

## **Legislative statement: Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)**

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This legislative statement is presented to the House of Representatives in accordance with Standing Order 272.

### **Overview**

This legislative statement supports the second reading of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) (the Bill). The Bill has been reported back from the Finance and Expenditure Committee. A number of changes have been made to the Bill as part of the Committee's consideration.

The Bill introduces amendments to the following legislation:

- Goods and Services Tax Act 1985;
- Income Tax Act 2007;
- Tax Administration Act 1994;
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022;
- Income Tax Act 2004;
- Companies Act 1993;
- Insolvency Act 2006; and
- The Residential Tenancies Act 1986.

### **Details of changes in the Bill**

The Bill sets the annual rates of income tax for the 2022–23 tax year at the same rates as 2021–22.

The other main items in the Bill are set out below.

#### *Platform Economy*

The Bill contains proposals which implement an information reporting and exchange framework developed by the Organisation for Economic Co-operation and Development (OECD) on digital platforms:

- Digital platform operators that are tax resident in New Zealand would be required to provide information about people who earn income on that platform, if the income is earned from providing accommodation and personal services. Where information relates to a non-resident taxpayer,

this information would be provided to that taxpayer's tax authority, provided these rules have been implemented in that jurisdiction. In return, the Commissioner of Inland Revenue would also receive information about New Zealand tax resident sellers on offshore digital platforms from other tax authorities where the OECD's rules are in force. These rules would come into force on 1 January 2024.

- To support the implementation of these rules, the proposals include new discretionary civil penalties that could apply in serious or unreasonable cases of non-compliance where operators of digital platforms or taxpayers who earn income on these digital platforms fail to comply with the requirements set out by the rules. The Bill also proposes that further changes made to the OECD rules would automatically apply in New Zealand unless an Order in Council is made to block the changes.

The Bill proposes that GST would apply to accommodation and certain transportation services provided through electronic marketplaces:

- The electronic marketplace rules currently require the collection of GST on cross-border services and certain imported goods purchased by New Zealand-resident consumers.
- The Bill proposes to extend the existing electronic marketplace rules in the Goods and Services Tax Act so that they apply to accommodation, ride-sharing and ride-hailing services, and delivery services for food and/or beverages, from 1 April 2024. This would ensure that GST applied to these services provided through electronic marketplaces, in the same way that GST applies to these services when provided by hotels, motels, taxi drivers, and restaurants. This would happen without hosts, drivers, and deliverers needing to register for GST themselves.
- The Bill would allow large taxpayers to opt-out of the marketplace rules and that would enable them, instead of the operator of the electronic marketplace through which these services are provided, to remain responsible for their own GST obligations.
- A flat-rate credit scheme is proposed to recognise that where the underlying supplier of the service (the host, driver, or deliverer) is not a GST-registered person because they are below the \$60,000 registration threshold, they would not be able to recover GST on the costs they incur in making their supplies. For these underlying suppliers, operators of electronic marketplaces would be required to pass on a proportion of the GST they collect from consumers of these services. This proportion is 8.5% of the value of the services supplied through the electronic marketplace, and recognises GST on the underlying supplier's costs.

#### *GST treatment of legislative charges*

The Bill contains a proposal to clarify the GST treatment of charges, including fees and levies, payable under New Zealand Acts and regulations ("legislative charges):

- The Bill would introduce a rule that would treat all legislative charges as consideration for a supply of goods and services. Charges in the nature of fines, penalties, interest, and general taxes would not be treated as consideration for a supply of goods and services as these types of charges are not generally for the supply of any goods or services. The proposed amendments would take effect from 1 July 2023 for legislative charges that come into force after this date, and from 1 July 2026 for all other legislative charges.
- The Bill also proposes a schedule of non-taxable legislative charges that could be amended in the future to include a reference to specific charges, or classes of charges, that would not be subject to the proposed rule. The schedule would require legislation to be updated, and a temporary transitional regulation-making power is proposed that would enable the Governor-General to make Orders in Council on the recommendation of the Minister of Revenue to add specific, or classes of, charges to this proposed schedule until 30 June 2026. This is to recognise that there may be good tax policy reasons why GST should not apply to particular charges that have not been identified at the time of the introduction of the Bill or while the Bill was considered by the Finance and Expenditure Committee.

#### *GST apportionment and adjustment rules*

The Bill proposes to reform the GST apportionment and adjustment rules for assets used for both business and private purposes or in making exempt supplies by:

- Allowing GST-registered businesses to elect to treat certain assets that have mainly private or exempt use, such as dwellings, as if they only had private or exempt use;
- Introducing a simple principal purpose test for assets acquired for \$10,000 or less; and
- Introducing new integrity measures to improve Inland Revenue's ability to collect GST owing on the sale of assets by a GST-registered business that claimed business use of the asset when they originally acquired the asset.

#### *Cross-border workers reform*

The Bill proposes to modernise and clarify the rules for cross-border work arrangements, including changes to how the pay-as-you-earn withholding tax, fringe benefit tax, employer's superannuation contribution tax and the non-resident contractors' tax rules apply to employers or payers of cross-border workers.

#### *Dual resident companies*

Proposals relating to companies that are both tax resident in New Zealand and another jurisdiction to:

- Remove uncertainty created by recent changes to Australia’s application of its corporate tax residence rules by ensuring affected New Zealand companies have uninterrupted access to New Zealand’s loss grouping, consolidation and imputation credit regimes; and
- Resolve integrity issues with the application of the domestic dividend exemption and corporate migration rules to dual resident companies.

#### *FBT exemption for public transport*

The Bill proposes to exempt public transport from fringe benefit tax, where bus, train, ferry, tram or cable car services are subsidised by an employer mainly for the purpose of their employee travelling between their home and place of work.

#### *Build-to-rent assets*

The Bill proposes to exempt “build-to-rent” developments from the interest limitation rules for residential property in perpetuity, for as long as they meet the asset class definition. To qualify for the exemption, the Chief Executive of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development would have to be satisfied that the development meets the definition of build-to-rent land.

#### *Other items*

The Bill would also:

- Grant nine New Zealand charities with overseas charitable purposes overseas donee status; and
- Make other minor technical and remedial changes to tax legislation. These include changes to other income tax rules, GST, tax administration and social policy.