to determine whether they are required to take an input tax deduction for the flat-rate credit and pass it on to the seller (since the flat-rate credit is only intended for sellers who are not GST-registered).

23. In some cases, a listing intermediary will be involved in a supply of taxable accommodation. A listing intermediary is a GST-registered person who lists taxable accommodation on an online marketplace on behalf of the person providing the accommodation.

24. When a listing intermediary is involved in a supply, the listing intermediary is responsible for administering the flat-rate credit scheme. However, the effect of the existing law is that the Commissioner technically cannot disclose a person's GST registration status to a listing intermediary (because the current permitted disclosure refers to operators of online marketplaces and does not apply to listing intermediaries). This means Inland Revenue cannot confirm if a listing intermediary should be paying the flat-rate credit to its clients (that is, providers of accommodation).

25. Therefore, we recommend an amendment to the permitted disclosure that would allow the Commissioner to tell a listing intermediary if a person is GST-registered. We recommend that this amendment should apply from the day after the Bill receives the Royal assent.

Fiscal impact

26. The two remedials above would address unintended revenue leakage and result in a nominal increase of tax revenue of $6 million over the forecast period.

Recommendations

Agree that an input tax deduction for the flat-rate credit should only be available if the seller has notified the marketplace operator that they are not registered for GST.

Agreed/Not Agreed　　　　Agreed/Not Agreed

Agree that this amendment should apply for taxable periods beginning on or after 1 April 2025.

Agreed/Not Agreed　　　　Agreed/Not Agreed

Agree that officials should communicate this amendment to marketplace operators before the Bill is reported back by the FEC.

Agreed/Not Agreed　　　　Agreed/Not Agreed

Agree to amend the permitted disclosure rules to allow the Commissioner to disclose the GST registration status of a person providing accommodation on an online marketplace to a listing intermediary for the purpose of administering the flat-rate credit scheme.

Agreed/Not Agreed　　　　Agreed/Not Agreed

Agree that this amendment should apply the day after the Bill receives the Royal assent.

Agreed/Not Agreed　　　　Agreed/Not Agreed

Note the following forecast adjustment for tax revenue, with a corresponding impact on the operating balance and net debt:

	$ million increase / (decrease)				
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 & outyears**
Crown Revenue and Receipts: Tax Revenue: GST	0.400	1.400	1.400	1.400	1.400
Total operating	(0.400)	(1.400)	(1.400)	(1.400)	(1.400)

Noted　　　　Noted

R&D Tax Incentive: Incorrect entity issue remedials

27. The Taxation (Budget Measures) Act 2024 amended legislation governing the Research and Development Tax Incentive (RDTI) to enable a business to have its RDTI approval corrected if it accidentally filed under the name of the wrong entity within a group of wholly owned businesses. We recommend two further remedial amendments arising out of this change. These are:

    27.1 *Avoiding the one-year time bar:* RDTI filing is subject to a one-year time bar. This means that an RDTI supplementary return may not be amended if it would increase the amount of RDTI credits paid once a year has passed after the due date for the supplementary return. Currently, this time bar can prevent businesses from switching their approval to the right entity under the provisions enacted earlier this year. The first remedial would therefore ensure that the RDTI time bar does not apply to changes enabled by the original amendment so that businesses can continue to have their RDTI approvals corrected when an incorrect entity name is used.

    27.2 *Applying the remedial to the 2020 and 2021 income years:* Currently, the original amendment only applies to the 2022 and later income years because this covered known cases of the incorrect entity issue. Subsequently, pre-2022 cases have been identified. We therefore recommend extending the existing amendments to the start of the RDTI regime in 2019 to ensure all such cases can be corrected. The fiscal cost of this amendment is $0.8 million, representing the increased tax credits forecast to be paid out due to this change.

Recommendations

Agree to amend the RDTI time bar so that it does not nullify the existing discretionary powers that allow RDTI approvals to be corrected when they have been filed under the incorrect entity.

Agreed/Not Agreed Agreed/Not Agreed

Agree that this amendment should apply for the 2019–20 and later income years (the beginning of the RDTI regime).

Agreed/Not Agreed Agreed/Not Agreed

Agree to an amendment extending the existing discretionary powers allowing RDTI approvals to be corrected to the 2019–20 and 2020–21 income years.

Agreed/Not Agreed Agreed/Not Agreed

Note the following forecast changes as a result of the decision to extend these discretionary powers, with a corresponding impact on the operating balance and/or net debt:

	$m – increase / (decrease)				
Vote Revenue **Minister of Science, Innovation and Technology**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 & Outyears**
Non-departmental Other Expenses: Science, Innovation and Technology: R&D Tax Incentive	0.800	-	-	-	-
Total operating	**0.800**	**-**	**-**	**-**	**-**

Noted Noted

Deemed source of income rule

Background

28. Income earned by a non-resident is only taxable under New Zealand's domestic law if it has a "source" in New Zealand. Section YD 4 of the Income Tax Act 2007 contains many subsections setting out when income has a source in New Zealand. Section YD 4(17D) provides that income has a source in New Zealand if there is a right for New Zealand to tax that income under a double tax agreement (DTA). The intention of this rule was:

- to ensure we have a right to tax income if another country has agreed we could tax it under a DTA, and
- to simplify taxation when a DTA is involved because the rule means it is not necessary to show we have a taxing right both under our DTA and under another provision of our domestic source rules.

Issue

29. However, the deemed source of income rule has resulted in overreach in some circumstances. In particular, three of our DTAs (those with India, Malaysia and Fiji) give New Zealand the right to tax a non-resident on payments made from New Zealand for technical services, even if the non-resident performs the services outside New Zealand and has no presence here.

30. This was not intended and is outside our normal tax settings (which require a non-resident to have some presence or activity in New Zealand before personal services income has a source here). This results in the different tax treatment of non-residents depending on which country they are from. There is no mechanism in the law to easily collect the tax payable.

31. Accordingly, last year we made an amendment in the Taxation (Annual Rates for 2023–24, Multinational Tax and Remedial Matters) Act 2024 to exclude these technical services fees from the application of section YD 4(17D). This technical amendment was intended to ensure these payments would not be taxed in New Zealand unless they had a source under another provision of section YD 4). Unfortunately, the way the amendment was drafted arguably does not cover technical services fees that New Zealand is entitled to tax under Article 12 of the New Zealand–India DTA.

Proposal

32. We recommend an amendment to ensure section YD 4(17D) does not apply to technical services fees paid to Indian residents, as originally intended. We want to do this as soon as possible, as the private sector has contacted us about the issue and is concerned about the uncertainty within the current law.

33. We recommend the amendment apply retrospectively to income years starting on or after 1 July 2018. This was the year the original amendment (enacted in 2024) applies from (being the year section YD 4(17D)) came into effect. A retrospective application date is necessary to ensure the original amendment operates as intended. This retrospective application date is taxpayer favourable.

Recommendations

Agree that section YD 4(17D) of the Income Tax Act 2007 be amended to ensure it does not apply to fees for technical services that are subject to Article 12 of the New Zealand–India double tax agreement.

Agreed/Not Agreed

Agree that this amendment should apply to income years starting on or after 1 July 2018.

Agreed/Not Agreed

Timing requirement for provision of taxable supply information by marketplace operator

34. The taxable supply information rules replaced the requirement for businesses to issue or retain tax invoices with a more general requirement to provide and keep certain records. These changes were aimed at modernising record-keeping requirements for GST and reducing compliance costs for taxpayers by providing greater flexibility.

35. GST-registered persons acquiring goods and services for their business are required to hold taxable supply information to support an input tax deduction. To enable businesses that have paid GST on their inputs to have this GST refunded in a timely manner, taxable supply information is generally required to be provided by the supplier within 28 days of a request for it by the recipient of the supply.

36. Under the GST platform economy rules, an operator of an online marketplace must provide taxable supply information to the recipient of the supply without the need for a request (since requesting this information from the marketplace operator might be difficult in practice). This requirement is to ensure the recipient can deduct input tax, if applicable, for services they purchase through an online marketplace. However, the law is silent on the time frame for when taxable supply information must be provided.

37. We recommend an amendment to specify that taxable supply information must be provided within 28 days of the time of supply. This amendment should apply from the day after the Bill receives the Royal assent.

Recommendations

Agree to an amendment that provides that, for a supply by a marketplace operator to which the GST platform economy rules apply, taxable supply information must be provided to the recipient of the supply within 28 days of the time of supply.

Agreed/Not Agreed

Agree that this should apply the day after the Bill receives the Royal assent.

Agreed/Not Agreed

Overseas donee status: Maintenance changes

38. The table below sets out six maintenance changes to the donee list (schedule 32) in the Income Tax Act 2007, and a name change to a charity listed in the Bill. These changes would ensure that the list is as current and updated as practical.

39. Where possible, Inland Revenue has contacted the ex-officers, trustees or representatives of the four charities that we recommend be removed from schedule 32.

Table 1: Recommended maintenance changes to schedule 32

No.	Recommended change	Reason	Application date
1.	The reference in the Bill to "Altus Resource Trust" should be **updated** to "Altus Pacific Aid"	The Trustees changed the name of the Trust on 8 May 2024.	8 May 2024
2.	**Update** the reference to "Community Action Overseas (Oxfam NZ)" to "Oxfam Aotearoa"	The operating name of the Trust was changed.	25 May 2021
3.	**Update** the reference to "Cotton On Foundation Limited" to "Cotton On Foundation New Zealand Limited"	The change ensures the donee list aligns with the legal name of the Foundation.	1 April 2022
4.	**Remove** the reference to "Operation Vanuatu Charitable Trust"	This charity was dissolved on 25 September 2024.	Date of the Bill's enactment
5.	**Remove** the refence to "Sampoerna Foundation Limited"	This charity was dissolved in June 2008.	Date of the Bill's enactment
6.	**Remove** the refence to "The Food Bank of New Zealand"	This charity was dissolved in October 1984.	Date of the Bill's enactment
7.	**Remove** the reference to "Together for Uganda"	This charity was dissolved on 31 March 2021.	Date of the Bill's enactment

Recommendations

Agree to the maintenance changes in Table 1 above.

Agreed/Not Agreed

Agree the maintenance changes in Table 1 should apply from the dates given in Table 1.

Agreed/Not Agreed

Interaction between cash-settled employee share schemes and ACC

40. There is currently a specific exclusion in the Accident Compensation Act 2001 to ensure that employee share scheme (ESS) benefits are not counted as income when an employer has elected to withhold and pay tax in relation to that benefit. This means that the ACC earners' levy does not apply to ESS benefits in these instances. This is because the ESS benefits are usually one-off benefits that provide an ongoing equity interest in an employer. They are viewed as different to regular payments of cash that contribute to day-to-day living costs.

41. A recent interpretation from Inland Revenue's Tax Counsel Office (TCO), released in July 2024, has determined this exclusion does not currently apply to cash-settled ESS benefits. This is because there is no option to not withhold tax on a cash-settled ESS benefit as it is considered extra pay. This means that the ACC earner levy treatment of share-settled ESS benefits and cash-settled ESS benefits is not aligned. This has the potential to cause problems in the processing of Employment Information filings because the system rejects the Employment Information form submitted by the employer if the "ESS benefits" field does not match the "earnings not liable for ACC" field.

42. We recommend an amendment to align the ACC earner levy treatment of share-settled ESS benefits and cash-settled benefits by removing the requirement for the employer to elect to withhold and pay the ACC earner's levy in relation to cash-settled ESS benefits. The proposed change would align with existing taxpayer practice prior to TCO's recent interpretation statement, so would have no fiscal impact.

43. We recommend this amendment should apply from 1 April 2024 to provide continuity in the ACC earner levy treatment of cash-settled ESS benefits.

Recommendations

Agree to exclude cash-settled ESS benefits from the definition of income under the Accident Compensation Act 2001.

Agreed/Not Agreed

Agree that this remedial amendment should apply from 1 April 2024.

Agreed/Not Agreed

Clarifying imputation effect on security arrangements

44. An amendment is required to ensure that the imputation rules work effectively and allow funding arrangements that provide for tax payments made by a taxpayer to be used as security against borrowings.

45. A new financial product was recently introduced that provides financing to clients who make a deposit into a tax pool to meet a provisional tax payment obligation. The financing is secured by transfer of security over an amount of those tax payments. If the client repays the secured borrowings by the due date, the security interest will be released, allowing the client to use their tax payments. If the client does not repay its borrowings, the client authorises the lender to sell or otherwise dispose of the tax payments it holds and apply the amounts received on sale towards amounts due.

46. The legal view on the imputation implications of this arrangement is that there is a transfer of title when the title to the tax deposit with the intermediary is transferred "by way of security" so the company can access borrowing. This means there would

be a debit to the imputation credit account of the client on the granting of a security followed by a corresponding credit in the imputation credit account when the security is released.

47. This position makes the financing arrangement more complex for clients who would need to seek advice on the possible impact on their imputation credit account, and the intermediary to administer. This treatment also creates an integrity issue that could allow taxpayers to circumvent the imputation continuity rules by parking imputation credits with the lender when they have a continuity breach, which is not desirable.

48. We recommend amending the imputation provisions to ensure a security arrangement will not trigger an imputation debit. Instead, a debit would only be triggered when the person defaults on their arrangement and the underlying tax payments pass to the lender.

49. We recommend this amendment apply from 1 April 2025.

Recommendations
Agree to amend the imputation rules to ensure taxpayers who use tax payments as security on funding arrangements do not have an imputation debit until they default on that security arrangement.
Agreed/Not Agreed
Agree that this should apply from 1 April 2025
Agreed/Not Agreed

Additional FamilyBoost remedial to remove requirement to publish thresholds

50. You have already agreed to a number of FamilyBoost remedials to be progressed in this Bill (IR2024/259 refers). We recommend a further remedial to ensure the integrity of FamilyBoost payments is preserved.

Issue

51. FamilyBoost payments are assessed using on information on hand and are treated as full and final. However, there is provision in the legislation for the Commissioner to reassess a claim when a significant overpayment or underpayment would exist based on the availability of new information (for example, when an employer had incorrectly recorded income information to the wrong employee and later corrects that information). The Commissioner has the discretion to decide the thresholds that determine whether an overpayment or underpayment is significant, taking into account the efficient use of resources required to make a reassessment.

52. It is a legislative requirement that these "significance thresholds" be published. This requirement was originally based on similar wording in student loan legislation.[1] As we have been assessing claims and preparing to publish the "significance thresholds", we have become aware of the risk that they could pose to the integrity of payments if they were to be published. The risk is that claimants could potentially use the threshold amounts to game the system and claim more than they are entitled to, knowing that we would not reassess the claim (unless it was a clear case of fraud).

[1] The relevant provisions of the student loan legislation set over-deduction and under-deduction thresholds and requires borrowers to be notified.

Proposal

53. We recommend removing the requirement to publish the thresholds. This would have no fiscal, operational or system impacts, and would also not prevent Inland Revenue from providing some public information on when or how it might reassess claims (when that can be done without risking the integrity of the payments).

54. We recommend this amendment apply from 1 July 2024, (the day that the FamilyBoost legislation came into effect).

Recommendations

Agree to amend the FamilyBoost rules to repeal the requirement to publish overpayment and underpayment thresholds.

Agreed/Not Agreed

Agree that this amendment should apply from 1 July 2024 to align with when the FamilyBoost rules came into effect.

Agreed/Not Agreed

Value of emissions units received for zero value

55. Emissions units are received by foresters when post-1989 forests registered in the emissions trading scheme sequester carbon. Although the legislation correctly specifies the units' value at the end of the income year, the acquisition value of these emissions units is unclear because it is not stated in the legislation. This makes their value unclear for tax purposes.

56. We recommend a remedial amendment to clarify that, for tax purposes, these emissions units have an acquisition value of zero for the period beginning with their transfer and ending before the end of the income year in which they are received.

57. We recommend that the amendment should be backdated to 1 July 2010, the date from which the uncertainty first arose.

Recommendations

Agree to clarify that a post-1989 forest land emissions unit transferred to a forester has a value of zero for the period beginning with its transfer and ending before the end of the income year.

Agreed/Not Agreed

Agree that the proposed amendment should be backdated to 1 July 2010.

Agreed/Not Agreed

Corporate beneficiary rule and foreign-sourced amounts

58. The corporate beneficiary rule taxes beneficiary income earned by certain companies from trusts at the 39% trustee tax rate (effectively treating this income as trustee income). The corporate beneficiary rule prevents trustees from sheltering income from the 39% tax rate in a company.

59. Generally, foreign-sourced amounts earned and retained as trustee income by New Zealand-resident trustees are exempt from tax **if** the settlors of the trust are non-resident. However, this position does not apply if the amounts are not retained and are distributed to a beneficiary of the trust as beneficiary income. An unintended

consequence of the interaction between these two rules is that foreign-sourced income subject to the corporate beneficiary rule is exempt.

60. Accordingly, we recommend an amendment to clarify that foreign-sourced amounts subject to the corporate beneficiary rule are not exempt from tax. This would be consistent with the existing minor beneficiary rule.

61. We recommend this amendment should apply from the 2024–25 income year (from 1 April 2024 for most trusts, when the 39% trustee tax rate first took effect).

Recommendations

Agree that foreign-sourced amounts earned by trusts with New Zealand-resident trustees and non-resident settlors, and subject to the corporate beneficiary rule, should not be exempt from tax.

Agreed/Not Agreed

Agree that this change should apply for the 2024–25 and later income years (from 1 April 2024 for most trusts).

Agreed/Not Agreed

Remove remedial clarifying date a company becomes nominated as agent for imputation group

62. The Bill currently proposes a remedial amendment that clarifies that when a nominated company notifies the Commissioner that they are no longer acting as the agent for an imputation group, the date given is prospective. This would reduce the ambiguity of the provision, ensuring that it cannot be interpreted as allowing for a retrospective date.

63. Prior to the introduction of the Bill, we became aware of a remedial matter raised by stakeholders related to another similar provision that related to consolidated groups. In that instance, we were able to find an interpretive solution to ensure that the rule did not create a gap for taxpayers who failed to notify the Commissioner that they were leaving a consolidated group. This meant no remedial provision was required.

64. The proposed remedial amendment of the provision in the Bill is similar, but in that case our legal team suggested that there was ambiguity in the wording that needed to be clarified. However, after reviewing the two issues following the introduction of the Bill we consider further work is required on these provisions to ensure they are consistent, and to identify any similar issues that might also need clarification.

65. Accordingly, we recommend removing the proposed remedial amendment from the Bill to allow officials to undertake a more comprehensive review of this and the other associated provisions to ensure they work as intended.

Recommendation

Agree to remove the proposed remedial amendment clarifying the phrasing of the date another company becomes the nominated agent for an imputation group.

Agreed/Not Agreed

Repeal of provision allowing information sharing between Inland Revenue and Companies Office

66. The proposed approved information-sharing agreement (AISA) between Inland Revenue and the Ministry of Business, Innovation and Employment is currently out for public consultation. The AISA incorporates an existing information share with the Companies Office that is currently authorised by a provision in the Tax Administration Act 1994. This provision will need to be repealed when the AISA comes into force.

67. The Privacy Act 2020 requires any potential conflicts between the proposed information-sharing agreement and any other enactment to have been identified and appropriately addressed before a Minister recommends an Order in Council for an information-sharing agreement.

68. The Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 has a provision ("Repeal Provision") that allows for the current authorising provision of the information share with the Companies Office to be repealed by a date set by Order in Council.

69. However, the Repeal Provision is set to repeal itself on 1 April 2025, which is before the AISA may come into force. To ensure that there are not two provisions for sharing the same information in place at the same time, we recommend extending the date on which the Repeal Provision would repeal itself by two years to 1 April 2027.

Recommendations

Agree to extend the date by which the Repeal Provision (which enables the repeal of the authorising provision) will be repealed – from 1 April 2025 to 1 April 2027, so that the Repeal Provision is not automatically repealed before the AISA is recommended.

Agreed/Not Agreed

Agree that this should apply from 31 March 2025.

Agreed/Not Agreed

Technical changes to roll-over relief rules

70. The bright-line test roll-over relief rules provide that in certain circumstances, such as a transfer of property between associated persons, the transferee takes on the transferor's cost base and bright-line start date. We recommend two minor changes to the rules to enable them to work as intended. These are:

    70.1 *Introduction of a deeming rule:* We recommend introducing a deeming rule to treat a "bright-line acquisition date" as a "bright-line start date" for the purposes of the roll-over relief rules. "Bright-line acquisition date" is terminology associated with the former 10-year bright-line test. This term was changed to "bright-line start date" with the reintroduction of the 2-year bright-line test.

    70.2 *Application of rollover relief:* We recommend removing the requirement for land to be "transferred within the bright-line period" for roll-over relief to apply. This requirement is currently causing the rule to not work as intended when there is a sale of land, rather than just a transfer.

71. We recommend these changes apply from 1 July 2024 (the date the roll-over relief rules first took effect).

Recommendations

Agree to the introduction of a rule that deems a bright-line acquisition date to be a bright-line start date for the purposes of the bright-line test roll-over relief rules.

Agreed/Not Agreed

Agree to remove the requirement that land be transferred within the bright-line period from the bright-line test roll-over relief rules.

Agreed/Not Agreed

Agree that these changes should apply from 1 July 2024 (the date the roll-over relief rules first took effect).

Agreed/Not Agreed

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Proposed responses to submissions on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill**

Date:	6 December 2024	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2024/397

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations	18 December 2024
Minister of Revenue	**Agree** to recommendations	18 December 2024

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Joshua Fowler	Bill Manager	s 9(2)(a)	☒
Damien Mancer	Bill Coordinator	s 9(2)(a)	☐

6 December 2024

Minister of Finance
Minister of Revenue

Proposed responses to submissions on the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill

Executive summary

1. This report seeks your approval on recommendations to be included in the departmental report to the Finance and Expenditure Committee (FEC) on the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill (the Bill).

2. The Bill is currently being considered by the FEC, and the departmental report is due with the Committee by 17 January 2025. The Bill received approximately 25 written submissions. Oral hearings of evidence occurred on 23 October and 6 November 2024.

3. The recommendations in this report are in response to issues raised by submitters. Subject to your approval, we will include these recommendations in the departmental report.

4. In addition to the specific policy and remedial changes outlined in this report, we seek your approval to recommend drafting changes to the Committee when the Bill as introduced does not achieve the policy intent or when the drafting could be improved or clarified.

5. While none of these amendments are material enough to require Cabinet approval, they require approval from the Minister of Revenue and, when there are fiscal implications (or shared responsibilities), the Minister of Finance. Only three of the recommended changes have fiscal implications and these would be funded through the Tax Policy Scorecard.

6. None of these changes give rise to any material compliance or administration costs, or any significant systems or technology implications.

7. Treasury has been consulted on this report and 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.

8. Unless otherwise stated, the recommended changes would take effect from the date of the Bill's enactment.

Next steps

9. Subject to your agreement, recommendations outlined in this report will be drafted for inclusion in the departmental 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 28 February 2025.

10. The finalised departmental report is due to the FEC no later than 17 January 2025. We will report to you with a draft version of the departmental report for noting by the week beginning 13 January 2025.

Recommended action

11. **Indicate** in the body of this report when you agree or do not agree with the recommended amendment.

Indicated | Indicated
Minister of Finance | *Minister of Revenue*

12. **Agree** that the fiscal implications resulting from these changes will be managed through the Tax Policy Scorecard.

Agreed/Not agreed | Agreed/Not agreed
Minister of Finance | *Minister of Revenue*

13. **Note** the net fiscal impact of the proposed changes on the Tax Policy Scorecard is as follows:

	$m – increase/(decrease)				
	2024/25	**2025/26**	**2026/27**	**2027/28**	**2028/29 & Outyears**
Tax Revenue	(0.300)	(0.600)	(0.600)	(0.600)	(0.600)

Noted | Noted
Minister of Finance | *Minister of Revenue*

14. **Agree** to minor and technical changes to proposals in the Bill to improve the drafting of provisions or to give effect to the policy intent.

Agreed/Not agreed | Agreed/Not agreed
Minister of Finance | *Minister of Revenue*

15. **Note** that agreed amendments will be included in the departmental report to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

Noted | Noted
Minister of Finance | *Minister of Revenue*

16. **Note** that, unless agreed otherwise, recommended amendments will commence the day after the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill receives the Royal assent.

Noted | Noted
Minister of Finance | *Minister of Revenue*

17. **Note** that the final version of the departmental report on the Bill will be sent to your office by the week beginning 13 January 2025 and then to the Finance and Expenditure Committee no later than 17 January 2025.

Noted | Noted
Minister of Finance | *Minister of Revenue*

s 9(2)(a)

[redacted]

Joshua Fowler
Bill Manager
Policy
Inland Revenue

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Background

18. The Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill is currently being considered by the FEC. The departmental report on submissions is due to the FEC no later than 17 January 2025 to facilitate the Committee reporting back to the House by 28 February 2025.

19. Written submissions on the Bill closed on 9 October 2024. Oral hearings of evidence occurred on 23 October and 6 November 2024. Approximately 25 written submissions were received.

20. As noted in our report of 22 November 2024, we will provide you with a draft copy of the departmental report by the week of 12 January 2025. The departmental report will provide you with a full summary of submissions on the Bill, along with officials' recommendations to the FEC.

Submissions

21. The Bill has been generally well received by submitters, some of whom expressed support for the Bill's strong remedial focus. Responses largely focused on opportunities for extending the ambit of the Bill's proposals. In brief:

    21.1 Submitters were supportive of the generic response to emergency events proposal, although one did not agree with the information-sharing aspect of the proposal. Submitters supported the proposal permitting the retrospective registration of a security for approved issuer levy (AIL), although some suggested the two-year restriction on registration be relaxed, and that tax pooling should be available to settle an AIL liability.

    21.2 Submitters were generally supportive of the proposal to implement the OECD Crypto-Asset Reporting Framework. Some submitters expressed concern at the decision to incorporate the OECD standard into New Zealand's law by reference, as well as the proposal's privacy implications.

22. Submitters were also generally supportive of proposals relating to overseas pensions, employee share schemes and the enrolment of persons aged under 16 in KiwiSaver. However, the Office of the Privacy Commissioner raised concerns with the New Zealand Business Number (NZBN) information-sharing proposal.

23. The content of submissions is further discussed below.

Departmental report

24. This report sets out recommended changes that could be included in the departmental report to the FEC.

25. Only three recommended changes have a fiscal impact. These items and a matter relating to the GloBE rules require approval by both the Minister of Finance and Minister of Revenue. The fiscal impact of decisions made in this report will be managed through the Tax Policy Scorecard.

26. None of the other proposed amendments in this report have a fiscal impact. These remaining proposals may be approved by the Minister of Revenue. We do not consider that the recommended changes in this report require Cabinet approval.

PIE eligibility

Associated interest

27. A proposal in the Bill would treat interest income from an associated party as ineligible income for a PIE. This proposal is intended to clarify that ineligible business income cannot receive PIE tax treatment by being converted to interest income. One of the exceptions to the proposed rule is when the associated party is also a PIE or eligible to become a PIE (because there is no ineligible income in the payer).

28. We agree with a submitter that this exclusion should also be extended to "foreign PIE equivalents" (broadly, an entity that would meet the PIE requirements except for being non-resident) because the avoidance opportunity also does not arise in this circumstance.

Land tainting

29. The land tainting rules can treat a sale of land that would have otherwise been on capital account as a taxable sale if the person undertaking that sale is associated with a person who undertakes property development (for example, land acquired to carry on a business of dealing in land). There is an existing exclusion from the land tainting rules for a PIE or an entity that qualifies for PIE status.

30. Although these rules are not affected by any current proposals in the Bill, a submission has been received that this exclusion should be extended so an entity that is a foreign PIE equivalent will not be associated with another entity for the purpose of the land rules. We agree with this position because the policy reasons for the PIE exclusion apply equally to a foreign PIE equivalent and recommend the submission be accepted. However, this would decrease tax revenue by $0.850 million over the forecast period.

Recommendations

Agree that interest income derived from an associated foreign PIE equivalent should not be excluded interest for the purpose of the PIE eligibility rules.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Agree that a foreign PIE equivalent should not be associated with another person for the purpose of the land tainting rules.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Note the following changes to tax revenue as a result of the recommendation above (land tainting rules), with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 & outyears**
Crown Revenue and Receipts: Company tax	(0.050)	(0.200)	(0.200)	(0.200)	(0.200)
Total Operating	0.050	0.200	0.200	0.200	0.200

Noted — *Minister of Finance*

Noted — *Minister of Revenue*

Minor remedial forestry issues

31. A submitter has suggested the Bill address some minor uncertainties associated with the tax rules applying to forestry.

Deductions for forestry releasing expenditure

32. The treatment of expenditure on "releasing" is currently unclear. Releasing involves the clearing of weeds and other undergrowth from around young trees to encourage their growth, and is a cost of maintaining a forest.

33. It has long been intended that the costs of planting and maintaining a forest be immediately deductible in the year that they are incurred. However, following the 2004 rewrite of the Income Tax Act, it is not clear that this treatment extends to expenditure on releasing.

34. Accordingly, we recommend an amendment to ensure that releasing costs are immediately deductible. We recommend this apply from 1 April 2005 (when the Income Tax Act 2004 first came into force).

Value of emissions units surrendered following deregistration of a forest

35. Emissions units are received when post-1989 forests registered in the emissions trading scheme sequester carbon. Conversely, emissions units need to be surrendered if a forest is removed from the scheme.

36. Conceptually, such surrenders should be for nil value, comparable to units surrendered because of an emissions liability under the scheme. The tax legislation could be clearer on this point to avoid any confusion for taxpayers.

37. Accordingly, we recommend a clarifying amendment to the Income Tax Act 2007 (ITA) backdated to 7 September 2010 (the date from which the technical omission first arose).

Recommendations

Agree to an amendment to ensure that releasing costs are immediately deductible.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Agree that this amendment apply retrospectively from 1 April 2005.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Note the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 & outyears**
Crown Revenue and Receipts: Tax Revenue	(0.200)	(0.200)	(0.200)	(0.200)	(0.200)
Total Operating	0.200	0.200	0.200	0.200	0.200

Noted — *Minister of Finance*

Noted — *Minister of Revenue*

Agree to an amendment to clarify that emissions units surrendered as a result of the removal of a forest from the emissions trading scheme are surrendered for nil value.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Agree that this amendment apply retrospectively from 7 September 2010.

Agreed/Not Agreed — *Minister of Finance*

Agreed/Not Agreed — *Minister of Revenue*

Employer-funded flu vaccinations

Background

38. Flu vaccinations are a common benefit provided to employees. These will generally not be subject to fringe benefit tax (FBT) when an employer:

    38.1 arranges a vaccine clinic on the premises, or

    38.2 provides a flu vaccine voucher to employees to get their vaccination done at their doctor's office or another clinic.

39. Employer-funded flu vaccinations are exempt from FBT in these cases because they fall under the health and safety exemption for FBT. This is because they are targeting a specific health and safety risk in the workplace. However, if instead an employee pays for their flu vaccination and is later reimbursed by their employer, this cash payment will be taxable and subject to PAYE.

40. The Bill contains a remedial amendment that would classify an amount an employer pays to or on behalf of an employee for a flu vaccination as exempt income of the employee. This would ensure that employers are not worse off if they reimburse an employee for a flu vaccination rather than providing it on their premises or by voucher.

41. Although submitters were supportive of this remedial amendment, most suggested its scope should be expanded to include reimbursements for other types of benefits.

Proposal

42. Some submitters suggested that the scope of the proposed PAYE exemption should be extended to include reimbursements for all other benefits that would qualify for the FBT health and safety exemption if they were non-cash benefits. Submitters argued that even under the current amendment there would still be inconsistent treatment of expenditure on other health and safety benefits, and that extending the exemption would allow employers flexibility as to how they provide them.

43. We agree there is currently a disparity between the FBT and PAYE rules regarding other benefits relating to specific health and safety risks in the workplace. Accordingly, we recommend that these submissions be accepted. This would decrease tax revenue by $0.849 million over the forecast period.

Recommendations

Agree that reimbursements for benefits that would qualify for the FBT health and safety exemption if they were non-cash benefits should not be subject to PAYE.

Agreed/Not Agreed | Agreed/Not Agreed
Minister of Finance | *Minister of Revenue*

Agree this amendment apply from 1 April 2025.

Agreed/Not Agreed | Agreed/Not Agreed
Minister of Finance | *Minister of Revenue*

Note the following changes to tax revenue as a result of the recommendations above, with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue Minister of Revenue	2024/25	2025/26	2026/27	2027/28	2028/29 & outyears
Crown Revenue and Receipts: Tax Revenue	(0.050)	(0.200)	(0.200)	(0.200)	(0.200)
Total Operating	0.050	0.200	0.200	0.200	0.200

Noted | Noted
Minister of Finance | *Minister of Revenue*

Securitisation entities and the Pillar 2 GloBE rules

44. In its submission on the amendment in the Bill that expands eligibility for the securitisation regime, the Australian Securitisation Forum (ASF) also raised two issues with the impact of the Pillar 2 Global Anti-Base Erosion (GloBE) rules on securitisation entities.

Securitisation

45. A securitisation entity is an entity[1] that issues debt instruments to investors and uses the proceeds to acquire a repackaged pool of loans from a creditor[2] (originator). The repayment streams on the repackaged loans are then used to repay the money owed on the debt instruments issued to investors.

The GloBE rules

46. The OECD's GloBE rules impose a top-up tax liability on multinationals that have been subject to an effective tax rate of less than 15% in any jurisdiction. The main rule is the Income Inclusion Rule (IIR), which makes a parent company liable for top-up tax on behalf of its undertaxed subsidiaries. There is also a backstop rule known as the Undertaxed Profits Rule (UTPR), which makes any group member liable for top-up tax if there is no IIR applying to an undertaxed subsidiary's income.

[1] Normally a trust or company.
[2] Typically, a bank or finance company.

47. The OECD has also contemplated jurisdictions implementing a Qualified Domestic Minimum Top-up Tax (QDMTT). This is a top-up tax imposed on entities located in a particular jurisdiction, in respect of undertaxed income earned there. A QDMTT applies in priority to the IIR and UTPR and enables source countries to collect top-up tax rather than give it up to other countries where the multinational operates.

48. New Zealand is implementing the IIR and UTPR for fiscal years beginning on or after 1 January 2025. While we are not implementing a QDMTT, we will be implementing a domestic IIR (DIIR). This will make New Zealand parent companies liable for top-up tax on undertaxed domestic-sourced income earned by them and their New Zealand subsidiaries. The DIIR will apply for fiscal years from 1 January 2026.

Securitisation entities and the GloBE rules – OECD Administrative Guidance

49. In its June 2024 Administrative Guidance on the GloBE rules, the OECD addressed a problem that had been identified with the application of the GloBE rules to securitisation entities. The problem was that, if a securitisation entity could become liable for top-up tax in respect of the undertaxed profits of other entities in the multinational group, it would not be bankruptcy remote[3] or tax neutral.[4] Rather, the entity's potential exposure to unexpected tax liabilities would negatively affect its own credit rating. This would undermine the viability of securitisation arrangements.

50. The OECD addressed the issue by clarifying that jurisdictions could choose to exclude securitisation entities from liability to top-up taxes under a QDMTT or UTPR. Other entities in the multinational group would then incur the top-up tax instead. The OECD did not consider it necessary to clarify that securitisation entities could be excluded from a liability under the IIR, because a securitisation entity would not be a parent entity (and thus would not have an IIR liability in the first place).

51. The OECD also stated that it would consider issuing further Administrative Guidance to ensure that securitisation transactions do not result in multinationals paying top-up taxes that are not commensurate with the economic profit of the securitisation entity. According to the OECD, this may occur when certain hedging arrangements result in mismatches between the income and the taxes recognised under the GloBE rules.

The Australian Securitisation Forum's submission

52. The ASF noted the OECD's June 2024 Administrative Guidance and submitted that New Zealand should amend its legislation to clarify that securitisation entities are excluded from liability to top-up tax. In practice, we only foresee the exclusion being relevant for the UTPR, since (as noted) the IIR and DIIR only apply to parent companies, which securitisation entities are not expected to be. Nevertheless, we see merit in clarifying the exclusion, to protect the bankruptcy remoteness and tax neutrality of these entities.

53. The change would have no fiscal impact because the top-up tax that would have been paid by the securitisation entity would instead be paid by another New Zealand entity in the multinational group, such as the originator. Moreover, the UTPR was not forecast to raise any revenue because it was assumed that multinationals would structure into an IIR instead to reduce compliance costs.

54. The ASF also submitted that there should be a choice as to whether the income earned by securitisation entities is taken into account by the originator in the various calculations required under: (a) the DIIR; and (b) to the greatest extent permissible

[3] Insulated from debts/liabilities of other entities in the group such as the originator.
[4] Not exposed to any additional tax consequences as a result of the activity being undertaken through a securitisation entity.

under OECD requirements, the OECD GloBE rules. This would mitigate the risk identified by the OECD that certain arrangements entered into by securitisation entities could result in distorted top-up tax calculations.

55. Officials do not recommend the second submission be accepted at this stage. We have not seen sufficient evidence that including the income of securitisation entities in a multinational's effective tax rate calculations leads to distortions. We will monitor the OECD's work in this area and revisit this submission if it becomes clearer that there is a problem. This should not be before the OECD releases further Administrative Guidance.

56. Cabinet has authorised the Minister of Finance and Minister of Revenue to jointly make decisions relating to the adoption of the GloBE rules (DEV-23-MIN-0031; CAB-23-MIN-0111 refers). Consequently, this decision requires joint sign-off even though the change would have no fiscal impact.

Recommendations

Agree to exclude securitisation entities from liability to top-up taxes under the GloBE rules and the DIIR, to ensure securitisation arrangements remain viable.

Agreed/Not Agreed	Agreed/Not Agreed
Minister of Finance	*Minister of Revenue*

Note that the above amendment would have no fiscal impact.

Noted	Noted
Minister of Finance	*Minister of Revenue*

Note that officials will monitor OECD Administrative Guidance for a possible future option to exclude securitisation entity income from a multinational's calculations under the GloBE rules, and will not propose an option to exclude such income under the DIIR at this stage because there is insufficient evidence supporting a need to do so.

Noted	Noted
Minister of Finance	*Minister of Revenue*

Changes requiring Minister of Revenue approval only

Approved issuer levy retrospective registration

57. Eight submissions were received on the approved issuer levy (AIL) retrospective registration proposal in the Bill. All submitters supported the proposal but thought it was too restrictive or otherwise flawed, and suggested changes to the policy design. Having analysed these suggestions, officials seek your agreement to make several changes to the proposal in the Bill as introduced.

Delays in registration not due to "oversight"

58. Two submitters noted that in some cases, a borrower may make an effort to register a security for AIL on time (before the first interest payment) but still fail to do so. This may occur, for example, when the borrower is a new company that is in the process of applying for an IRD number and is not issued the number until sometime after the first interest payment on the security is made. The IRD number is required for the security registration form, so the borrower is not able to complete the application on time. Delays, despite efforts to comply, may also occur if the borrower makes a mistake with the application and has to restart.

59. Submitters pointed out that such cases are not an "oversight", so would not be in scope of the Commissioner's discretion to allow retrospective registration as it is currently drafted. They suggested that there should either be a grace period for registration, or a widening of the discretion to cover these cases. This would ensure borrowers who overlook their obligations do not receive more favourable treatment than borrowers who attempt to comply but fail due to administrative delays or other extenuating circumstances.

60. The policy intent is that retrospective registration for AIL should be available when there has been an unintentional delay in registration. Delays occurring despite a borrower's efforts to comply on time are clearly in this category. Such cases may be resolved pragmatically at an operational level. However, for the sake of taxpayer certainty, we recommend the Commissioner's discretion be widened to cover them. It will not be necessary to provide a list of factors for the Commissioner to consider in assessing these cases because the Commissioner will already know that the borrower has been attempting to register the security on time.

Two-year time window for retrospective registration

61. The Bill currently proposes that retrospective registration of a security for AIL will only be available if the borrower applies for it within two years of the date on which the first interest payment on the security was made. The rationale for the time limit was to ensure that borrowers remain incentivised to attend to their AIL obligations in a timely manner, and do not wait indefinitely to register for AIL on the basis that, even if audited, they will get the same basic tax outcome as a borrower who registered on time.

62. However, submitters were of the view that there are already sufficient disincentives against deliberate non-compliance in place. In particular, the fact that retrospective registration will be at the Commissioner's discretion (and therefore not guaranteed) makes it preferable to register on time. The Commissioner will only approve an application for retrospective registration if satisfied that the delay was unintentional. Moreover, even if the Commissioner approves the application for retrospective registration, the borrower may still incur use of money interest and late payment penalties, which act as a further deterrent.

63. It should be noted that interest and penalties will not apply if the borrower uses tax pooling to meet the late AIL liability (this is not currently permitted, but officials are proposing to allow it; see the section on "Tax pooling" below). However, the use of tax pooling to satisfy a new liability is itself subject to a Commissioner discretion, and thus not preferable to meeting the liability on time.

64. Some submitters suggested that if Inland Revenue is concerned about deliberate non-compliance, a specific civil penalty for late AIL registration could be brought in. In their view, this would be more appropriate than the current legislative approach, which they perceive as the continued use of non-resident withholding tax (NRWT) as a penalty for mistakes with AIL registration not dealt with within two years.

65. On further consideration, officials agree with submitters that there are sufficient disincentives against flouting the AIL regime without imposing a two-year time restriction on retrospective registration. Accordingly, we recommend the proposed restriction be removed.

66. Instead, the amount of time between the borrower's first interest payment and their application for retrospective registration (ie, the duration of the delay) could be included in the list of factors the Commissioner may consider in determining whether the cause of the delay was an oversight. This would signal that Inland Revenue expects any mistakes with AIL registration to be identified and disclosed as soon as possible. The sooner the error came to light, the more likely the Commissioner would regard it as an oversight (the logic being that as time goes on, the borrower has had longer to become aware of their error and disclose it).

However, the duration of the delay would be just one of several considerations, and not determinative; a borrower could apply for retrospective registration five years late and still be approved if the Commissioner was satisfied the delay was unintentional.

67. Officials do not consider that a new civil penalty for late AIL registration is necessary at this time. However, if compliance concerns emerge in the future, despite the disincentives mentioned above, a penalty could be reconsidered.

Natural person factor

68. As alluded to above, the Bill proposes a list of factors the Commissioner may take into account in determining whether the cause of the delay in registration of a security for AIL was an oversight. One of the current proposed factors is whether the borrower applying for retrospective registration is a natural person, as opposed to a corporate entity.

69. The rationale for this factor was the assumption that a natural person would be less likely than a corporate to be well-advised about their tax affairs, so the Commissioner would consider it more likely that a natural person's error was an oversight. However, several submitters took issue with this assumption and noted that genuine errors will occur regardless of whether the person is a natural person or an entity. One submitter said it should not be relevant whether a person has received advice in relation to their AIL obligations; they could receive advice but still fail to register a security due to an oversight. Another submitter suggested that the size and complexity of the business is the relevant consideration, noting that a close company with a single natural person shareholder was likely to be no more sophisticated than a natural person.

70. The three submitters that commented on this factor all recommended it be removed.

71. Officials agree with submitters that the natural person factor may not meaningfully help the Commissioner discern whether the delay in registration was likely to be an oversight. We accordingly recommend that this factor be removed.

Tax pooling

72. One submitter suggested that if the Commissioner backdates a borrower's date of registration, the borrower should be allowed to use tax pooling[5] to satisfy any resulting AIL liability.

73. A provision in the ITA gives the Commissioner a discretion to allow a taxpayer to use tax pooling to meet a new liability. The Commissioner must be satisfied that the taxpayer was not deliberately non-compliant, and did not show a lack of reasonable care. Additionally, the taxpayer must voluntarily disclose the new liability within a reasonable time after becoming aware of it.

74. However, AIL is not currently included in the list of tax types for which the Commissioner may allow a new liability to be met with pooling. Officials agree with the submitter and recommend that taxpayers be permitted to use pooling to satisfy an AIL liability if approved for retrospective registration.

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[5] Tax pooling is a facility when taxpayers can trade over and under payments of tax to reduce their exposure to use of money interest. Tax poolers charge interest rates that are higher/lower than use of money interest rates.

Fiscal implications

75. All the recommended changes are expected to be fiscally neutral.

76. The original revenue estimate was based on past known cases plus a small allowance for unknown cases, giving an overall estimate of $0.2 million per annum. Although small, this estimate was not dampened by any assumed constraints on retrospective registration such as those addressed here. Accordingly, varying these constraints has no further fiscal impact beyond that already advised.

Recommendations

Agree that, in addition to cases of "oversight", retrospective registration should be available when the delay in registration occurred despite the borrower making an effort to register the security on time.

Agreed/Not agreed

Minister of Revenue

Agree to remove the two-year time window for retrospective registration, on the basis that there will already be sufficient incentives for borrowers to register a security for AIL on time.

Agreed/Not agreed

Minister of Revenue

Agree to include the duration of the delay in registration as a factor the Commissioner may consider in determining whether the delay was caused by an oversight.

Agreed/Not agreed

Minister of Revenue

Agree to remove "whether the person is a natural person" from the list of factors the Commissioner may consider in determining whether the delay in registration was caused by an oversight.

Agreed/Not agreed

Minister of Revenue

Agree to add approved issuer levy to the list of taxes for which the Commissioner has the discretion to allow tax pooling to be used to satisfy late liabilities.

Agreed/Not agreed

Minister of Revenue

Note that the above recommendations are all expected to be fiscally neutral.

Noted

Minister of Revenue

Nature of interaction between transfer pricing rules and deemed dividend rules

77. The Bill currently proposes an amendment to clarify an ambiguity in the transfer pricing provisions in the ITA. The amendment confirms that dividends can still be deemed to arise when transfer pricing adjustments are made, regardless of whether an application for a matching treatment is made (agreed to in report IR2024/176).

78. Submitters' responses on this proposal are varied, with the main point of contention being the proposed retrospective application of the provision. In submitters' view

the amendment should not apply retrospectively without a provision to protect taxpayers who might have taken the alternative interpretation.

79. Although we previously recommended that the amendment should have retrospective application on the basis the changes merely confirm the policy intent, we accept that retrospective application could be seen as unfair to taxpayers who interpreted the law in its current formulation differently to Inland Revenue.

80. Accordingly, we now recommend that the amendment apply prospectively from the day after the Bill receives the Royal assent. The change in effective date will not have any fiscal impact.

Recommendation

Agree to change the application date of the amendment to clarify the interaction between the deemed dividend and transfer pricing rules currently in the Bill to the day after the Bill receives the Royal assent.

Agreed/Not agreed

Minister of Revenue

Share-lending arrangements

81. The Bill currently contains a provision (IR2024/092 refers) that would defer the recognition of taxable income for a share user in a share-lending transaction until the transaction has been completed. However, one submitter suggested that deferral of income should be optional for taxpayers.

82. While there would be no tax benefit to choosing not to defer the recognition of income (i.e., including the taxable income in an earlier year), it is possible that this could create compliance costs for a share user whose systems record the income at the point of sale. As with the original deferral proposal, making the deferral of income optional will not have any fiscal impact.

83. Accordingly, in the interests of keeping compliance costs low, we would recommend this submission be accepted.

Recommendation

Agree that a share user in a share-lending transaction should be able to choose whether to defer the recognition of taxable income until the transaction is completed.

Agreed/Not agreed

Minister of Revenue

Debt-funding special purpose vehicles (SPVs)

84. A debt-funding special purpose vehicle (SPV) is an entity (typically a trust or company) that issues debt instruments to investors and uses the proceeds to acquire from a creditor[6] (or originator) a repackaged pool of loans, the payment streams of which are directly used to repay the debt instruments. The ITA contains an elective regime that allows SPVs to be treated as transparent for tax purposes

[6] Typically a bank or finance company.

in certain circumstances if all the assets of the SPV originate from sponsors within the same wholly-owned group of companies.

85. The Bill contains a remedial amendment that would expand the eligibility of the regime to allow SPVs to elect into the regime if they have an originator that is a trust in certain situations. Six submitters supported the change but submitted that further changes should be made to reduce compliance costs.

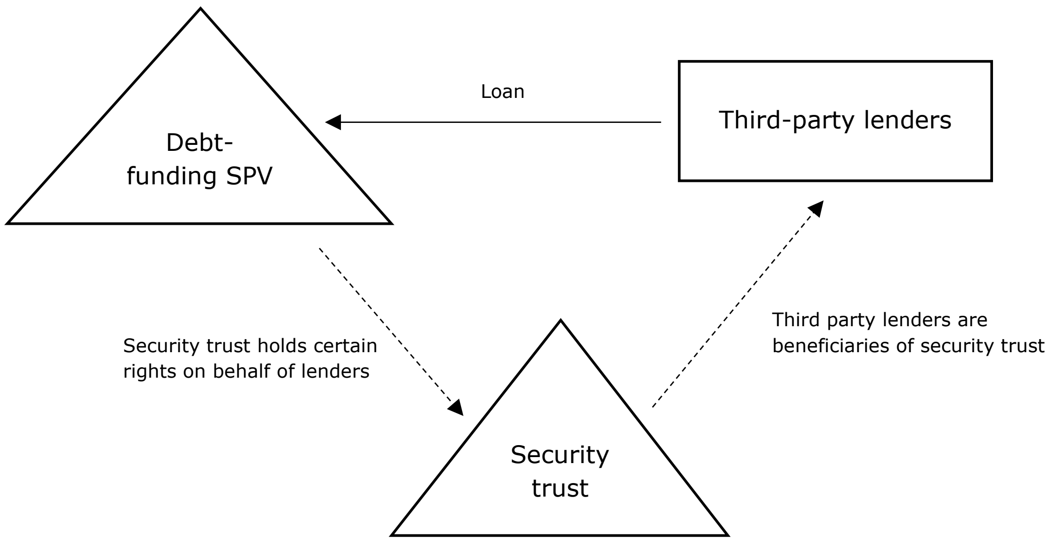
Eligibility

86. Submitters argue that eligibility for the regime should be expanded to allow SPVs to elect into the regime if they hold assets received from a third party that is not a trust, or if they hold "self-originated" assets.

87. The policy intent of the eligibility criteria for the regime is to ensure that an SPV is treated as transparent for tax purposes for assets that are held by the same economic group. We agree with submitters that the eligibility of the regime should be expanded to allow flow-through tax treatment when the SPV has received assets from a third party or "self-originated" assets, subject to the assets being held on balance sheet for the beneficiary or shareholder of the SPV (or a member of the beneficiary/shareholder's wholly-owned group).

Associated persons rules

88. Generally, when a debt-funding SPV obtains funding by way of a loan from a third-party lender, a separate "security trust" is settled to hold certain rights to enforce the lenders' rights. Submitters have argued that a person should not be associated \with a borrower simply because the person (or an associate of the person) is a beneficiary, settlor or appointer of a security trust established in connection with the borrowing.



89. We agree with submitters and recommend excluding such arrangements from the associated persons rules, provided they would not be associated if not for the lending arrangement.

90. These changes would have no fiscal impacts. Taxpayers can achieve the same outcomes under current law, albeit by incurring unnecessary compliance costs.

Recommendations

Agree that SPVs should be able to elect into the tax transparent regime if they hold assets received from a third party that is not a trust, or if they hold "self-originated" assets, provided that the assets are being held on balance sheet for the beneficiary or shareholder of the SPV (or a member of the beneficiary/shareholder's wholly-owned group).

Agreed/Not agreed

Minister of Revenue

Agree that a person should not be associated with a borrower simply because the person (or an associate of the person) is a beneficiary, settlor or appointer of a security trust established in connection with the borrowing.

Agreed/Not agreed

Minister of Revenue

Thin capitalisation changes related to non-debt liabilities

Background

91. You previously agreed to include some thin capitalisation changes related to non-debt liabilities in the Bill (IR2024/176 refers). These changes included:

    91.1 extending the non-debt liabilities exclusion to interest-free loans from a settlor that has made a settlement of at least 10% of the value of the total settlements on the trust, and

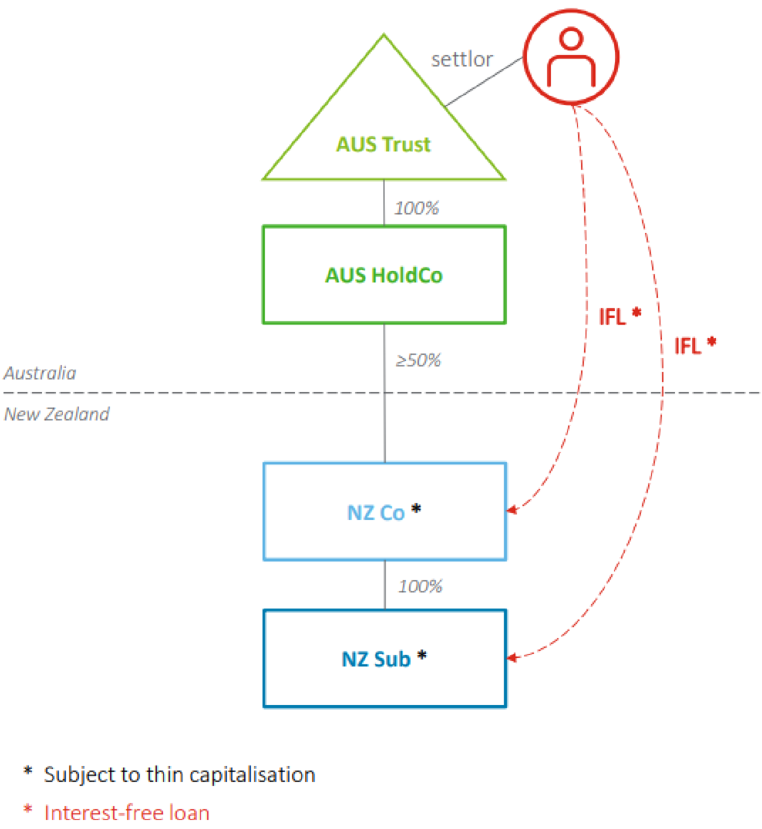
    91.2 extending the non-debt liabilities exclusion to situations when interest-free loans are provided by, or redeemable shares are held by, non-corporate entities with an effective 100% ownership/settlement interest in the shareholder or in another member of the wholly-owned group that the shareholder belongs to.

92. The changes introduced in the Bill cover various scenarios, such as:

    92.1 interest-free loans from a settlor to a trust when the settlor has made one or more settlements totalling at least 10% of the value of total settlements on the trust, and

    92.2 when the shareholder is a foreign company wholly owned by a foreign trust with a settlor that has made 100% of the settlements on the trust and the settlor provides interest-free loans directly to the New Zealand companies subject to the thin capitalisation rules (see diagram below).

Interest-free loan from Settlor to NZ Corporate



Submissions

93. The submissions received on these changes were broadly supportive with some technical submissions suggested to improve how the rules would apply in practice. Officials recommend that some amendments are made to the Bill to incorporate these submissions.

94. The first recommendation is to include interest-free loans from relatives of a settlor/shareholder (and redeemable shares held by relatives of a settlor/shareholder) when considering interest-free loans from a settlor/shareholder (and redeemable shares held by a settlor/shareholder). This would essentially cover relatives within two degrees of relationship, such as a spouse, child, sibling or grandparent. It would mean that relatives of a settlor/shareholder could also provide interest-free loans or hold redeemable shares that would be covered by the exclusion.

95. The second recommendation is to change the requirement for a settlor to make 100% of the settlements on a trust to instead require the settlor to make at least 90% of the settlements on a trust. This would provide some flexibility when nominal or accidental settlements are made on the trust (for example, by providing services at less than market value) outside of the settlor (and their relatives if the first recommendation is agreed).

96. The third recommendation is to amend the wording to reflect that interest-free loans can be excluded from non-debt liabilities when they are between any member of the New Zealand thin capitalisation group and a member of the parent shareholder's equity group. This is because the legislation may otherwise be read as requiring the interest-free loan to be between the parent member of the New Zealand thin capitalisation group (eg, NZ Co in the diagram above) and a member of the shareholder's equity group (eg, Settlor in the diagram above). This

amendment would mean an interest-free loan between another company in the New Zealand thin capitalisation group (eg, NZ Sub in the diagram above) and a member of the shareholder's equity group (eg, Settlor) would be excluded from non-debt liabilities.

97. The fourth recommendation is to amend the effective date for the proposed change in the Bill to ensure that a natural person with non-debt liabilities greater than their total assets are required to reduce their total interest deductions. You previously agreed to our recommendation that the change should apply from 1 April 2011, which is when the provision was last amended (IR2024/306 refers). However, we accept the submission that the issue only arose when the non-debt liabilities exclusion was introduced. Accordingly, we now recommend that the amendment should apply from 1 July 2018 (ie, when the non-debt liabilities exclusion became effective).

98. The fiscal impact for these changes is expected to be negligible since the four recommendations above are relatively technical and minor in nature to improve how the rules will work in practice and ensure they are consistent with the policy intent. Furthermore, the original fiscal estimates have already covered the additional scenarios under the revised scope.

Recommendations

Agree that the non-debt liabilities exclusion can be extended to include interest-free loans from relatives of a settlor/natural person (and redeemable shares held by relatives of a settlor/natural person) when considering interest-free loans from a settlor (and redeemable shares held by a settlor).

Agreed/Not agreed

Minister of Revenue

Agree to change the requirement for a settlor to make 100% of the settlements on a trust to instead require the settlor to make at least 90% of the settlements on a trust when considering an equity group.

Agreed/Not agreed

Minister of Revenue

Agree to amend the Bill to reflect that interest-free loans can be excluded from non-debt liabilities when they are between any member of the New Zealand thin capitalisation group and a member of the parent shareholder's equity group.

Agreed/Not agreed

Minister of Revenue

Agree that the amendment to ensure that a natural person with non-debt liabilities greater than their total assets is required to reduce their total interest deductions should apply from 1 July 2018.

Agreed/Not agreed

Minister of Revenue

Note that the above recommendations are not expected to have further fiscal impact beyond that previously advised.

Noted

Minister of Revenue

Disabled beneficiaries and minor beneficiary rule

Background

99. Disabled beneficiary trusts are excluded from the 39% trustee tax rate and are subject to a 33% tax rate on trustee income. To qualify for this exclusion, all the beneficiaries must derive an eligible government support payment for the relevant income year. A minor (person aged under 16 years old) can satisfy the disabled beneficiary definition if they derive the child disability allowance or the disability allowance.

100. This is known as the "minor beneficiary rule" and is an integrity measure that ensures that certain amounts of beneficiary income earned from trusts by minors are taxed at the 39% trustee tax rate. There is an existing exclusion for children that derive the child disability allowance, but not the disability allowance.

101. The proposed remedial amendment currently in the Bill would ensure that beneficiary income derived from a disabled beneficiary trust by a minor is not subject to the minor beneficiary rule. Submitters were supportive of this remedial amendment, but one recommended extending its scope.

Issue

102. The submitter proposed that the amendment be extended so that the minor beneficiary rule does not apply to beneficiary income derived from any discretionary trust by a minor provided they meet the disabled beneficiary definition. They submit that this could help to reduce compliance costs for families with a disabled child, when it may not be practical to set up a separate trust to meet the disabled beneficiary trust requirements.

103. Officials recommend accepting this submission. Extending the proposal to include disabled beneficiaries of non-disabled beneficiary trusts would help to reduce the risk that they are over-taxed and could reduce compliance costs. We do not have concerns from an integrity perspective.

104. This change would have no fiscal impact. This is because taxpayers could achieve the same outcome under the proposed change already in the Bill, albeit with unnecessary compliance costs.

Recommendation

Agree that the minor beneficiary rule should not apply to beneficiary income derived by a disabled beneficiary from any discretionary trust.

Agreed/Not agreed

Minister of Revenue

Corporate beneficiary rule

Background

105. The "corporate beneficiary rule" is an integrity rule that ensures that trustees cannot shelter income from the 39% trustee tax rate by distributing income as beneficiary income to a company (which would be taxed at 28%).

106. Generally, if a non-resident person earns foreign-sourced income then it is not subject to tax in New Zealand. Beneficiary income retains the source of the income

earned by the trustee. For example, if a New Zealand trustee earns income from Australia and distributes it to an Australian beneficiary as beneficiary income, the income is not subject to tax despite being first derived by the New Zealand resident trustee.

Issue

107. A submitter has raised an issue with how the corporate beneficiary rule interacts with foreign-sourced income. Currently, if a New Zealand resident trustee earns foreign-sourced income and distributes it to a non-resident corporate beneficiary, and if the corporate beneficiary rule applies, such income will be taxed to the trustee at 39%. This is inconsistent with the general tax treatment for other amounts of income.

108. We recommend excluding companies from the corporate beneficiary rule if the company has no New Zealand-resident shareholders, and the beneficiary income is foreign-sourced. This will result in such amounts not being subject to New Zealand tax, consistent with other foreign-sourced amounts of income derived by non-residents.

109. This change would have no fiscal impact. The proposed amendment would align the legislation with the original policy intent of the corporate beneficiary rule.

Recommendation

Agree that companies should be excluded from the corporate beneficiary rule for foreign-sourced amounts of beneficiary income if they have no New Zealand shareholders.

Agreed/Not agreed

Minister of Revenue

Subdivisions/partitions of land between co-owners

Background

110. When co-owners subdivide land and each keep a parcel, each co-owner goes from owning a share in the whole of the undivided land to being the sole owner of the subdivided land. While the share of the subdivided land they hold may reflect the share they held as co-owner, they are considered to have disposed of their share in the parcel they did not keep to the other co-owner.

111. Under the ITA, no income tax is imposed when there is no substantive change of ownership following a subdivision between co-owners. The Bill proposes a change to this rule to give a co-owner who acquires land from another co-owner on a partition or subdivision, the other co-owner’s bright-line start date for the undivided land. However, we now recommend two changes to the original proposal. These would:

Apply the co-owner’s acquisition date/bright-line start date:

111.1 As noted, we had originally recommended that the transferor’s bright-line start date (or acquisition date in the case of land sale rules other than the bright-line test) be aligned with the co-owner’s bright-line start date for their undivided land.

111.2 However, following discussions with submitters, we now recommend that the co-owner’s bright-line start date/acquisition date for their subdivided title be aligned with the bright-line start date/acquisition date that applies to their undivided land. This recognises that co-owners may not acquire the land at the same time (for example, person A may acquire the land, and person B may only be brought on as a co-owner later). It also ensures an appropriate outcome if a co-owner subsequently disposes of their subdivided land because many of the land sale rules turn on when land was acquired.

Exception for land acquired following a subdivision:

111.3 In some cases, a co-owner can acquire an additional piece of land following a subdivision. We recommend an exception to the above rule that would treat this additional piece of land as having an acquisition/bright-line start date of the date the co-owner became entitled to that additional piece of land, rather than the date the undivided land was acquired by the taxpayer. This exception ensures the land sale rules can apply appropriately when an additional portion of land that would otherwise be taxable is acquired.

111.4 We recommend that the application of this rule be subject to the existing de minimis, namely that the additional piece of land acquired by a co-owner would need to be more than 5% of the person's original acquisition. The application of this rule is illustrated in Example 1, below.

Example 1: Land acquired following a subdivision

Person A and Person B buy land in equal shares. They then decide to subdivide and build a house on each of their shares. Upon subdivision, Person A increases their holding and gains an additional 10% of the land, resulting in Person A owning the equivalent of 60% of the undivided land.

Applying the proposed rule above, 5/6ths of Person A's title would be treated as being acquired on the date the undivided land was acquired, with the remaining 1/6th acquisition of the additional 10% being acquired on the date Person A became entitled to it as part of the subdivision.

Fiscal cost

111.5 These changes fit within the original fiscal cost estimate for the amendment proposed in the Bill as introduced.

Recommendations

Agree that a co-owner's bright-line start date and acquisition date for their subdivided title is the date they acquired their first interest in the undivided land.

Agreed/Not agreed

Minister of Revenue

Agree that when a co-owner acquires more land on subdivision, and that extra portion of land is more than 5% of their original allocation, the acquisition date for that extra portion of land is the date they acquired it, rather than the date they acquired the undivided land.

Agreed/Not agreed

Minister of Revenue

Zero-rating services provided in relation to commercial vessels

112. The Bill contains an amendment to zero-rate for GST purposes services provided directly in connection with temporarily imported commercial vessels. This brings the

law into line with services provided in relation to temporarily imported non-commercial vessels, which are zero-rated for GST purposes.

113. Several submitters considered that the proposed expansion of the rule was too narrow, in that it only zero-rated services in relation to some types of commercial vessels that were temporarily in New Zealand, and not others.

114. Officials consider that it is consistent with the policy intent to extend the zero-rating rule to services provided directly in connection with the types of craft and goods referred to by the submitters. This is because the services will be provided in relation to goods or vessels that will ultimately be exported, and therefore relate to consumption that will occur outside New Zealand.

Financial implications

115. The original amendment is forecast to have a small fiscal cost of $0.2 million per annum. The proposed expansion of the rule is minor and falls within the scope of the original intent of the provision. As such, it is not expected to result in any increased fiscal cost.

Recommendations

Agree to expand the zero-rating provision contained in the Bill that applies to services provided directly in connection with commercial vessels to services provided in relation to other types of vessel and goods that will be exported.

Agreed/Not agreed

Minister of Revenue

Note that the proposed extension of the provision is expected to be fiscally neutral.

Noted

Minister of Revenue

Approved taxable period end dates

116. Submitters were supportive of the proposal in the Bill to provide more flexibility for GST-registered taxpayers to have alternative dates approved by the Commissioner as their taxable period end dates, provided good commercial reasons exist for those dates.

117. One submitter noted that it might not always be practicable for a taxpayer to apply for a change in their taxable period end date before the start of the taxable period that they intend the change to be effective for (as is required by the current drafting, except in one specific scenario). The submitter suggested that the Commissioner should be given discretion to allow the change of taxable period end date to take effect in the taxable period in which the person applies.

118. For example, when a person sells their company to another person, the vendor may wish to align the end date of the last taxable period under their ownership with the date of the shareholding change. In this situation, the date of the shareholding change may not be known until close to the settlement date.

119. Officials agree that there are some situations (such as the example outlined above, and a small number of other scenarios) in which it would be desirable for the Commissioner to have the discretion to allow a change in taxable period end date to take effect in the period in which the change is requested. We recommend that the person requesting the change be required to show that it was not practicable

for them to apply for the change before the start of the taxable period they intend the change to be effective for.

Recommendations

Agree that the Commissioner may allow a change in taxable period end date to take effect in the taxable period in which the change is requested if the person requesting the change can show that it was not practicable for them to apply for the change before the start of that taxable period.

Agreed/Not agreed

Minister of Revenue

Agree that this amendment apply retrospectively from 30 March 2022 (being the application date for the proposals currently in the Bill relating to taxable period end dates).

Agreed/Not agreed

Minister of Revenue

Timing of GST on accommodation supplied through an electronic marketplace

120. Submitters were broadly supportive of the proposal to provide operators of electronic marketplaces, listing intermediaries, and accommodation providers with the option of accounting for GST on a supply of taxable accommodation made through an electronic marketplace on the completion of the performance of the services (being the guest's check-out date) or at an earlier time.

121. However, two submitters raised concerns with the practicality and workability of the proposal as it applies to accommodation providers using electronic marketplaces. Officials understand these concerns relate to a relatively common industry practice where some marketplace operators pay the monies owing to the accommodation provider a couple of days after guest check out has occurred. In this situation, the accommodation provider's accounting system is often configured to recognise the payment and the GST liability on the date the provider receives the money from the marketplace operator. This means that if the latest the provider can account for the supply in their GST return is the check-out date, they essentially need to do a manual workaround in their system to ensure the amounts are included in the correct taxable periods, which increases their compliance costs.

122. Both submitters seem to prefer an approach where the supplier can account for GST on the date they physically receive the payment. The problem with this approach (and with the current law) is that in the accommodation context, the supplier is usually considered to have received payment the moment the customer pays for the supply, even when the payment is made to a different person who holds the payment for a period before remitting it to the supplier. This is the case, for example, when the person receives payment as agent of the supplier.

123. To deal with the issue raised by submitters, officials instead recommend that the proposal in the Bill be amended to allow the person that is liable for GST on these supplies to account for GST up to seven days after the performance of the services is completed. We tested this approach with one of the submitters that raised the issue, and they were satisfied that it would address the problem in virtually all cases (because the timing difference between guest check out and receipt of payment from the marketplace operator is typically only one or two days).

Recommendations

Agree that marketplace operators, accommodation providers and listing intermediaries have the option of accounting for GST on a supply of taxable accommodation made through an electronic marketplace seven days after the completion of the performance of the services or at an earlier time.

Agreed/Not agreed

Minister of Revenue

Agree that this amendment apply retrospectively from 1 April 2024 (being the date the GST rules for the platform economy came into force).

Agreed/Not agreed

Minister of Revenue

Drafting of GST rule that limits a final deduction when land is sold by a property developer

124. The Goods and Services Tax Act 1985 includes a rule that limits input tax adjustments for land sold by property developers to the GST fraction of the original purchase price. This ensures that GST is collected on the full increase in the land's value (because the increase in value is likely to be due to their property development activity).

125. The Bill proposes a remedial amendment that would expand how property developers are defined for the purpose of this rule by adding references to erecting buildings and dealing in land.

126. Submitters have expressed concern that adding these references could make the rule broader than intended when it was introduced. Submitters argue this could potentially apply to businesses who sell land that they used for another business purpose, rather than a property development activity (for example, a retirement village that buys land with an intention to use the land to provide accommodation services, but ultimately decides to not proceed with its plan and sells undeveloped land instead).

127. We agree with submitters and recommend clarifying the proposed rule so it better achieves the original policy intention of applying to property developers. This would not have a fiscal cost because the policy intention and forecast revenues assumed the rule would be limited to property developers, and the drafting in the Bill is a proposal rather than current law.

Recommendation

Agree to clarify the proposed GST rule in the Bill that limits input tax adjustments for land sales so it applies as intended to land that is developed and sold by property developers.

Agreed/Not agreed

Minister of Revenue

Generic response to emergency events

128. Submitters were generally supportive of the emergency response provisions. All submitters support the introduction of generic response provisions for emergency events to improve efficiency for the Government and certainty for taxpayers. Submissions primarily suggested additional measures and feedback on the Order in Council activation mechanism. We are not recommending adding any further measures. The Taxpayers Union submission was against the information-sharing proposal, but the Office of the Privacy Commissioner supports the proposal.

Activation of emergency response mechanism

129. Officials have declined aspects of the Legislation Design and Advisory Committee's (LDAC) submission, which suggests additional legislative criteria for activating the Emergency Response proposal. Specifically, they suggested listing the criteria that Ministers would need to consider when deciding whether a particular declared emergency warranted activation of one or more of the generic measures. In our view, the criteria that Ministers would consider are more appropriate as Ministerial and Cabinet discretions. Legislative requirements, such as those suggested by LDAC (eg, economic magnitude), could be overly prescriptive and be an impediment to the timely activation of the relevant measures, thereby reducing certainty for taxpayers.

130. We propose that the emergency response measures be redrafted. This proposed redraft is the result of internal and external stakeholder feedback on the complexity and readability of the proposed provisions. Therefore, the objective of the new draft would be to reduce compliance costs for businesses by making the provisions easier to follow. We will be consulting with key stakeholders on the proposed redraft.

Information sharing

131. Although one submitter opposed the information-sharing aspect of the emergency response proposal, the Office of the Privacy Commissioner expressed support for the approach proposed in the Bill.

Crypto-Asset Reporting Framework

132. Submitters were supportive of New Zealand adopting the OECD CARF and recognise that it is important that tax authorities have visibility over incomes derived through crypto-assets. Submitters were also supportive of the amount of lead-in time before the proposals take effect, noting that this will provide affected crypto-asset service providers with sufficient time to adopt the rules.

Incorporation by reference

133. Some submitters were critical of the proposed approach to incorporate the OECD CARF into New Zealand by way of reference to the OECD standard, as opposed to transposing the CARF in detail into New Zealand legislation.

134. Incorporation by reference has been utilised for previous OECD standards (such as the Common Reporting Standard and Model Rules for the platform economy) and is done to ensure New Zealand has equivalent rules with other jurisdictions. Direct transposition of the standard into New Zealand law could result in some inadvertent differences between the New Zealand rules and OECD standard, and result in New Zealand not being subject to information exchange. Some submitters sought further clarity on how the proposed penalty provisions will apply. Further examples of how the penalty provisions are intended to apply will be included in a *Tax Information Bulletin* item.

Privacy

135. The Office of the Privacy Commissioner (the OPC) submitted that more detailed analysis of the privacy impacts of the CARF are necessary before the Bill proceeds into law.

136. We sought comments from the OPC prior to the introduction of the Bill and met with the OPC following the introduction of the Bill. The OPC has since noted the confidentiality, data safeguards and legal framework that protect the personal information Inland Revenue collects. The OPC further noted that the technical controls that apply to information shared to overseas tax authorities (including confidentiality and data safeguards that are subject to independent review), help to mitigate potential privacy concerns, particularly those relating to cybersecurity risks. We accordingly believe that the points made in the OPC's submission have been substantially addressed.

NZBN information sharing

137. You will recall the Bill proposes the sharing of the contact addresses and tax file numbers of unincorporated entities with the Ministry of Business, Innovation and Employment (MBIE) to encourage the uptake of NZBN numbers.

138. The OPC submitted that the proposal lacked a strong policy case, and that the language proposed in the Bill was too broad. The OPC argued that an information sharing agreement could be more appropriate and would preserve the safeguards under the Privacy Act 2020.

139. Following a discussion with the OPC, we remain of the view that an information-sharing agreement is best suited to situations in which information flows from both agencies on an ongoing basis, rather than once, and when the share is ongoing rather than short lived as is currently proposed. We also note the information provided to MBIE would be destroyed once it has been used by MBIE to contact unincorporated entities. However, we agree that there is scope to refine the drafting. We have recommended minor drafting clarifications to ensure the policy intent is more accurately reflected in the wording of the Bill.

Increase thresholds for exempt employee share schemes

140. Submitters were generally supportive of the proposed increase to the thresholds for exempt employee share schemes, though some supporters believe the threshold increases should have been greater.

141. Suggestions included further increasing the threshold to make it easier for businesses in the start-up sector to utilise the scheme, and reconsidering the spending cap. Another submitter suggested that other monetary thresholds in the Inland Revenue Acts should be updated to reflect the effects of inflation.

142. Officials have recommended declining these submissions on the basis that they do not align with the policy intent of the scheme. A tax exemption for employment income does not fit generally within New Zealand's broad-based low-rate framework. The limit on the benefit provided, and the fact that the scheme must be "widely offered" to almost all employees, are the main justifications for operating the exempt scheme, which carves out employment income from the tax base. Further, allowing a deduction would be inconsistent with the treatment of exempt income.

PIE eligibility

143. Some submissions were received suggesting that no remedial amendments should be made to the PIE rules without a fuller review. Similar comments were made in our initial consultation on this issue. As stated in our earlier report (IR 2024/189 refers), officials have reviewed the original policy documents in relation to these rules and are confident that a more comprehensive review is unnecessary and that the proposed amendments align with the original policy intent of the PIE rules.

Extending KiwiSaver eligibility to temporary visa holders

144. You will recall that KiwiSaver membership is currently only available to New Zealand citizens living permanently in New Zealand and those holding a residence class visa. Te Ara Ahunga Ora Retirement Commission (TAAORC) submitted in favour of extending KiwiSaver eligibility to temporary visa holders. This follows the recommendation made in its *2022 Review of Retirement Income Policies*.

145. TAAORC noted that New Zealand's settings different from those of Australia, the UK and the USA, in which temporary migrants can join workplace-based retirement savings schemes in those countries. TAAORC argued that changing this setting would help to ensure New Zealand is an attractive destination to a globally mobile labour force.

146. While we acknowledge that those on temporary visas are ineligible to join KiwiSaver, we note that any change to current settings would require the reform of the KiwiSaver eligibility rules and would present increased costs for employers (including potentially the Crown). Accordingly, we have recommended this submission be declined until such time as this work is prioritised and resourced as part of the Government's tax and social policy work programme.

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Measures for inclusion in an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill**

Date:	5 February 2025	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2025/001

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	18 February 2025

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Joshua Fowler	Senior Policy Advisor	s 9(2)(a)	☒
Carl Harris	Senior Policy Advisor	s 9(2)(a)	☐
Damien Mancer	Policy Advisor	s 9(2)(a)	☐

5 February 2025

Minister of Revenue

Measures for inclusion in an Amendment Paper to the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill

Summary

Purpose

1. This report:

   1.1 updates you on recent developments in the progress of the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill ("Emergency Response Bill") through the House; and

   1.2 seeks your permission to include additional legislative amendments in an Amendment Paper to the Bill.

The Emergency Response Bill

Timetable

2. The Emergency Response Bill is currently being considered by the Finance and Expenditure Committee (FEC). FEC is required to report the Bill back to the House by 28 February 2025.

3. Following discussions with the Leader of the House's Office, we understand the second reading of the Bill is likely to occur on 4 March 2025, to be followed by Committee of the whole House stage on 5 March 2025 and third reading on 13 March 2025. Royal assent is expected by the end of March 2025.

Upcoming Amendment Paper

4. You will recall the proposed release of an Amendment Paper at the Committee of whole House stage of the Bill. The Amendment Paper will contain the following items already approved by you for inclusion, namely:

   4.1 final-year fees free for student loans (IR2024/367 refers);

   4.2 changes to ensure the appropriate tax treatment of the resale rights for visual artists (IR2024/487 refers).

5. The Amendment Paper will also add the New Zealand Memorial Museum Trust – Le Quesnoy to the list of overseas donee organisations in the Income Tax Act 2007, with effect from 1 April 2025.[1]

Additional proposals

6. We are seeking your permission to include further proposals in the upcoming Amendment Paper. The additional proposals in this report are remedial in nature and do not require Cabinet approval. They do not give rise to any material

[1] ECO-24-MIN-0275, CAB-24-MIN-0458 refer.

compliance or administration costs, or any significant systems or technology implications for Inland Revenue.

Auckland Future Fund

7. Auckland Council has established the Auckland Future Fund (AFF) as a long-term investment fund for the benefit of the current and future communities of the Auckland region. The Council is promoting the Auckland Council (Auckland Future Fund) Bill (the AFF Bill). This is a local Bill, with the purpose of fostering public confidence in the administration of the AFF, while enabling the Council to retain the flexibility to make decisions about the entity or body that holds and manages the AFF.

8. As a local authority, Auckland Council is exempt from income tax. We recommend amending the Income Tax Act 2007 to also exempt the AFF from income tax on the basis the AFF will be undertaking activities that could be directly undertaken by the Council. The AFF Bill will ensure that only Auckland Council or an entity approved by Auckland Council will be able to receive distributions from the AFF.

9. We recommend amending the Goods and Services Act 1985 to include the AFF within the definition of "local authority". This will ensure the AFF will be able to claim GST back on its purchases and expenses, consistent with other local authorities.

10. The AFF Bill is expected to be enacted in mid-2025. We recommend including amendments to the Inland Revenue Acts in an Amendment Paper to the Emergency Response Bill to provide for the correct tax treatment of AFF before the AFF Bill is enacted.[2] These changes will have no fiscal, operational or systems impacts.

11. These amendments should apply from the day after the Emergency Response Bill receives Royal assent.

Consultation

12. We have consulted the Auckland Council on these proposed amendments, and they are supportive of the changes. The Department of Internal Affairs and the Ministry for Business, Innovation and Employment have been informed of the proposed changes.

Clarifying the use of the power to extend time for doing something under Inland Revenue legislation

13. The Tax Administration Act 1994 gives the Governor-General the power, by Order in Council, to extend a timeframe for doing a thing (e.g., file tax information) under the Income Tax Act 2007, the Tax Administration Act 1994, and the Goods and Services Tax Act 1985.

14. There is an interpretation that suggests the power can only be applied in two scenarios, namely:

    14.1 before the time for doing something has expired in circumstances where that thing *cannot* be done; and

    14.2 after the time for doing something has expired in circumstances where that thing *has not* been done.

15. This interpretation means the power may not be able to be used to extend the time for doing something before the due date has expired. This would mean, for example,

[2] This is because, as a local Bill, the AFF Bill cannot amend the Inland Revenue Acts.

the due date for filing a GST return could not be extended until after the original due date had passed unless the reason for the extension was because taxpayers "could not" file the return (due to, say, a natural disaster). This outcome does not align with the policy intent or existing practice. It also increases taxpayer uncertainty as those impacted would not receive advance notice of a timeframe being extended until after they had failed to meet that timeframe.

16. We recommend a remedial amendment to clarify that this power can be used to extend a date in advance of the expiration of the timeframe. We also recommend limiting the power to only extend the timeframes that apply to taxpayers, rather than all timeframes (some of which apply to the Commissioner). This amendment has no fiscal, operational or system impacts.

17. We recommend the amendment be included in an amendment paper as the section is used for unusual and unexpected situations which cannot be foreseen and delaying this change to the next tax bill may result in uncertainty to taxpayers in one of those situations where certainty is paramount.

18. We recommend this amendment apply from the day after the Emergency Response Bill receives the Royal assent.

Consultation

19. Chartered Accountants Australia New Zealand and the Corporate Taxpayers Group have been consulted on the proposed remedial and support it on the basis that it is taxpayer friendly. This amendment also addresses their concerns that this power allows timeframes that apply to the Commissioner to be extended.

20. We are in the process of consulting on the proposed draft legislation with the Crown Law Office.

Final-year Fees Free –non-disputable decision

21. On 29 April 2024, Cabinet agreed to replace first-year Fees Free with a final-year Fees Free scheme from 1 January 2025, whereby payments of learner fees will be made following completion of their study programme (CAB-24-MIN-0148 refers). Inland Revenue is administering the final-year Fees Free initiative.

22. In October 2024 (IR2024/367 refers), Ministers agreed that legislative changes to give effect to fees free would be included in an Amendment Paper to the Emergency Response Bill.

23. A learner who does not agree with a decision can utilise the Inland Revenue complaints process, and if this does not resolve matters, a review by the Ombudsman may be sought and judicial review is also available.

24. This is consistent with the approach that was taken with COVID-19 support and cost of living payments administered by Inland Revenue. A complaints process is considered more appropriate than the tax-specific disputes process because the Fees Free entitlement will be based on information provided by another agency (rather than a tax assessment). Therefore, we recommend that decisions made in relation to final-years Fees Free should not be a "disputable decision".

25. This amendment should apply from 1 January 2025, with the first fees free payment not being made until 2026.

Consultation

26. We have advised the Ministry of Education, the Ministry of Social Development and the Tertiary Education Commission that decisions made in relation to final-years Fees Free are not a "disputable decision".

Repeal of provision allowing information sharing between Inland Revenue and Companies Office

27. You and the Minister of Finance previously agreed to extend the date by which the provision which enables the repeal of the authorising provision for the information share between Inland Revenue and the Companies Office (Repeal Provision) will itself be repealed. You agreed to extend the repeal of the Repeal Provision from 1 April 2025 to 1 April 2027 (IR2024/396 refers).

28. This change will ensure the Repeal Provision is not automatically repealed before the proposed Approved Information Sharing Agreement (AISA) between Inland Revenue and MBIE may take effect. The proposed AISA will act as the new authorising provision for the information share between Inland Revenue and the Companies Office if it comes into force.

29. We recommend that this extension of time be included in the Bill via Amendment Paper with a commencement date of 31 March 2025.

FamilyBoost tax credit terminology

30. We have identified a minor inconsistency in the drafting of the FamilyBoost provisions in the Tax Administration Act 1994. We recommend including an amendment in the Amendment Paper to ensure there is a consistent use of terminology. This amendment should apply from 1 July 2024, the date when the FamilyBoost provisions first came into effect.

Consultation

31. The Treasury has been consulted and has no concerns about the proposed measures set out in this report.

Next steps

32. Following this report, we will incorporate the necessary legislative amendments into the draft Amendment Paper.

33. The Amendment Paper is scheduled to be released for consideration as part of the Committee of whole House stage of the Emergency Response Bill. This stage is expected to be in the week commencing 3 March 2025.

Recommended action

We recommend that you:

Proposed amendments to apply from day after Royal assent

a) **Agree** the Auckland Future Fund should be exempt from income tax;

Agreed/Not agreed

b) **Agree** the Auckland Future Fund should be treated as a "local authority" for GST purposes;

Agreed/Not agreed

c) **Agree** to amend the power to extend the time for doing anything under the Inland Revenue legislation to allow a prospective extension of time prior to a due date expiring;

Agreed/Not agreed

d) **Agree** that amendments referred to in recommendations (a) to (c) should apply from the day after the Emergency Response Bill receives the Royal assent;

Agreed/Not agreed

Proposed amendments that will apply from 1 January 2025

e) **Agree** that decisions made in relation to final years Fees Free should be non-disputable decisions;

Agreed/Not agreed

f) **Agree** that amendments referred to in recommendation (e) should apply from 1 January 2025;

Agreed/Not agreed

Proposed amendments that will apply from 31 March 2025

g) **Note** you and the Minister of Finance previously agreed to extend the date by which the Repeal Provision, described in paragraphs 27-29 above, will be repealed from 1 April 2025 to 1 April 2027;

Noted

h) **Note** the amendment referred to in recommendation (g) will apply from 31 March 2025;

Noted

Proposed amendments that will apply from 1 July 2024

i) **Agree** to adjust the terminology in the FamilyBoost tax credit provisions to make it more consistent;

Agreed/Not agreed

j) **Agree** that amendment referred to in recommendations (i) should apply from 1 July 2024;

Agreed/Not agreed

Legislative vehicle

k) **Agree** to include legislative amendments that give effect to the recommendations above in an Amendment Paper to be released at the Committee of whole House stage of the Emergency Response Bill.

Agreed/Not agreed

s 9(2)(a)

Joshua Fowler
Bill Manager
Policy

Hon Simon Watts
Minister of Revenue
/ /2025

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Base maintenance measure for inclusion in upcoming Amendment Paper**

Date:	20 February 2025	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2025/066

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations	27 February 2025
Minister of Revenue	**Agree** to recommendations	27 February 2025

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**	**Suggested first contact**
Martin Neylan	Policy Lead	s 9(2)(a)	☐
Ben Smith	Principal Policy Advisor	s 9(2)(a)	☒

20 February 2025

Minister of Finance
Minister of Revenue

Base maintenance measure for inclusion in upcoming Amendment Paper

Purpose

1. This report seeks your agreement to include a base maintenance amendment in the Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill. The amendment would prevent revenue leakage by denying inappropriate income tax deductions for operators of electronic marketplaces and listing intermediaries in the platform economy.

Inappropriate income tax deductions

2. GST rules for the platform economy came into force on 1 April 2024. These rules include a flat-rate credit scheme to reduce over-taxation of services provided by hosts, drivers and deliverers who provide accommodation and transportation services through electronic marketplaces. The flat-rate credit scheme compensates hosts, drivers and deliverers who are not registered for GST by providing them with a credit for GST on their average expenditure associated with providing these types of services.

3. The flat-rate credit scheme requires marketplace operators and "listing intermediaries"[1] to pass on a proportion of the GST they collect to hosts, drivers and deliverers who have notified them that they are not registered for GST. This is equal to 8.5% of the value of the services, and it is funded by a deduction against the 15% GST collected by marketplace operators and listing intermediaries. The flat-rate credit is intended to put hosts, drivers and deliverers in a comparable position to GST-registered persons who provide the same services.

4. Inland Revenue is aware some practitioners consider marketplace operators and listing intermediaries can claim income tax deductions for the flat-rate credit under current law. This is because marketplace operators and listing intermediaries must pay the flat-rate credit to certain hosts, drivers and deliverers and it is therefore expenditure they have "incurred". We consider this to be an aggressive interpretation of the rules and an undesirable tax policy outcome, because marketplace operators and listing intermediaries have not borne the economic cost of the flat-rate credit. The flat-rate credit is deducted from GST payable by marketplace operators and listing intermediaries, and it is therefore a cost met by the Crown (through the GST system).

Denying inappropriate deductions requires a law change

5. To prevent marketplace operators and listing intermediaries from claiming income tax deductions for the flat-rate credit, we recommend a minor amendment to the Income Tax Act 2007. This amendment could be included in the Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

[1] A listing intermediary is essentially a property manager interposed between a host and an electronic marketplace.

6. Amending the law now (as opposed to waiting for the next available tax Bill) ensures the appropriate law is in place before marketplace operators and listing intermediaries start preparing their income tax returns for the 2024–25 income year. Because the flat-rate credit scheme has not been in place for a full income year, it is highly unlikely that any marketplace operators or listing intermediaries will have claimed income tax deductions for flat-rate credits they have passed on yet.

7. If the law is not amended, there is a high risk of revenue leakage because marketplace operators and listing intermediaries may claim income tax deductions for any flat-rate credit they have passed on to hosts, drivers and deliverers since 1 April 2024, and this would reduce their profits on which they pay income tax.

Financial implications

8. If you agree with our recommendation to introduce a remedial amendment to address this issue, there will be a small and unquantifiable positive fiscal impact for the Crown. This arises because under the status quo, marketplace operators and listing intermediaries will be able to claim inappropriate income tax deductions for the flat-rate credit. Amending the law to prevent this outcome therefore increases tax revenue relative to taking no action.

9. The financial implications of the change recommended in this report are reflected in the following table:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 and outyears**
Tax Revenue: Income Tax	0.200	0.200	0.200	0.200	0.200
Total operating	**(0.200)**	**(0.200)**	**(0.200)**	**(0.200)**	**(0.200)**

10. This is a small notional fiscal gain, as we do not anticipate that the interpretation under the current law of inappropriate income tax deductions being available is yet widespread. The overall impact on the fiscal position is neutral because the gain from the change is offset by an equal and opposite adjustment to forecasts under the current settings.

11. We recommend this change be recognised on the Tax Policy Scorecard. This would be consistent with your decisions for the Scorecard and there is no risk that the Scorecard would exceed its limits if the additional revenue arising from the change recommended in this report is accounted for on the Scorecard.

Consultation

12. The Treasury has been consulted and supports the recommendations in this report.

Next steps

13. If you agree with our recommendations, we will include an amendment preventing inappropriate deductions for the flat-rate credit in the upcoming Amendment Paper.

Recommended action

We recommend that you:

(a) **agree** that income tax deductions for the flat-rate credit, which is funded through the GST system, should not be available for marketplace operators or listing intermediaries (because the flat-rate credit is not an economic cost borne by them)

Agreed/Not agreed — *Minister of Finance*

Agreed/Not agreed — *Minister of Revenue*

(b) **agree** to include an amendment preventing income tax deductions for the flat-rate credit in the Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill at the Committee of the whole House stage

Agreed/Not agreed — *Minister of Finance*

Agreed/Not agreed — *Minister of Revenue*

(c) **note** the following changes because of decisions made in recommendations (a) and (b), with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 and outyears**
Tax Revenue: Income Tax	0.200	0.200	0.200	0.200	0.200
Total operating	**(0.200)**	**(0.200)**	**(0.200)**	**(0.200)**	**(0.200)**

Noted — *Minister of Finance*

Noted — *Minister of Revenue*

(d) **agree** that the additional revenue from the changes referred to in recommendations (a) and (b) be accounted for on the Tax Policy Scorecard.

Agreed/Not agreed — *Minister of Finance*

Agreed/Not agreed — *Minister of Revenue*

s 9(2)(a)

Ben Smith
Principal Policy Advisor
Policy

Hon Nicola Willis
Minister of Finance
/ /2025

Hon Simon Watts
Minister of Revenue
/ /2025

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: Trust disclosures – post-implementation review recommendations

Date:	12 December 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/481

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	20 December 2024

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Kerryn McIntosh-Watt	Policy Director	s 9(2)(a) [redacted]	☐
Carl Harris	Senior Policy Advisor	s 9(2)(a) [redacted]	☒

12 December 2024

Minister of Revenue

Trust disclosures – post-implementation review recommendations

Executive summary

Purpose

1. This report summarises the findings of Inland Revenue's review of the trust disclosure rules and seeks decisions on whether legislative amendments should be made to improve the rules and reduce compliance costs. Decisions are required before the end of 2024 to allow sufficient time to implement the necessary changes for the 2025 tax returns.

Post-implementation review

2. In 2022, increased disclosure requirements were introduced in the Tax Administration Act 1994 to collect further information from trustees for the 2021–22 and later income years. Not all the disclosure requirements are set out in legislation – the Commissioner of Inland Revenue can use his discretion to collect certain information in prescribed forms.

3. Following their introduction, trustees, tax agents and other stakeholders have raised concerns about the compliance costs associated with complying with the disclosure rules.

4. In January 2024, you agreed to defer making a decision on changes to the trust disclosure rules until after the completion of a post-implementation review (IR2023/292 refers). We have now completed our review. The objective of the review was to determine whether changes should be made to improve future disclosures and reduce compliance costs.

5. We considered a range of options in the review, including repealing the regime in full, keeping it unchanged, and maintaining the regime with changes. To inform our recommendations we interviewed 13 stakeholders, completed a compliance costs survey with 1,200 responses, analysed the disclosure data, and engaged John Cantin, an external practitioner, to undertake an independent review.

6. Officials consider that the disclosures provide useful insights that support tax compliance and the development of tax policy. Not collecting the disclosure information would impact our efforts to enforce the trust tax rules and adversely affect our ability to monitor behavioural changes in response to tax rates.

7. Due to the wider all-of-government benefits, there is a risk that repealing the rules may result in another Government department needing to collect some of the same information (e.g. information about beneficial ownership). The disruption to trustees of introducing, repealing, and then re-introducing some of the same requirements would be costly, inefficient and frustrating for the sector.

8. However, we acknowledge the impact that the disclosures have had on taxpayers. Trustees and tax agents incurred high compliance costs in the first year of complying with the rules as they established new processes and collected information. With these processes in place, compliance costs have lessened in subsequent years, but there are still ongoing difficulties.

9. Following the stakeholder interviews, we held a second round of consultation on potential changes to the rules. Balancing stakeholder feedback and the benefits from a tax compliance and policy perspective, we have identified a range of measures that can reduce compliance costs. Our recommended changes can be grouped into three categories:

   9.1 Reducing granularity: Unnecessary breakdowns within the rules could be removed.

   9.2 Reducing subjectivity: Changes could make it simpler to comply by reducing the number of subjective tests in the rules.

   9.3 Improving the taxpayer experience: Changes could make it easier to comply by streamlining the disclosure process in myIR and improving guidance and forms.

10. We are already working with software providers to progress changes to the disclosure rules for the 2025 tax returns that do not require legislative amendment. We seek your approval to include legislative amendments in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill by Amendment Paper to further improve the disclosures and reduce compliance costs.

Communications plan

11. Attached to this report are draft copies of Inland Revenue's report on the post-implementation review and John Cantin's independent report. We plan on publishing both reports in early 2025. This will allow sufficient time to finalise the reports and peer review the disclosure data for publication.

12. We recommend publishing a press release at the same time to announce the changes to the disclosure rules. We will work with your office on drafting a press release.

Next steps

13. Following your decisions on this report, we will draft the necessary legislative amendments for inclusion in an Amendment Paper for the current omnibus taxation Bill and work with software providers to implement the necessary changes for the 2025 tax returns.

14. The Associate Minister of Justice, Hon Nicole McKee, has responsibility for the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Due to the relevance of the disclosure rules to monitoring beneficial ownership of trusts, we recommend that a copy of this report is referred to Minister McKee.

Recommended actions

Recommendations We recommend that you:	**Minister of Revenue**
a) **agree** that the trust disclosure rules should remain in place, with changes made to reduce compliance costs for taxpayers;	Agreed Not agreed

Recommendations We recommend that you:	**Minister of Revenue**
b) **note** that Inland Revenue is progressing the following changes that do not require legislative amendment: ***Changes to 2025 tax returns*** i. No longer requiring trustees to separately disclose the value of land and buildings that they hold. ii. Reducing the categories of non-taxable distributions. iii. Reducing the categories of settlements. ***Changes on a slower timeframe*** iv. Pre-populating details of “connected persons” in myIR. v. Rewriting the Operational Statement. vi. Improving guides and forms.	Noted
c) **agree** that legislative amendments should be made to the Tax Administration Act 1994 to: ***Changes to 2025 tax returns***	
i. no longer require the disclosure of nil value distributions and settlements;	Agreed Not agreed
ii. replace the minor and incidental test for non-cash distributions and settlements with a $100,000 bright line; and	Agreed Not agreed
iii. introduce a statutory provision to assist trustees in obtaining information.	Agreed Not agreed
d) **agree** to include changes to give effect to your decisions on recommendation (c) in an Amendment Paper for release at the Committee of Whole House stage of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill in March 2025.	Agreed Not agreed
e) **refer** a copy of this report to the Associate Minister of Justice (Hon Nicole McKee) for their information.	Referred Not referred

s 9(2)(a)

Kerryn McIntosh-Watt
Policy Director
Policy

Hon Simon Watts
Minister of Revenue
/ /2024

Background

Regulatory context

15. Apart from the Ministry of Business, Innovation & Employment (MBIE) and Department of Internal Affairs (DIA) registers for charitable trusts, there is no trust register in New Zealand. Inland Revenue is the only agency that collects comprehensive data on domestic and foreign trusts.

16. The Trusts Act 2019 came into force in January 2021, just before the trust disclosure rules in April 2021 (for the 2021–22 and later income years). It is difficult to determine the compliance costs of complying solely with the disclosure rules because the Trusts Act codified potentially more stringent requirements for trustees than were previously applied. The Trusts Act requires trustees to identify initial trust settlements, identify every beneficiary and provide every beneficiary (or their representative) with basic trust, including financial, information.

Increased disclosure requirements

17. Increased disclosure requirements were introduced to collect further information from trustees to (a) gain insight into whether the 39% personal tax rate is working effectively and to (b) provide better information to understand and monitor the use of structures and entities by trustees.

18. The Tax Administration Act 1994 requires trustees of trusts with assessable income to disclose financial information and details of distributions, settlements, beneficiaries, settlors, and persons with powers of appointment to add or remove trustees (appointers). Most of the financial information metrics required to be disclosed match those in the IR10 form[1] that is completed by entities in business but includes all of the assets and liabilities of the trust, not just their business activities. Not all the disclosure requirements are set out in legislation – the Commissioner of Inland Revenue can use his discretion to collect certain information in prescribed forms.

19. A range of trusts are excluded from the disclosure rules, including charities, trusts eligible to be Māori authorities, and trusts that are "non-active". To be non-active, a trust must have only reportable income of $1,000 or less (in addition to other requirements).

Post-implementation review

20. In January 2024, you agreed to defer making a decision on changes to the disclosure rules until after the completion of a post-implementation review (IR2023/292 refers). The objective of the review was to determine whether changes should be made to improve future disclosures and reduce compliance costs. The full range of options includes repealing the regime, keeping it unchanged, and maintaining the regime with changes.

21. We have now completed the review. This included:

    21.1 Interviewing 13 stakeholder groups that represent trustees, tax agents, accountants, tax advisers, and software providers.

    21.2 Undertaking a compliance costs survey of 17,000 trustees and tax agents.

[1] The IR10 form is a form for the disclosure of business assets (and other business financial information). The IR10 is used by more companies than trusts.

21.3 Analysing the disclosure data from the 2021–22 and 2022–23 income years.

21.4 Engaging John Cantin, an external practitioner, to undertake a parallel, but independent, review of the disclosure rules.

22. This report summarises the conclusions of our review and provides recommendations on improving the regime and reducing compliance costs. Attached to this report are near-final versions (subject to formatting, proofreading, and quality assurance of data) of Inland Revenue's report on the post-implementation review and John Cantin's report. Following your decisions on this report, we will publish both Inland Revenue's and John Cantin's reports in early 2025.

Findings of the review

Feedback from interviews with stakeholders

23. We received a range of differing, and at times conflicting, views from stakeholders, trustees and tax agents. There were clear differences in feedback from stakeholders that generally represent larger, more complex trusts compared with feedback from stakeholders that represent mostly smaller trusts. The differences in views reflect the unique role that trusts play in New Zealand. Trusts are used in a wide range of contexts, with different purposes, objectives, and activities. Although distinctions can be made between different types of trusts, the vast majority are subject to the same laws and tax settings as each other.

24. Some feedback also stemmed from the way in which the disclosure requirements are presented in different accounting systems, which is generally outside of Inland Revenue's control.

25. Common themes from stakeholders were that:

25.1 Complying with the rules was hardest and most costly in the first year due to the need to establish new processes and undertake a one-off collation of some information. Complying is generally easier in subsequent years, but still incurs an ongoing cost.

25.2 Disclosing information is easier if it is already available in the financial statements prepared by the trust. Collecting non-financial information can be difficult, particularly settlor, beneficiary and appointer information.

25.3 Disclosing non-cash distributions is problematic. It can be difficult to value non-monetary amounts and the exclusion for "minor and incidental" distributions is difficult to apply.

25.4 Some stakeholders have said that the disclosures have led to a greater awareness of the trust tax rules, others said the disclosures have not benefited trustees.

25.5 Changes should only be made if they result in a real reduction in ongoing compliance costs, otherwise changes could just create more one-off costs.

26. Stakeholders made a range of suggestions for how the rules could be improved. Common suggestions included adopting a risk-based approach and exempting small trusts from the rules. Stakeholders considered that the level of detail required for the disclosure of financial information was unnecessarily specific, and that Inland Revenue needed to be clearer about why the information needs to be disclosed.

Survey results

27. We sent a voluntary compliance costs survey to 17,000 randomly selected trustees and tax agents, and received 1,200 responses (a 7% response rate). Similar to feedback received in stakeholder interviews, the survey respondents provided mixed results. This may also reflect the wide range of uses of trusts in New Zealand, and that simpler trusts are likely to have lower compliance costs. The main takeaways from the survey are that:

    27.1 52% of respondents said that fees to prepare tax returns have increased by more than 5% between 2022–23 (second year of disclosures) and 2020–21 (year before disclosures).

    27.2 40% of respondents said fees to prepare financial statements were more than 5% higher over the same period.

    27.3 Many trustees may be preparing financial statements for the first time, which may account for some of the increased compliance costs. 25% of respondents did not prepare financial statements for the 2020–21 financial year.

    27.4 35% of respondents incurred fees for the one-off collation of information to comply with the first year of the rules (2021–22). Only 4% said they incurred fees for the collation of information in the second year (2022–23).

Benefits to Inland Revenue

28. The disclosure data has continued to inform our compliance approach. The second year of disclosures (2022–23) are broadly consistent with the first year (2021–22). There were no major new insights, yet compliance issues continue to be highlighted. We continue to direct resources towards compliance interventions where taxpayers appear not to have complied, or where the disclosures have uncovered tax risks. Examples include:

    28.1 <u>Distributions to minors</u>: We have undertaken 200 reviews of income allocated to minors. The "minor beneficiary rule" is an integrity rule that taxes certain beneficiary income distributions to minors at the trustee tax rate to prevent trustees from taking advantage of a minor's low tax rate. Most were found to have been incorrectly taxed at the minor's tax rate, rather than the trustee rate.

    28.2 <u>Omitted income</u>: We ran a campaign to review 1,300 taxpayers who had received income from a trust but had not included them in their tax assessments. We received a good response with many taxpayers making voluntary disclosures. Further follow up work is underway for those that have not replied. The new data enables us to better identify recipients of trust income, which may lead to more automation in this area.

    28.3 <u>Access to data</u>: We have made data about beneficiary distributions and current account balances more accessible in our system to ensure our staff are alerted to trust income/distributions when discussing possible social policy issues with customers. This also allows our staff to better assess a taxpayer's financial position when they need help with tax debt.

29. The data has also continued to assist us in identifying changes in taxpayer behaviour in response to changes in tax rates and will continue to provide insights during the current and future income years as we monitor compliance with the 39% trustee tax rate. Collecting disclosures from the 2023–24 year (the year before the 39% trustee rate) and the 2024–25 year (the first year of the 39% trustee rate) will be

crucial for monitoring behavioural responses to the 39% rate; those disclosures will be due to be filed by 31 March 2025 and 31 March 2026, respectively.

All-of-government benefits

30. The disclosures also have wider non-tax benefits. New Zealand received an uplift in our Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) rating with the OECD Financial Action Task Force (FATF) due to the Trusts Act 2019 and increased disclosure rules. The latter were seen as a very important transparency initiative especially as to identification of controlling persons.

31. New Zealand's AML/CFT regulatory system is supported by multiple agencies and is an all of Government priority. Although the trust disclosure regime has a tax focus, significant changes to reduce the disclosure requirements for trustees may have a negative impact on New Zealand's AML/CFT rating.

Conclusions

32. We do not recommend repealing the rules; the disclosures provide useful insights that help support tax compliance and the development of tax policy. Not collecting the disclosure information would impact our ability to enforce the trust tax rules and adversely affect our ability to monitor behavioural changes in response to tax rates.

33. Due to the wider all-of-government benefits, there is also a risk that structural changes to exempt large classes of trusts from the rules, or repeal the rules entirely, may result in another Government department needing to collect some of the same information in the near future. The disruption to trusts of introducing, repealing, and then re-introducing some of the same requirements would be costly, inefficient and frustrating for the sector.

34. However, we acknowledge the impact that the disclosures have had on taxpayers. Trustees and tax agents incurred high compliance costs in the first year of the rules as they established new processes and collected information. With these processes in place, compliance costs have lessened in subsequent years, but there are still ongoing difficulties.

35. Following the stakeholder interviews, we held a second round of consultation on potential changes to the rules. Balancing stakeholder feedback and the benefits from a tax compliance and policy perspective, we have identified a range of measures that can reduce compliance costs. Our recommended changes can be grouped into three categories:

    35.1 <u>Reducing granularity</u>: Unnecessary breakdowns within the rules could be removed.

    35.2 <u>Reducing subjectivity</u>: Changes could make it simpler to comply by reducing the number of subjective tests in the rules.

    35.3 <u>Improving the taxpayer experience</u>: Changes could make it easier to comply by streamlining the disclosure process in myIR and improving guidance and forms.

36. Stakeholders highlighted reduced disclosure requirements or an exemption for small trusts as a priority. We do not recommend exempting (or reducing requirements for) classes of trusts from the disclosure requirements at this stage. As noted above, a range of trusts are already excluded from the disclosure rules. Introducing further exemptions may impact our ability to monitor compliance with the 39% trustee rate. We recommend deferring consideration of exempting "small trusts" from the

disclosure rules until after the first tax returns under the 39% trustee tax rate have been analysed (late 2026).

Reducing granularity

Land and buildings

37. Trustees are required to disclose the value of land and buildings held by the trust separately. Similarly for settlements of land and buildings on the trust. This breakdown was introduced for simplicity because it aligns with the existing IR10 form for taxpayers in business. This has been problematic for some trustees that have not held valuations for land and buildings separately. We are progressing changes to only require a combined value for a trust's land and buildings and settlements of land and buildings. This will not require a legislative amendment.

Categories of beneficiary distributions

38. Currently, trustees are required to disclose whether a non-taxable distribution is a distribution of trust capital, trust corpus, use of trust property for less than market value, distribution of trust assets, or forgiveness of debt. We are progressing changes to the trust tax return to combine these breakdowns and only require a combined value for non-taxable distributions. This will not require a legislative amendment.

Reducing subjectivity

Nil value distributions and settlements

39. Under the legislation, trustees subject to the disclosure requirements are required to disclose all distributions and settlements for the relevant year. We recommend that the legislation is amended to no longer require the disclosure of nil value distributions or settlements. Stakeholders identified this as a priority among the range of options provided.

Minor and incidental test

40. Trustees are also not required to disclose non-cash distributions or settlements if they are minor and incidental to the activities of the trust. This is a subjective test that requires trustees to value non-cash transactions and consider whether the distribution or settlement is incidental to the activities of the trust. Stakeholders have advised that determining whether a distribution or settlement needs to be disclosed is a compliance heavy exercise and supported simplifying the requirements.

41. We recommend amending the legislation to simplify the disclosure requirements for distributions and settlements by replacing the minor and incidental test with a bright line test. We recommend that:

    41.1 if a beneficiary has received less than $100,000 worth of non-cash distributions from the trust, then those distributions do not need to be disclosed for that income year.

    41.2 if a settlor has settled less than $100,000 worth of non-cash settlements on the trust, then those settlements do not need to be disclosed for that income year.

42. For the 2022–23 year, 2,500 trusts disclosed non-cash distributions to 4,200 beneficiaries. The below table shows that a $100,000 bright line for non-cash distributions will mean that 48% of these trusts will no longer need to disclose these distributions, while only 2% of the total value disclosed will be foregone. This also

has the additional benefit of simplifying the rules for the unknown number of trusts that determined they had a distribution that was minor and incidental and did not need to be disclosed. This would simplify the costs for many trustees and tax agents, while still retaining most of the benefit of the disclosures. A similar impact for non-cash settlements is also shown in the table below.

Table: Non-cash distributions disclosed for 2022–23 year

	Below bright line of $100,000	**Above bright line of $100,000**
Number of trusts	1,200 **(48%)**	1,300 (52%)
Number of beneficiaries receiving distributions	1,900 (45%)	2,300 (55%)
Total value of non-cash distributions *(use of trust property, distribution of trust assets, and forgiveness of debt)*	$34m **(2%)**	$1,768m (98%)

Table: Non-cash settlements disclosed for 2022–23 year

	Below bright line of $100,000	**Above bright line of $100,000**
Number of trusts	1,600 **(33%)**	3,200 (67%)
Number of settlors making settlements	2,500 (34%)	5,000 (67%)
Total value of non-cash settlements *(land, buildings, shares/ownership interests, financial arrangements, services, other)*	$50m **(1%)**	$5,800m (99%)

Improving the taxpayer experience

Statutory provision to support trustees

43. Some stakeholders noted that trustees found it difficult to obtain details of settlors, beneficiaries and appointers. The disclosure rules place obligations on trustees, but there is no legislative requirement compelling settlors, beneficiaries and appointers to provide the necessary information to trustees. This can result in situations where trustees are unable to comply with the rules despite their best efforts. We recommend introducing a statutory provision to support trustees by requiring the relevant settlors, beneficiaries and appointers to provide the necessary information to trustees.

Pre-population of information in myIR

44. Trustees are required to disclose, for an income year, details of settlors that made a settlement on the trust and details of beneficiaries that received a distribution from the trust. If details of the same settlor or beneficiary need to be disclosed in subsequent years, taxpayers that use myIR are required to resubmit the person’s details again each time; there is no ability for details from prior years to be pre-populated.

45. We propose allowing for pre-population of prior year’s information in myIR to reduce ongoing costs for trustees. However, this would require system changes for Inland Revenue, further time to develop and implement, and require prioritisation against

Inland Revenue's other delivery priorities. Pre-population can already be achieved for taxpayers that use external software providers such as MYOB.

Improved guidance and forms

46. In 2022, Inland Revenue published an Operational Statement setting out the Commissioner's view of the law regarding the disclosure rules and providing guidance on practical issues. We plan on updating the Operational Statement to take into account the proposed changes for the 2025 tax returns and provide improved guidance in response to feedback from stakeholders.

47. We also plan on updating the tax return and guidance to improve ease of access.

External practitioner's review

48. John Cantin's independent report on the disclosure rules is focused on taxpayer compliance costs and benefits. He draws conclusions based on evidence gathered from stakeholders during the review, along with policy and wider all-of-government considerations. He recommends that the conclusions in both his and Inland Revenue's report are consulted on through the Generic Tax Policy Process.

49. His report concludes that the trust disclosure regime should continue, subject to changes to reduce compliance costs and reconsideration of its relevance in the future. He suggests that the purpose of the rules should be restated as:

    49.1 supporting Inland Revenue's administration, processing and enforcement functions, and

    49.2 helping to inform tax policy decisions.

50. He recommends that any changes to the rules should balance reducing compliance costs with ensuring that adequate information is collected. The report also suggests that any changes should consider the following:

    50.1 whether the information required can be aligned with what is produced by trusts, and

    50.2 whether the information required is necessary.

51. Further specific recommendations are provided in his draft report, which has been attached.

Implementation

52. Some of the recommendations of the review can be progressed without legislative amendment – these relate to the prescribed forms set by the Commissioner. We are already liaising with software providers on implementing these changes for the 2025 tax returns.

53. To implement the changes that require legislative amendment in time for the 2025 tax returns, your decisions are required before the end of 2024. This is due to the required lead in times to progress changes to tax returns and engage with software providers.

54. Subject to your decisions on this report, the changes that require legislative amendment will be included in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill by Amendment Paper at the Committee of Whole House stage in March 2025.

Financial and administrative implications

55. The proposals in this report that we recommend progressing for the 2025 tax returns have no financial or administrative implications and will be delivered within existing baselines. The potential impact of longer-term changes (i.e. pre-population of information in myIR) will require further analysis.

Communications plan

56. Following your decisions on this report, we plan to publish our report on the post-implementation review and John Cantin's report in early 2025.

57. We recommend that you issue a press release at the same time to announce the proposed changes to improve future disclosures and reduce compliance costs. We will work with your office on drafting a press release.

58. We have already begun engaging with software providers on the proposed changes in this report. Software providers and tax agents will be engaged through our normal annual change processes as we implement the changes.

Milestone	Tentative date
Ministerial decisions on legislative amendments to the rules	Before end of 2024
Publication of Inland Revenue's post-implementation review report and John Cantin's report	February 2025 [TBC]
Ministerial press release announcing changes to the disclosure rules	February 2025 [TBC]
Amendment Paper to Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill released at Committee of Whole House stage	Early March 2025
Enactment of Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill	Before end of March 2025
2025 tax returns go live (containing changes to disclosure rules)	Early April 2025

Appendix: Summary of proposed changes to the trust disclosure rules

Item	Proposed change	Is a legislative amendment required?	Estimated implementation date
Reducing granularity			
1	No longer requiring trustees to separately disclose the value of land and buildings that they hold	No	2025 returns
2	Reducing the categories of beneficiary distributions	No	2025 returns
3	Reducing the categories for settlements	No	2025 returns
Reducing subjectivity			
4	No longer requiring the disclosure of nil value distributions and settlements	Yes	2025 returns
5	Replacing the minor and incidental test for distributions and settlements with a $100,000 bright line	Yes	2025 returns
Improving the taxpayer experience			
6	Introduce statutory provision to assist trustees in obtaining information	Yes	1 April 2025
7	Pre-populate details of "connected persons" in myIR	No	TBC
8	Rewrite of the operational statement	No	TBC
9	Improving guides and forms	No	TBC

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: **Further advice on recommended trust disclosure changes**

Date:	20 February 2025	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2045/048

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations	27 February 2025

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Kerryn McIntosh-Watt	Policy Director	s 9(2)(a)	☐
Carl Harris	Senior Policy Advisor	s 9(2)(a)	☒

20 February 2025

Minister of Revenue

Further advice on recommended trust disclosure changes

Executive summary

Purpose

1. This report seeks your agreement to include legislative changes to the trust disclosure rules in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (the Emergency Response Bill) via an Amendment Paper. We are also providing further advice in response to your questions from the 28 January 2025 meeting with officials.

2. Decisions on whether to progress legislative amendments are required by 27 February 2025 to allow sufficient time to draft the legislative amendments.

Consultation

3. In February 2025 we consulted with members of the Tax System Forum (TSF) on potential amendments to the disclosure rules to reduce compliance costs and improve the rules. Similar to feedback from stakeholders during our review in 2024, feedback from the TSF was mixed.

4. The TSF provided mixed support for replacing the minor and incidental test with a de minimis and exempting small trusts from the rules, often because they either prefer a different approach or more significant changes to the disclosure regime. However, they did reach a consensus that changes to reduce requirements to disclose personal information or to introduce a statutory provision to help trustees collect information should not be progressed in the Emergency Response Bill.

Recommended changes for 2025 tax year

5. On 1 February 2025 you agreed that trustees should no longer be required to disclose nil value distributions and settlements. On balance, we also recommend replacing the minor and incidental test for the disclosure of non-cash distributions and settlements with a $100,000 bright-line per beneficiary or settlor.

6. Throughout our review, and in consultation with the TSF, we received feedback that determining whether to disclose non-cash distributions and settlements is a compliance heavy exercise. Although there is a risk that stakeholders may be concerned with this change being made at the Committee of the whole House stage of the Bill, it will help address a large pressure point for many taxpayers.

7. In this report we summarise other potential changes that could be made to reduce compliance costs. We do not recommend progressing these in the Emergency Response Bill due to requiring Cabinet approval for the changes, the limited time to implement for the 2025 tax year, and the potential impact on tax compliance.

8. Attached as an appendix is a summary of the potential changes.

Next steps

9. Subject to your decisions on this report, we will incorporate the necessary legislative amendments into the draft Amendment Paper.

10. The Amendment Paper is scheduled to be released for consideration as part of the Committee of whole House stage of the Emergency Response Bill. This stage is expected to be on 5 March 2025.

11. Following your decisions on this report, we will publish our review of the disclosure rules and the independent practitioner's report on Inland Revenue's Tax Policy website.

Recommended action

We recommend that you:

a) **agree** to replace the minor and incidental test for non-cash distributions and settlements with a bright-line for each beneficiary or settlor;

Agreed/Not agreed

b) if you agree with recommendation (a), either:

Option A: **agree** to set the bright-line at $100,000; **OR**

Agreed/Not agreed

Option B: **agree** to set the bright-line at ____________.

Agreed/Not agreed

c) **agree** to include changes to give effect to your decisions on recommendations (a) and (b) in an Amendment Paper for release at the Committee of whole House stage of the Emergency Response Bill; and

Agreed/Not agreed

d) **refer** a copy of this report to the Associate Minister of Justice (Hon Nicole McKee) for their information.

Referred/Not referred

s 9(2)(a)

Kerryn McIntosh-Watt
Policy Director
Policy

Hon Simon Watts
Minister of Revenue
/ /2025

Background

12. We reported to you on 12 December 2024 with recommended legislative changes to the trust disclosure rules to reduce compliance costs and improve the rules (IR2024/481 refers). At the 28 January 2025 meeting with officials, you asked us to consult with the Tax System Forum (TSF). You also requested further advice on:

- the benefits and costs of the recommended changes, and
- the changes we are not currently recommending but are the "next cabs off the rank".

The Emergency Response Bill

13. The Emergency Response Bill is currently being considered by the Finance and Expenditure Committee (FEC). The FEC is required to report the Bill back to the House by 28 February 2025. An Amendment Paper is proposed for release on 5 March 2025 at the Committee of the whole House stage of the Bill. We are seeking decisions by 27 February 2025 to ensure there is sufficient time to draft the necessary legislative amendments.

Feedback from the Tax System Forum

14. To support your decision making, we have consulted with the TSF on potential legislative changes that could reduce compliance costs and improve the disclosure rules. The TSF members also provided general observations about the disclosure rules and our review.

General feedback from the TSF on the trust disclosure rules

15. Two members of the TSF supported the requirement for trustees to prepare and disclose financial statements, and another said there is value in Inland Revenue getting a better understanding of how trusts are used. However, all six members commented on the wide scope of information required, and that this needs to be justified in terms of tax administration. One member said that in their experience, most of the costs were incurred in the first year of disclosure.

16. Some members made suggestions about how the disclosures could be amended to reduce compliance costs. Three members said that the disclosures should be aligned as far as possible with what trustees already include in their financial statements. Four suggested said that the rules should be targeted at trusts that pose integrity concerns, rather than applying broadly to many trusts.

17. Three members said that due to the variation in the size and complexity of trusts, along with the expertise of trustees, the disclosure rules will be applied and interpreted differently. This will impact the quality of the data that Inland Revenue receives.

Feedback from the TSF on Inland Revenue's review

18. Members wanted their general feedback on the rules to be taken into account by the review, and two said the review overlooks fundamental considerations such as the inflexibility of the legislation and the risk of broad information collection without a clear reason. One member added that minor amendments will not be appreciated if the justification for the regime as a whole is unclear or weak.

19. One member raised options for limiting disclosure, such as to when a trust is first registered, or to a subset of trusts on a less regular basis. They also said that pre-

population of returns would help to reduce compliance costs, while two other members said that automation of the disclosure process should be supported.

20. Two members said that the review does not go far enough to seriously reduce the compliance costs associated with the regime. One of these members was surprised with the conclusion that the rules should be retained and said that this could be a result of how the review was carried out. They said that since reactions to the disclosure rules differ depending on the type of trust, feedback from consultation was variable and difficult to reconcile.

21. One member said that the review's justifications for recommending that the rules are retained are insufficient. For example, they said that it is not clear how the data assists Inland Revenue with tax compliance or what insights it provides. They disagreed that most compliance costs were incurred in the first year of disclosure, and said there are high ongoing costs for some trusts. Another member said that potential additional one-off costs of implementing further changes should not be a reason for leaving issues with the regime unaddressed.

Officials' view

22. The disclosures are providing useful insights that support tax compliance. The data is informing our compliance approach to trusts and is assisting us in identifying tax risks.

23. Based on stakeholder feedback, we consider that most compliance costs associated with the disclosures were set-up costs incurred in the first year of the rules. The ongoing compliance costs largely stem from trustees needing to disclose information that is not already recorded in their financial statements. The non-legislative changes we are already progressing, and the potential legislative changes we have identified, are focused on reducing the impact of collecting information that is not held in trusts' financial statements.

Recommended legislative changes for 2025 tax year

No longer requiring disclosure of nil value distributions and settlements

24. On 1 February 2025 you agreed to a legislative amendment to no longer require trustees to disclose nil value distributions and settlements. This change will be included in an Amendment Paper to the Emergency Response Bill.[1]

Replacing the minor and incidental test

25. Trustees are not required to disclose non-cash distributions or settlements if they are "minor and incidental" to the activities of the trust. This is a subjective test that requires trustees to value non-cash transactions and consider whether the distribution or settlement is incidental to the activities of the trust.

Potential change

26. The requirement to disclose details of non-cash distributions and settlements could be simplified by replacing the minor and incidental test with a bright-line. Setting the bright-line at a sufficiently high threshold would mean that trustees would not need to obtain valuations of small distributions or settlements to determine whether they need to disclose such transactions.

27. The below table shows the percentage of trusts that make non-cash distributions below different thresholds.

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[1] Refer to recommendation (c)(i) of report IR2024/481: *Trust disclosures – post-implementation review recommendations*.

Threshold for non-cash distributions	**$100,000**	**$500,000**	**$1,000,000**
Number of trusts that will no longer need to disclose non-cash distributions	1,375	1,965	2,225
Percentage of all trusts that disclose non-cash distributions	55%	79%	89%

Feedback from stakeholders

28. In 2024 we tested a range of potential changes with ten stakeholders[2]. Five of these stakeholders said that reduced requirements for the disclosure of non-cash distributions (or settlements) would be a priority among the options consulted on. During the review we also heard more generally that determining whether a non-cash distribution or settlement needs to be disclosed is a compliance heavy exercise.

29. Three members of the TSF agreed with replacing the "minor and incidental" test with a bright-line. However, three preferred a different approach, such as:

- Inland Revenue specifying the types of non-cash distributions that need to be disclosed, omitting those that do not have tax consequences; or
- only requiring non-cash distributions and settlements to be disclosed to the extent they are recorded in financial statements.

30. One member thought that a $100,000 threshold would sufficiently reduce disclosures of non-cash distributions, while another member suggested a $200,000 threshold.

31. One member of the TSF raised concerns at progressing such a change at the Committee of whole House stage of the Bill, as there will be no opportunity for taxpayers to submit or comment on the change before it is enacted into law.

Officials' recommendation

32. On balance, we recommend progressing this change to replace the minor and incidental test with a bright-line per beneficiary or settlor for non-cash distributions and settlements. Although there is a risk that stakeholders may be concerned with this change being made at the Committee of the whole House stage of the Bill (with no opportunity for taxpayers to submit on the change), it will also help address a large pressure point for many taxpayers.

33. We recommend setting the bright-line at $100,000. This will mean that 55% of trusts that make non-cash distributions and 33% of trusts that receive non-cash settlements will no longer need to make these disclosures. This also has the additional benefit of simplifying the rules for an unknown number of trusts that determined a non-cash distribution or settlement was minor and incidental and did not need to be disclosed.

Potential legislative changes we are not recommending

34. You have requested advice on potential further changes that we are not recommending. Although it is feasible to legislate some of these changes in the Emergency Response Bill, we do not recommend progressing them in the current Bill because they will likely:

- require Cabinet approval before progressing,

[2] We consulted CA ANZ, CPA Australia, Deloitte, EY, KPMG, OliverShaw, PwC, Taxlab, The Law Association and a New Zealand Law Society member.

- not be able to be implemented in the 2025 trust tax return in time,
- impact Inland Revenue's tax compliance efforts, or
- create controversy due to limited consultation on specific design features.

35. If you wish to progress some of these changes, we recommend progressing them for the 2026 tax year in the next annual rates tax bill scheduled for introduction in August 2025. This will allow time for officials to consult stakeholders on the detailed design of the changes and for you to seek Cabinet approval, if necessary.

Exempting small trusts from disclosure requirements

Potential change

36. Small trusts could be exempted from the disclosure requirements based on an income and asset threshold. Such trusts would still be required to file a tax return.

Feedback from stakeholders

37. Nine of the ten stakeholders we tested potential changes with said that reduced disclosure requirements for small trusts would be a priority among the options consulted on. However, two of these stakeholders said this depends on the definition of "small trust".

38. Two members of the TSF agreed with this proposal (although one said this depends on how "small trusts" are defined), but suggested it come into effect for the 2025 tax year. Three members did not agree. Their reasons included the risk of multiple trusts being created and continuing compliance costs for trusts that are not "small".

Officials' recommendation

39. The 2025 tax year is the first year where the 39% trustee tax rate applies. An exemption from disclosure requirements for small trusts would impact Inland Revenue's ability to monitor emerging tax risks associated with the 39% rate, particularly relating to the lower 33% tax rate for trusts with less than $10,000 net income.

40. If you wish to introduce an exemption for small trusts, we recommend obtaining Cabinet approval for this change. This is because New Zealand received an uplift in our Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) rating with the OECD Financial Action Task Force (FATF) due to the Trusts Act 2019 and the disclosure rules for trustees in the Tax Administration Act 1994 (the TAA). Introducing an exemption for small trusts would mean that we would no longer collect beneficial ownership for those trusts which may have a negative impact on New Zealand's AML/CFT rating with FATF. We recommend that you consult with your Cabinet colleagues, particularly the Associate Minister of Justice (Hon Nicole McKee) before progressing this change.

41. It is not feasible to obtain a Cabinet decision on this change in time for it to be included in the Emergency Response Bill. Therefore, if you wish to progress this change, we recommend progressing it in the next omnibus tax bill scheduled for introduction in August 2025.

Statutory provision to assist trustees in obtaining information

Potential change

42. A statutory provision could be introduced to support trustees by requiring relevant settlors, beneficiaries and appointers[3] to provide the necessary information to trustees.

Feedback from stakeholders

43. During our review, some stakeholders noted that trustees found it difficult to obtain details of settlors, beneficiaries and appointers. The disclosure rules place obligations on trustees, but there is no legislative requirement compelling settlors, beneficiaries and appointers to provide the necessary information to trustees. However, only two of the ten stakeholders we tested potential changes with said a statutory provision to support trustees was a priority among the options consulted on.

44. All six members of the TSF disagreed with this proposal, particularly if it was progressed for the 2025 tax year. They were concerned about its enforceability and said that Inland Revenue should use its existing information-gathering powers.

Officials' recommendation

45. We consider that this is a change that should be explored further, because some trustees are not able to satisfy their legal disclosure obligations due to having difficulties in obtaining the relevant information from third parties. However, due to the mixed views of stakeholders, we recommend deferring consideration of this change to the 2025–26 omnibus tax bill scheduled for introduction in August 2025. This will enable us to undertake further consultation.

Reducing the requirement to disclosure personal information

Potential change

46. Trustees are required to disclose the name, date of birth, jurisdiction of tax residence, and IRD number (or foreign tax file number if applicable) of each beneficiary that receives a distribution, each settlor that makes a settlement, and appointers. These requirements could be reduced to only require the disclosure of the relevant person's IRD number.

Feedback from stakeholders

47. Seven of the ten stakeholders we tested potential changes with in 2024 said that removing the requirement to disclose this personal information would be a priority among the options consulted on.

48. Three members of the TSF disagreed with this proposal, and said it is reasonable for Inland Revenue to gather this information or that the key issue was the initial disclosure of historical information. Three members said this information should only be required if a distribution or settlement is made in a tax year, which is the status quo.

Officials' recommendation

49. Although the benefits and costs of this change are unquantifiable, we do not recommend making this change due to the potential costs being significant:

- <u>Benefits</u>: It will likely result in a limited reduction in compliance costs since taxpayers only need to collect this information once. Although these details need

[3] An "appointer" is a person with the power to add or remove a trustee, add or remove a beneficiary, or amend the trust deed.

to be disclosed each year that a person receives a distribution or makes a settlement, our understanding is that software providers offer the ability for taxpayers to prepopulate these details in their tax returns each year.

- Costs: These requirements are essential to ensure that Inland Revenue can correctly identify a person and match the information disclosed by the trustee with other tax information held by Inland Revenue. This change would impact tax compliance by reducing the quality of data disclosed and making it challenging to determine whether we can match data with the correct taxpayer.

Repealing the disclosure requirements

Potential change

50. The legislative requirements for trustees to disclose additional information in their tax returns could be repealed.

Feedback from stakeholders

51. We did not explicitly consult stakeholders on this change. However, four of the ten stakeholders we tested potential changes with recommended repealing the legislated disclosure requirements or considering it as an option. Their reasons included that a legislative approach is inflexible, that the tax administration benefits have not established, and that the costs to the private sector outweigh marginal benefits to Inland Revenue.

52. We only consulted the TSF on changes that could feasibly be made in the current Bill. However, one member of the TSF recommended that the disclosure requirements in legislation should be repealed. They said that Inland Revenue should instead use its general information powers to seek financial account data, which would be more efficient. Another member agreed that a strict legislative approach is inflexible.

Officials' recommendation

53. The Commissioner of Inland Revenue has general powers under the TAA to collect information in prescribed forms. Repealing the legislated requirements would mean that the disclosure obligations for trustees would be managed operationally by the Commissioner, like other entity types. This would mean that Inland Revenue could be more flexible in amending disclosure requirements to respond to emerging issues.

54. However, it is highly likely that the Commissioner would still collect the majority of the current disclosure requirements due to the benefits to tax compliance. Therefore, repealing the legislation would likely send mixed messages to taxpayers with limited impact on compliance costs.

55. Further, there is a risk that repealing the legislated disclosure requirements could have a negative inference for the Commissioner's ability to collect the same information under his general powers in the TAA, depending on the rationale for the repeal.

56. Similar to the potential change to exempt small trusts from the disclosure requirements, we recommend obtaining Cabinet approval for this change due to the potential negative impact on New Zealand's AML/CFT rating with FATF.

Non-legislative changes

57. Our review of the disclosure rules identified a range of non-legislative changes that could be made to reduce compliance costs and improve the rules. We have progressed some of these changes for the 2025 trust tax returns. Other changes,

such as improving guidance and prepopulating information in myIR, will take further time to develop and implement (IR2024/481 refers).

Risks

58. Due to the varied nature and complexity of trusts in New Zealand, feedback on the disclosure rules and suggested improvements is mixed and at times contradictory. It is challenging to identify solutions that satisfy most stakeholders while still supporting tax administration.

59. Some stakeholders have raised concerns with progressing substantive changes to the requirements at the Committee of whole House stage of the Bill, due to there being no opportunity for taxpayers to submit on the changes. To mitigate this, we have limited our recommended changes for inclusion in the current Bill to the options with the broadest support.

60. However, deferring consideration of potential changes to allow for further consultation could be met with criticism from some stakeholders. There is "stakeholder fatigue" relating to consulting on the disclosure rules. If further consultation is necessary, stakeholder fatigue could be mitigated by consulting on the design of specific proposed changes rather than seeking further options (as suggested by one member of the TSF).

Conclusions

61. On balance, we recommend only progressing the following changes in the Emergency Response Bill:

- no longer requiring the disclosure of nil value distributions and settlements (already approved), and
- introducing a $100,000 de minimis per beneficiary or settlor for non-cash distributions and settlements.

62. These changes, coupled with the non-legislative changes we are already progressing and improvements to Inland Revenue's guidance, will help reduce compliance costs for taxpayers while still retaining the benefits for tax administration.

Officials' recommendation	Potential change	Stakeholders' views	Benefits	Costs
Already approved for Emergency Response Bill via Amendment Paper	No longer requiring disclosure of nil value distributions and settlements	• In 2024, we consulted 10 stakeholders and asked them which potential changes they would prioritise. **5** supported reduced requirements non-cash distributions. *The TSF was not consulted as the change had been approved.*	• 40,000 trusts will no longer need to disclose nil value settlements. • An unknown number of trusts will no longer need to disclose nil value distributions.	• No impact on tax compliance.
Recommend for Emergency Response Bill via Amendment Paper	Replacing the minor and incidental test with a bright-line	• **5** stakeholders supported reduced requirements for disclosing non-cash distributions. • **3** TSF members supported.	• A $100,000 bright-line will mean that 55% of trusts that make non-cash distributions and 33% of trusts that receive non-cash settlements will no longer need to report these transactions. • Benefit for unknown number of trusts with non-cash transactions that have determined they do not need to comply.	• Depending on the bright-line threshold, an unknown but likely limited impact on tax compliance.
Recommend considering for 2025–26 Annual Rates Bill	Statutory provision to assist trustees in obtaining information	• **2** stakeholders supported helping trustees collect personal information. • **0** TSF members supported.	• Easier for an unknown number of trusts to collect the information they need to comply. • Improved tax compliance due to better visibility of persons connected with trusts.	• No impact on tax compliance.
If you wish to progress, recommend considering for 2025–26 Annual Rates Bill	Exempting small trusts from the disclosure requirements	• **9** stakeholders supported. • **2** TSF members supported.	• A material reduction in compliance costs for 10,000s of trusts depending on the definition of a small trust.	• Provided that the definition was not too wide, an unknown but likely limited impact on tax compliance. • Potential negative impact on New Zealand's AML/CFT rating.
Do not recommend	Reducing the requirements to disclose personal information	• **7** stakeholders supported. • **0** TSF members supported.	• Limited benefit to taxpayers. Taxpayers only need to collect this information once.	• Unknown but likely a material impact on tax compliance.
	Repealing the disclosure requirements in full	• **3** stakeholders supported, **1** recommended considering • **1** TSF member supported, **1** recommended considering. *Note that neither group was explicitly consulted on this change.*	• Increased flexibility for the Commissioner to amend disclosure obligations in response to emerging issues.	• Repealing the legislation while still collecting most of the same information will create mixed messages for taxpayers, which could impact tax compliance. • Risk that the Commissioner's ability to collect this information under his general powers could be challenged. • Potential impact on New Zealand's AML/CFT rating.

Inland Revenue
Te Tari Taake

POLICY

Tax policy report:	**Tax implications of the Resale Rights for Visual Artists Act 2023**

Date:	5 December 2024	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2024/487

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations	19 December 2024
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister for Arts, Culture and Heritage	19 December 2024

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**	**Suggested first contact**
Martin Neylan	Policy Lead	s 9(2)(a) (wk)	☐
Ben Smith	Principal Policy Advisor	s 9(2)(a) (wk)	☒

5 December 2024

Minister of Finance
Minister of Revenue

Tax implications of the Resale Rights for Visual Artists Act 2023

Purpose

1. This report:

   1.1 informs you of recent legal analysis undertaken by Inland Revenue, the Ministry for Culture and Heritage, and the Crown Law Office on the tax implications of the artist resale royalty scheme (the **scheme**) which came into force on 1 December 2024

   1.2 seeks your agreement to a legislative response that would set appropriate tax outcomes for the scheme, and

   1.3 seeks your agreement to recognise the small positive fiscal impact of the changes recommended in this report on the Tax Policy Scorecard.

Artist Resale Royalty

2. The Resale Rights for Visual Artists Act 2023 established a "royalty"[1] scheme to ensure that creators of visual art are recognised and rewarded when their work is resold on the secondary art market. It came into force on 1 December 2024. The Ministry for Culture and Heritage estimates the scheme will benefit artists and other rights holders (such as the estates of deceased artists) by about $800,000 a year had the scheme been in place in 2020. Implementing the scheme was a condition of the Free Trade Agreement with the European Union.

3. Under the scheme, eligible artists and other rights holders are entitled to a payment that is 5% of the sale price of qualifying art when sold on the secondary market. Qualifying art must have a resale value of at least $2,000 excluding any applicable GST. The legal liability for the 5% payment is with the vendor of the art and art market professionals (such as auction houses) who manage the sale of the art.

4. The 5% payment is paid to a "collection agent" who is responsible for collecting and distributing the funds to eligible artists and rights holders. The collection agent is entitled to retain 20% of the 5% payment to recognise its costs. The collection agent is not a Crown entity, but it does receive temporary funding from the Crown through the Ministry for Culture and Heritage.

5. The GST implications of the scheme have been difficult to analyse because of the complex tripartite nature of the arrangement. Inland Revenue provided the Ministry for Culture and Heritage with initial advice during the early stages of policy development in 2022. Inland Revenue then provided early legal analysis on the tax implications of the scheme in 2023 after the Resale Rights for Visual Artists Bill passed into law. Final advice was provided in 2024. Due to an inconsistency between the 2023 and 2024 advice, Inland Revenue and the Ministry for Culture and Heritage agreed to seek a view from the Crown Law Office on the GST implications of the scheme. The Crown Law Office provided their view in November 2024.

[1] While the payments are referred to as a "royalty", they are more akin to a statutory entitlement. This is because royalties are traditionally paid under contract to the owner of an asset (such as a patent, copyright, or natural resources) for the right to use that asset.

6. We consider the current law results in inappropriate outcomes from a tax policy perspective. These inappropriate outcomes ultimately affect the amount that eligible artists and other rights holders would receive under the scheme.

Changes should be made to ensure appropriate tax outcomes

7. Under current law, GST applies at 15% to two payments under the scheme:

    7.1 The payment from art market professionals and art owners to the collection agent, as this payment is treated as consideration for goods or services provided by the collection agent because the payment is a charge payable under legislation.

    7.2 The payment of the balance from the collection agent (minus the collection agent's 20%) to GST-registered artists. This payment is also treated as consideration for goods or services from the artists because it is also a charge payable under legislation.

8. The current outcome is not intuitive. It effectively results in GST being collected on the same payment twice. It also results in GST deductions being available for GST-registered art market professionals and art owners (despite them not paying for any goods or services from the collection agent) and for the collection agent (despite not paying for any goods or services from the artists or other rights holders). Because of these deductions, artists and other rights holders receive less than what they should under the scheme.

9. In addition, because of how the law is currently drafted, the artist is only entitled to 80% of the total 5% payment (being the total amount less the 20% retained by the collection agent). As a result, the 20% retained by the collection agent cannot be characterised as a fee for services paid by eligible artists and other rights holders to the collection agent. For tax purposes, it makes sense to look at the 20% withheld by the collection agent to be like a fee charged by the collection agent to eligible artists and rights holders for its services. This would make it clearer that the 20% is deductible for income tax and GST purposes, as applicable, if the artist is liable for income tax and GST on the 5% payment they are entitled to under the scheme.[2] This is also consistent with how the Ministry for Culture and Heritage intended the scheme to operate.

10. The following table sets out the recommended tax treatment of the payments.

Table 1: Recommended tax treatment

Payment	Recommended tax treatment
The 5% payment from the art market professional and art owners to the collection agent	This payment should not be subject to GST because it is not for any goods or services provided by the collection agent, artists or other rights holders.

[2] Under current law, eligible artists will be liable for income tax on the payment they receive if it relates to artwork produced while they were in business. We consider this to be an appropriate tax policy outcome.

Payment	Recommended tax treatment
The 20% retained by the collection agent from the payment referred to above	The fee for the collection agent's services should be subject to GST because the collection agent is providing administrative services associated with collecting and distributing funds to eligible artists and rights holders. These types of services would ordinarily be subject to GST. Under current law, the collection agent will be liable for income tax on the payment, and we consider this to be an appropriate outcome. For GST-registered artists, the 20% retained by the collection agent represents a fee for the collection agent's services and it should be deductible for GST purposes. Further, if the artist is liable for income tax on the 5% payment, the 20% fee should also be deductible for income tax purposes.
The payments received by eligible artists and other rights holders	The appropriate GST treatment of this payment depends on whether you consider the payment to be: • like further consideration for the supply of the art (suggesting the payment should be subject to GST), or • unrelated to the art and a windfall gain (suggesting the payment should not be subject to GST). On balance, we consider the payment should be viewed as if it were akin to further consideration for the supply of art and therefore subject to GST when received by GST-registered artists in relation to their taxable activity. This would mean the payment is *not* subject to GST when received by other artists and rights holders. This outcome ensures that GST-registered artists receive the same economic benefit as other persons, as GST-registered artists can deduct GST on their costs whereas persons who are not registered for GST cannot. This treatment is also consistent with the usual GST treatment of ordinary royalties.

Option to backdate changes to 1 December 2024

11. If you agree to introduce rules that set out the appropriate tax treatment of the scheme as described above, you could choose to do so retrospectively, so that they applied from 1 December 2024 (to coincide with the date the scheme came into force) or so that they apply prospectively, for example, from 1 April 2025 (after the current omnibus tax bill passes into law).

12. The general presumption is that law changes will have prospective effect. However, retrospective changes in tax law are not uncommon. Retrospective law changes may be desirable in circumstances where it is necessary to prevent over-taxation, or where the current law results in unintended tax consequences, such as the case here. (The unintended consequences are that the 5% payment is essentially subject to GST twice, and art market professionals, art owners, and in some instances the collection agent, will be entitled to GST deductions despite not making a payment for any goods or services. This has the effect of reducing the total amount available to be paid to eligible artists and other rights holders, which is inconsistent with the intention of the scheme.)

13. The main issue with pursuing retrospective law changes is that it could result in additional compliance costs for art market professionals, art owners, and the collection agent. These compliance costs could arise because GST returns of these persons should be amended to the extent that they differ from the outcomes recommended in this report. On balance, we consider these compliance costs to be minor and manageable and consider there is a stronger argument that the changes should apply retrospectively so that eligible artists and other rights holders are not disadvantaged by the tax outcomes under the current law.

14. If you agree that amendments should be retrospective to align with when the scheme came into force, Inland Revenue will work with the Ministry for Culture and Heritage to reduce any associated compliance costs arising from this decision.

Financial implications

15. Under current law, the GST outcome for the Crown is neutral in all circumstances. This is because we expect the persons paying GST to get a corresponding GST deduction. We consider this outcome to be inappropriate for the reason mentioned in paragraph 8.

16. If you agree the GST treatment of the payments should be as described in the table above, there would be a small positive financial impact for the Crown. This increase arises because:

    16.1 GST-registered artists will be liable to return GST on payments without there being a corresponding GST deduction for the collection agent, and

    16.2 artists and rights holders who are not registered for GST will not be able to deduct GST for the cost of the collection agent's services.

17. The financial implications of the changes recommended in this report are reflected in the following table:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 and outyears**
Tax Revenue: Goods and Services Tax	0.014	0.043	0.043	0.043	0.043
Total operating	**(0.014)**	**(0.043)**	**(0.043)**	**(0.043)**	**(0.043)**

18. We recommend the additional GST revenue from the changes recommended in this report be recognised on the Tax Policy Scorecard.

19. The Treasury has been consulted on the financial implications and agrees the changes proposed in this report are consistent with Ministers' decisions for the Tax Policy Scorecard. These is no risk that the Tax Policy Scorecard would exceed its limits if the additional GST revenue arising from the changes recommended in this report are accounted for on the Tax Policy Scorecard.

Legislative implications

20. Setting specific tax rules for the scheme will require changes to the Goods and Services Tax Act 1985 and the Income Tax Act 2007. Because the scheme came into force on 1 December 2024, we recommend legislative changes be made as soon as possible to provide certainty to art market professionals, art owners, the collection agent, and eligible artists and rights holders under the scheme.

21. If you agree, these amendments could be included in an Amendment Paper to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill at the Committee of the whole House stage.

22. We are currently working with officials at the Ministry for Culture and Heritage to determine whether any additional changes are required to the Resale Rights for Visual Arts Act 2023. It may be that only changes to the Goods and Services Tax Act 1985 and the Income Tax Act 2007 are required to achieve the outcomes described in this report.

Consultation

23. The Ministry for Culture and Heritage has been consulted and support the recommendations in this report.

Next steps

24. If you agree to the approach outlined in this report, we will prepare the necessary amendments to the Goods and Services Tax 1985 and the Income Tax Act 2007 for inclusion in the Amendment Paper to be released at the Committee of the whole House stage of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill.

25. We will also work with officials at the Ministry for Culture and Heritage to communicate the intended tax changes, ahead of the Amendment Paper being released, to art market professionals, the collection agent, and eligible artists and other rights holders, to ensure the appropriate tax treatment can be given effect as soon as practicable.

Recommended action

We recommend that you:

(a) **agree** that, in principle, the 5% payment to eligible artists who are registered for GST should only be subject to GST once, which ensures they are treated no better or worse than other artists and rights holders who are not registered for GST

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(b) **agree** that the collection agent, who is responsible for collecting and distributing the payments under the scheme to eligible artists and rights holders, should be required to account for GST on the 20% retained from the payments for providing services to eligible artists and rights holders in the same way as other persons who provide similar kinds of services

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(c) **agree** that, for tax purposes, the 20% retained by the collection agent should be deductible for GST and income tax purposes, as applicable, by eligible artists and rights holders if they are liable for GST and income tax on the 5% payment

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(d) if you agree to the recommendations in (a), (b) and (c), **agree** that this treatment applies with retrospective effect from 1 December 2024 to coincide with the date the artist resale royalty scheme came into force

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(e) **note** the following changes as a result of the decisions in recommendations (a) to (d), with a corresponding impact on the operating balance and/or net core Crown debt:

	$m – increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29 and outyears**
Tax Revenue: Goods and Services Tax	0.014	0.043	0.043	0.043	0.043
Total operating	**(0.014)**	**(0.043)**	**(0.043)**	**(0.043)**	**(0.043)**

Noted | Noted

Minister of Finance | *Minister of Revenue*

(f) **agree** that the additional revenue from the changes referred to in recommendations (a) to (d) be accounted for on the Tax Policy Scorecard

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(g) if you agreed to the recommendations in paragraphs (a) to (d), **agree** that amendments giving effect to these decisions be included in an Amendment Paper to be released at the Committee of the whole House stage for the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Matters) Bill

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(h) if you agreed to the recommendations above, **agree** to allow officials to communicate your decisions ahead of the Amendment Paper being released to provide certainty to art market professionals, art owners, the collection agent, and eligible artists and other rights holders under the scheme

Agreed/Not agreed | Agreed/Not agreed

Minister of Finance | *Minister of Revenue*

(i) **refer** a copy of this report to the Minister for Arts, Culture and Heritage for his information.

Referred/Not referred

Minister of Revenue

Ben Smith
Principal Policy Advisor
Policy

Hon Nicola Willis
Minister of Finance
/ /2024

Hon Simon Watts
Minister of Revenue
/ /2024

Te Tāhuhu o te Mātauranga Ministry of Education | Tertiary Education Commission Te Amorangi Mātauranga Matua | Inland Revenue Te Tari Taake | Ministry of Social Development Te Manatū Whakahiato Ora

Report: Final-year Fees Free implementation paper 3

To:	Hon Nicola Willis, Minister of Finance Hon David Seymour, Associate Minister of Finance Hon Shane Jones, Associate Minister of Finance Hon Erica Stanford, Minister of Education Hon Simon Watts, Minister of Revenue Hon Penny Simmonds, Minister for Tertiary Education and Skills & Associate Minister for Social Development and Employment		
Cc:	Hon Louise Upston, Minister for Social Development and Employment		
Date:	18 September 2024	Deadline:	4 October 2024
Security Level:	In-Confidence	Priority:	High
From:	Clara Rowe	Phone:	04 463 8491
Position:	Senior Policy Manager (Acting)	METIS No:	METIS: 1335474 IR2024/367 TEC: B-24-00725 MSD: REP/24/9/843

Why are we sending this to you?

- This is the third of three papers seeking your agreement to final-year Fees Free settings. This paper covers consequential legislative and financial implications arising from the implementation design. Paper one covers outstanding eligibility settings and paper two seeks to confirm the implementation approach.

What action do we need, by when?

- Please return the signed paper no later than Friday, 4 October 2024 to enable implementation on time by 1 January 2025.

Key facts, issues and questions

- Several legislative changes are needed to implement final-year Fees Free.
- The final implementation model does not reflect the roles that were anticipated through Budget 2024 (B24). Agencies have revised the administrative costs accordingly within the funding envelope agreed by Cabinet.
- This paper is intended to seek final decisions on final-year Fees Free ahead of the policy start date of 1 January 2025.

Alignment with Government priorities

1 The Government has committed to "stop first year Fees Free and replace with a final year Fees Free with no change before 2025".

Background

2 On 29 April 2024, Cabinet agreed to replace first-year Fees Free with a final-year Fees Free scheme from 1 January 2025, whereby payments of learner fees will be made following completion of their study programme [CAB-24-MIN-0148 – Initiative ID 15736 refers].

3 Cabinet delegated the detailed policy and implementation design to the Minister of Finance, the Associate Ministers of Finance (Hon Shane Jones and Hon David Seymour), and the Minister for Tertiary Education and Skills, as well as appropriation Ministers (the Minister for Social Development and Employment and the Minister of Revenue) as relevant.

4 On 4 July 2024, we provided advice on the proposed eligibility and entitlement parameters for the final-year Fees Free policy [METIS 1330161 refers]. We noted that further work was needed to finalise the detailed policy settings, including working through potential interactions with other government supports, and the implementation design.

5 This is the final of three papers on final-year Fees Free. The first two papers seek your agreement to outstanding eligibilty settings [METIS 1333764; IR2024/354; TEC: B-24-00720; MSD: REP/24/8/811] and the high-level implemenation design [METIS: 1335473; IR2024/366; TEC: B-24-00724; MSD: REP/24/9/842]. Minister Upston is receiving this paper because of decisions we are seeking from you on paper one.

Privacy implications

6 Paper two seeks your agreement to Inland Revenue (IR) and the Tertiary Education Commission (TEC) leading the implementation design, including IR providing an application process and paying learners' Fees Free entitlement and TEC providing data to support eligibility and calculate the learners' entitlement.

7 This section covers the data sharing changes needed to support implementation and associated assessment of privacy implications.

New data collection and sharing processes are needed to support the implementation

8 IR and TEC do not currently hold common learner identifiers for information-sharing purposes to confirm learner eligibility and enable payment of their Fees Free entitlements. New data collection and sharing processes therefore need to be established, including the collection and sharing of unique identifiers, to implement the final-year Fees Free policy.

9 The data to be collected by TEOs and shared between agencies, including TEC, IR and the Ministry of Social Development (MSD),[1] involves using learner National Student Numbers (NSNs), IRD numbers and dates of birth to link the learner's Fees Free entitlement with IR's systems through which the learner will apply for payment. IR have advised they need a

[1] MSD will provide the TEC with a list of learners who have accessed the Training Incentive Allowance for course fees in their final year. This will involve names, dates of birth, learner NSNs and IRD numbers.

minimum of three identifiers to provide more confidence in matching learner information accurately, and NSNs and IRD numbers are the only existing *unique* identifiers.

10 Using common identifiers between agencies creates the ability to match customers more accurately and ensures the entitlement is paid to the correct learner. This also means the learner will have a better experience when applying for their Fees Free entitlement as the interaction can be more personalised to their information. Overall, the process will be more streamlined with the use of common identifiers and the possibility of a payment being made to an incorrect person is reduced.

We are undertaking a privacy impact assessment of the proposed collection and sharing of unique identifiers

11 The privacy impact assessment will cover the data and information sharing design between agencies required to implement the final-year Fees Free scheme, with a focus on the collection and sharing of NSNs and IRD numbers. It includes consideration of sector feedback on the collection and use of IRD numbers.

12 At this point in time, there are minimal identified privacy risks and these have been indicated to likely be given a low rating in the assesment. The privacy impact assesment will be continually updated as the operationalisation of the final-year Fees Free policy is developed and implemented and any privacy risks that arise can be addressed at that time.

13 We are engaging with the Office of the Privacy Commissioner on the assessment to test their thinking on the proposed collection, sharing and security of data.

Legislative implications

14 Subject to your agreement to the proposed high-level implementation design presented in paper two, several legislative changes are needed to enable the data sharing arrangements and for IR to administer final-year Fees Free.

Changes to the Training Incentive Allowance Programme

15 Subject to your agreement, MSD will amend the Training Incentive Allowance (TIA) Programme to reflect that MSD will no longer assess an applicant's eligibility for TIA course fees based on their eligibility for Fees Free.

16 MSD will share the necessary information with TEC to enable implementation of the TIA exclusion for Fees Free eligibility. This will include learners' NSNs to verify and match learner identity with TEC data. The Secretary for Education will authorise MSD[2] to use NSNs for the relevant purposes.

Legislative changes to support IR using NSNs

17 The Ministry of Education (MoE), TEC and MSD are specified users of NSNs under the Education and Training Act 2020; however, IR is not. Regulations are required to enable IR to become a specified user of NSNs.

18 The Governor-General may, by Order in Council made on the recommendation of the Minister of Education, make regulations to identify an agency as a specified user of NSNs. We propose that the Minister recommends the making of regulations to add IR as a specified

[2] MSD has already been declared to be a specified user of NSNs: https://www.legislation.govt.nz/regulation/public/2012/0338/latest/DLM4856408.html?src=qs

user. Once a user has been specified through regulations, the Secretary of Education may then, under Schedule 24 of the Education and Training Act 2020, authorise the user to use NSNs for prescribed purposes.

Legislative changes to enable IR to administer the final-year Fees Free policy

19 Subject to the agreement of the Minister of Revenue, the following amendments are needed to enable IR to administer final-year Fees Free:

a. Amending the Tax Administration Act 1994 to:

   i. allow IR to administer final-year Fees Free. The amendment would allow for the Fees Free entitlement to be credited against a student loan and/or paid to the learner. It would also include a requirement to publish on an internet site the eligibility requirements. The eligibility requirements will include:

      1. the eligibility and entitlement parameters as agreed by Cabinet and Joint Ministers in this and previous advice [see Annex 1 to paper 1], and

      2. requiring the learner to apply for their final-year Fees Free entitlement within 12 months of their completion date (with the transitional rule noted in paragraph 16 in paper 1);

   ii. authorise IR to share information with TEC and vice versa; and

   iii. allow for the imposition of use-of-money interest when a learner does not have a student loan, an amount is paid to them in error and they do not repay the amount within 30 days of being notified by IR that the amount was paid in error.

b. Amending the Student Loan Scheme Act 2011 to:

   i. credit the final-year Fees Free entitlement effective as at the completion date;

   ii. ensure the credit of the final-year Fees Free entitlement does not satisfy the learner's repayment obligation;

   iii. ensure the credit of the final-year Fees Free entitlement cannot be offset against assessments or late payment interest;

   iv. ensure the credit of the final-year Fees Free entitlement is not treated as an excess repayment; and

   v. allow the amount which determines an overseas based borrower's repayment obligation to be reduced by any Fee Free entitlement paid to the loan.

Financial implications

A reduction in administration funding (departmental)

20 The final implementation model for final-year Fees Free looks different to the administrative funding Cabinet agreed to through Budget 2024. Agencies have revised the administrative funding based on the updated implementation model.

$million	Budget 2024 2023/24 – 2027/28 & out-years*		Updated implementation model 2024/25 – 2028/29 & out-years	
	Operating	Capital	Operating	Capital
IR	2.525	0.700	9.435	2.800
TEC**	13.175	-	7.671	5.344
MSD	11.481	1.524	0.821	0.404
Total	**27.181**	**2.224**	**17.927**	**8.548**

* Only TEC received funding through Budget 2024 for 2023/24. MSD and IR totals cover funding allocated for 2024/25 to 2027/28 & out-years.

** Total expenditure for TEC is indicative only and will be finalised before the 2025 March Baseline Update.

21 As Inland Revenue is now undertaking more of the administration activity, there is a increase for Vote Revenue appropriations of $5.875m in operating and $2.100m in capital over the forecast period (2024/25 to 2028/29). Conversely, there is a decrease for Vote Social Development appropriations of $10.660m in operating and $1.120m in capital over the forecast period.

22 The net financial impact across Inland Revenue and MSD is a $7.998 million decrease, incorporating an $8.978m decrease in operating funding and an increase of $0.980m capital funding.

23 We propose to transfer the funding between agencies (MSD and IR) and convert currently appropriated operating expenditure into capital expenditure as indicated in the table above and in recommendations (v) – (x) and based on the implementation roles and responsibilities moving forward [see paragraph 16, paper 2]. This will be reflected by agencies in their respective 2024 October Baseline Update submissions.

24 Expenditure for the TEC to undertake its role as part of final-year Fees Free has not been finalised. The TEC expects that changes will likely be reflected as part of MoE's 2025 March Baseline Update submission.

A fiscally neutral non-departmental funding transfer from TEC to IR

25 To authorise expenditure of the final-year Fees Free payments, a new non-departmental other expense appropriation in Vote Revenue will be required from the financial year 2025/26. Inland Revenuie will require a performance reporting exemption for this appropriation on the basis that performance reporting will be provided within Vote Tertiary Education.

26 As Inland Revenue will now be the administering agency, funding for the non-departmental final-year Fees Free scheme payments will be transferred from the *Fees-free Payments* appropriation within Vote Tertiary Education to the new Vote Revenue appropriation. To allow TEC to close out the first-year Fees Free scheme, $128m will be retained for 2024/25 in their appropriation. Funding from 2025/26 will be transferred to Vote Revenue.

27 Inland Revenue is working to determine the accounting implications of the transfer to final-year Fees Free and will include any funding implications in future forecast updates.

28 We note that $25m will also be transferred from financial year 2023/24 underspends within Vote Tertiary Education to the *Fees-free Payments* appropriation in Vote Tertiary Education to cover the transitional period in 2025 for phasing out the first-year Fees Free scheme and this will be confirmed through the 2024 October Baseline Update (OBU) [SOU-24-MIN-0062, CAB-24-MIN-0216 refer].

29 The Treasury was consulted on this paper and had no comments.

Next Steps

30 MoE will provide a Cabinet paper for Minister Stanford to take to the Cabinet Legislation Committee in November 2024 to make the necessary regulations to add IR as a specified user of NSNs. Subject to Cabinet and Executive Council approvals, MoE will then update the Education (National Student Number) Notice 2023, which sets out authorised uses of the NSN for specified users.

31 IR proposes that the changes to the Tax Administration Act 1994 and the Student Loan Scheme Act 2011 will be given effect through an amendment paper to the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill.

Recommended Actions

The Ministry of Education (MoE), the Tertiary Education Commission (TEC), Inland Revenue (IR) and the Ministry of Social Development (MSD) recommend you:

Privacy implications

a. **note** that,
   i. to date, minimal privacy risks (that are likely to be given a low risk rating) have been identified in relation to the data collection and sharing arrangements needed to support implementation, and
   ii. the privacy impact assessment will be continually updated, and any new privacy risks addressed, as the final-year Fees Free scheme is implemented

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

Legislative changes

Changes to the Training Incentive Allowance (TIA) Programme

b. **agree** for MSD to undertake the work to amend the TIA Programme to reflect the changes to Fees Free from first-year to final -year, including any required transitional arrangements

Hon Penny Simmonds

Agree/Disagree

c. **note** that MoE will update the Education (National Student Number) Notice 2023, which sets out authorised uses of the NSN for specified users (such as MSD), to support implementation of the TIA exclusion

Hon Erica Stanford	Hon Penny Simmonds
Noted	**Noted**

Legislative changes to support IR using NSNs

d. **agree** for the Minister of Education to recommend the making of regulations to add IR as a specified user of NSNs to enable the necessary data collection and sharing arrangements as part of the final-year Fees Free implementation

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Erica Stanford	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

e. **agree** that, subject to your agreement to recommendation d above, MoE will provide a draft Cabinet paper for Minister Stanford to take to Cabinet Legislation Committee in November 2024 to make the necessary regulations

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Erica Stanford	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

f. **agree** to issue drafting instructions for Parliamentary Counsel Office to give effect to the decisions in recommendation d above

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Erica Stanford	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

g. **note** that, if the regulations are made, MoE will update the Education (National Student Number) Notice 2023, which sets out authorised uses of the NSN for specified users

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Erica Stanford	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

Legislative changes to enable IR to administer the final-year Fees Free policy

h. **agree** the Tax Administration Act 1994 be amended to:

No.	**Amendment**	Hon Simon Watts
A	allow IR to administer final-year Fees Free	**Agree/Disagree**
B	authorise IR to share information with TEC and vice versa	**Agree/Disagree**
C	allow for the imposition of use-of-money interest	**Agree/Disagree**

i. **agree** that the Student Loan Scheme Act 2011 be amended to:

No.	**Amendment**	Hon Simon Watts
A	credit the final-year Fees Free entitlement effective as at the completion date	**Agree/Disagree**
B	ensure the credit of the final-year Fees Free entitlement does not satisfy the learner’s repayment obligation	**Agree/Disagree**
C	ensure the credit of the final-year Fees Free entitlement cannot be offset against unpaid amounts or late payment interest	**Agree/Disagree**
D	ensure the credit of the final-year Fees Free entitlement is not treated as an excess repayment	**Agree/Disagree**
E	allow the amount which determines an overseas based borrower’s repayment obligation to be reduced by any Fee Free entitlement paid to the loan	**Agree/Disagree**

j. **agree** that recommendations h and i above be given effect through an Amendment Paper to the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill which was introduced on 26 August 2024

Hon Simon Watts

Agree/Disagree

k. **note** that Inland Revenue will draft the legislative amendments to give effect to the decisions in recommendations h and i above which the Parliamentary Counsel Office will peer review

Hon Simon Watts
Noted

Financial implications

l. **note** that funding for the final-year Fees Free policy was agreed at B24 with final decisions around implementation and administration funding to be agreed by Joint Ministers [CAB-24-MIN-0148 – Initiative ID 15736 refers]

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

m. **note** that the funding for final-year Fees Free Payments will be administered by Inland Revenue (rather than TEC) and that, to authorise expenditure for final-year Fees Free payments, a new non-departmental appropriation in Vote Revenue will be required.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

Establishing a new appropriation in Vote Revenue

n. **agree** to establish the following non-departmental other expenses appropriation in Vote Revenue limited to final-year Fees Free payments and loan offsets made to eligible recipients.

Vote	**Appropriation Minister**	**Title**	**Type**	**Scope**
Revenue	Minister of Revenue	Final-year Fees Free Payments	Non-Departmental Other Expenses	This appropriation is limited to final-year Fees Free payments and loan offsets made to eligible recipients.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

o. **agree** that changes to expenditure within the *Final-year Fees Free Payments* appropriation be managed through forecast changes at Baseline Updates based on forecast student enrolments, and that increases or decreases in forecast expenditure be managed against Budget allowances.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

p. **authorise** the Minister of Finance and the Minister of Revenue to approve forecast changes to *final-year Fees Free* expenditure through Baseline Update processes in accordance with Cabinet Office Circular CO (18) 2 Proposals with Financial Implications and Financial Authorities.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Authorise / Not authorise	**Authorise / Not authorise**	**Authorise / Not authorise**	**Authorise / Not authorise**	**Authorise / Not authorise**

q. **agree** to a performance exemption for Vote Revenue for the new *Final-year Fees Free Payments* appropriation, as:

i. the appropriation is one from which resources will be provided to a person or entity other than a department under s15D(2)(b)(ii) of the Public Finance Act 1989;

ii. TEC will provide performance reporting consistent with existing reporting for Fees Free Payments;

Hon Nicola Willis
Agree/Disagree

Transfer funding for Fees Free Payments from Vote Tertiary Education to Vote Revenue

r. **agree** that non-departmental funding for the Final-year Fees Free Payments be transferred from Vote Tertiary Education to Vote Revenue, with $128 million remaining in Vote Tertiary Education to close out the first-year Fees Free scheme.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

s. **agree** to transfer $1.591m of the funding for Fees Free payments from 2024/25 to 2025/26 due to payments not being made to learners until the beginning of 2026.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

t. **approve** the following changes to appropriations to give effect to the decision in recommendation r and s above, with a corresponding impact on the operating balance:

	$m – increase/(decrease)				
	2024/25	**2025/26**	**2026/27**	**2027/28**	**2028/29 & Outyears**
Vote Tertiary Education **Minister of Tertiary Education and Skills** Non-departmental Other Expenses: Fees-free Payments	(1.591)	(50.653)	(68.846)	(117.666)	(161.855)
Vote Revenue **Minister of Revenue** Non-Departmental Other Expenses: Final-year Fees Free Payments	-	52.244	68.846	117.666	161.855
Total Operating	**(1.591)**	**1.591**	**-**	**-**	**-**

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Yes / No	**Yes / No**	**Yes / No**	**Yes / No**	**Yes / No**

u. **note** that Inland Revenue is working to determine the accounting implications of the transfer to final- year Fees Free and will include any funding implications in future forecast updates.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

Shifting funding from MSD to IR to support the implementation of final-year Fees Free

v. **approve** the following changes to appropriations and departmental capital injections, including a fiscally neutral operating to capital swap, to give effect to the decision in recommendation c in the *Report: Final-year Fees Free implementation part 2* [METIS: 1335473; IR2024/366; TEC: B-24-00724; MSD: REP/24/9/842 refers], with a corresponding impact on the operating balance and net core Crown debt:

	$m – increase/(decrease)				
	2024/25	**2025/26**	**2026/27**	**2027/28**	**2028/29 & Outyears**
Vote Social Development **Minister of Revenue**					
Departmental Output Expense: Management of Student Loans (funded by revenue Crown)	(0.959)	(2.417)	(3.283)	(4.097)	(4.097)
Ministry of Social Development: Capital Injection / (withdrawal)	(1.120)	-	-	-	-
Vote Revenue **Minister of Revenue**					
Multi-Category Expenses and Capital Expenditure: Services for Customers MCA Departmental Output Expense					
Services to Ministers and to assist and inform customers to get it right from the start	0.525	2.495	1.285	0.785	0.785
Inland Revenue: Capital Injection	1.100	1.000	-	-	-
Total Operating	**(0.434)**	**0.078**	**(1.998)**	**(3.312)**	**(3.312)**
Total Capital	**(0.020)**	**1.000**	**-**	**-**	**-**

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Yes / No	**Yes / No**	**Yes / No**	**Yes / No**	**Yes / No**

w. **agree** that recommendation v above has the following corresponding net positive impact on the operating balance and net core Crown debt:

	$m – increase/(decrease)				
	2024/25	2025/26	2026/27	2027/28	2028/29 & Outyears
Operating Balance and Net Core Crown Debt Impact	(0.434)	0.078	(1.998)	(3.312)	(3.312)
Operating Balance Only Impact	-	-	-	-	-
Net Core Crown Debt Only Impact	(0.020)	1.000	-	-	-
No Impact	-	-	-	-	-
Total	**(0.454)**	**1.078**	**(1.998)**	**(3.312)**	**(3.312)**

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

x. **agree** that the proposed changes to appropriations and departmental capital injections for 2024/25 above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

Administrative funding for TEC

y. **note** that officials will seek your agreement to changes to administrative funding for the Tertiary Education Commission once total expenditure has been finalised, likely in time for changes to be reflected as part of the March Baseline Update

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

z. **agree** that any funds provided in B24 for Fees Free departmental costs that are no longer required should be returned to the centre

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

aa. **note** that the TEC will manage its implementation role for final-year Fees Free within the funding committed through Budget 2024 and otherwise absorb costs in their baseline

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Simon Watts	Hon Penny Simmonds
Noted	**Noted**	**Noted**	**Noted**	**Noted**

Proactive release

bb. **agree** that the Ministry of Education release this paper once final decisions have been made on the final-year Fees Free scheme policy and implementation design and with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

Hon Nicola Willis	Hon David Seymour	Hon Shane Jones	Hon Penny Simmonds
Agree/Disagree	**Agree/Disagree**	**Agree/Disagree**	**Agree/Disagree**

Katrina Sutich
General Manager
Tertiary and Evidence
Ministry of Education

s 9(2)(a)

18/09/2024

Tim Fowler
Chief Executive
Tertiary Education
Commission

s 9(2)(a)

18/09/2024

Jane Elley
Customer Segment
Lead
Customer and
Compliance Services
Inland Revenue

s 9(2)(a)

18/09/2024

Shannon Soughtton
Group General Manager
Income
Ministry of Social
Development

s 9(2)(a)

18/09/2024

Hon Nicola Willis
Minister of Finance

__/__/____

Hon David Seymour
Associate Minister of
Finance

__/__/____

Hon Shane Jones
Associate Minister of
Finance

__/__/____

Hon Erica Stanford
Minister of Education

__/__/____

Hon Simon Watts
Minister for Revenue

__/__/____

Hon Penny Simmonds
Minister for Tertiary
Education and Skills
Associate Minister for
Social Development and
Employment

__/__/____

Inland Revenue
Te Tari Taake

POLICY

Tax policy report: Clarification of the application of use-of-money interest to fees free entitlements paid in error

Date:	10 February 2025	**Priority:**	High
Security level:	In Confidence	**Report number:**	IR2025/040

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations **Refer** report to the Minister of Finance, Associate Minister of Finance (Minister Seymour), Associate Minister of Finance (Minister Jones), Minister of Education, Minister for Social Development and Employment, Minister for Universities, Minister for Vocational Education for their information	14 February 2025

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Carolyn Elliott	Policy Lead	s 9(2)(a)	☒
Alison Wright	Principal Policy Advisor	s 9(2)(a)	☐

10 February 2025

Minister of Revenue

Clarification of the application of use-of-money interest to fees free entitlements paid in error

Summary

Purpose

1. This report clarifies how use-of-money interest will apply when a learner does not have a student loan, and a final-year fees free entitlement is paid to the learner in error. It asks that you agree that the imposition of use-of-money interest be consistent with all other products in Inland Revenue's START system and that the amendment be included in the Amendment Paper to the Taxation (Annual Rates for 2024‒25, Emergency Response, and Remedial Measures) Bill, alongside other previously agreed changes to facilitate Inland Revenue's administration of final-year fees free.

Background

2. On 29 April 2024, Cabinet agreed to replace first-year Fees Free with a final-year Fees Free scheme from 1 January 2025, whereby payments of learner fees will be made following completion of their study programme [CAB-24-MIN-0148 – Initiative ID 15736 refers].

3. Cabinet delegated the detailed policy and implementation design to the Minister of Finance, the Associate Ministers of Finance (Hon Shane Jones and Hon David Seymour), and the Minister for Tertiary Education and Skills, as well as the appropriation Ministers (the Minister for Social Development and Employment and the Minister of Revenue) as relevant (Joint Ministers).

4. Cabinet also delegated to you the authority to issue drafting instructions for the necessary amendments to implement the final-year fees fee amendments for inclusion in the current omnibus taxation bill.

5. As noted in Final-Years Fees Free implementation paper 2 [IR2024/366 refers]:

   Inland Revenue and the Tertiary Education Commission are leading the implementation of the final-year fees free policy with the following high-level roles and processes [METIS 1330616 refers]:

   a. upon completing a qualification, learners would apply for their Fees Free entitlement via the myIR portal;

   b. the Tertiary Education Commission would provide Inland Revenue with data that supports the eligibility assessment and the fee cost of the learner's final-year; and

   c. Inland Revenue would pay the learner's fees free entitlement, either offsetting the relevant amount against a learner's student loan balance if they have one or, if not, paying it into the learner's nominated bank account.

6. In Final-year Fees Free Implementation paper 3 (IR2024/367 refers), you agreed that legislative changes to give effect to fees free would be included in an Amendment Paper to the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill.

Use-of-money clarification

7. When payments are made incorrectly or payments are overdue, Inland Revenue applies use-of-money interest. It is possible that a fees free payment could be made to a learner without a student loan in error. We anticipate that this will happen rarely.

8. In paragraph 19(a)(iii) of report IR2024/367 we set out that an amendment is needed to the Tax Administration Act 1994 to allow for the imposition of use-of-money interest when an amount is paid to a learner in error.[1] It suggested an amendment to:

> *allow for the imposition of use-of-money interest when a learner does not have a student loan, an amount is paid to them in error and they do not repay the amount within 30 days of being notified by IR that the amount was paid in error.*

9. However, we have since become aware the report's description of how Inland Revenue's START system applies use-of-money interest is incorrect.

10. Inland Revenue applies use-of-money interest to compensate the Crown for not having the use of its money. It is Inland Revenue's practice to impose use-of-money interest on debts arising from an incorrect payment from the *day after the incorrect payment*. This is not consistent with the wording in the earlier report which indicated that use-of-money interest would be imposed 30 days after the person is notified of the incorrect payment.

11. We recommend that you agree that when a fees free entitlement is paid to a learner in error that use-of-money interest should be imposed from the day after the incorrect payment consistent with Inland Revenue's START system.

Consultation

12. We have advised the Ministry of Education, the Ministry of Social Development and the Tertiary Education Commission that we are clarifying with you when use-of-money interest will be charged.

13. The Treasury has been consulted and has no concerns about the proposal set out in this report.

Next steps

14. If you agree to this amendment, we will incorporate the necessary legislative amendments into the draft Amendment Paper. The changes to fees free apply from 1 January 2025, with first payments being made to learners from January 2026. We therefore recommend that the amendment be included in the Amendment Paper to the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill.

[1] Report: Final-year Fees Free implementation paper 3.

15. The Amendment Paper is scheduled to be released for consideration as part of the Committee of whole House stage. This stage is expected to be in the week commencing 3 March 2025.

Recommended action

We recommend that you:

1. **agree** to an amendment to the Tax Administration Act 1994 so that when a fees free entitlement is paid to a learner in error that use-of-money interest should be imposed from the day after the incorrect payment consistent with Inland Revenue's START system

   Agreed/Not agreed

2. **agree** the amendment be included in the Amendment Paper to the Taxation (Annual Rates for 2024−25, Emergency Response, and Remedial Measures) Bill

   Agreed/Not agreed

3. **refer** a copy of this report to the Minister of Finance, Associate Minister of Finance (Minister Seymour), Associate Minister of Finance (Minister Jones), Minister of Education, Minister for Social Development and Employment, Minister for Universities, Minister for Vocational Education for their information.

   Referred/Not referred

s 9(2)(a)

Carolyn Elliott
Policy Lead
Policy

Hon Simon Watts
Minister of Revenue
/ /2025