Legislative statement: Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill

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

Overview

This legislative statement supports the third reading of the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill.

The Bill introduces amendments to the following Acts:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Gaming Duties Act 1971
- Child Support Act 1991
- Income Tax Act 2004
- Taxation (Annual Rates for 2022–2023, Platform Economy, and Remedial Matters) Act 2023; and
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

Details of changes in the Bill

The Bill sets the annual rates of income tax for the 2023–24 tax year at the rates currently specified in schedule 1, part A of the Income Tax Act 2007.

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

Increasing the trustee tax rate to 39%

The Bill proposes increasing the trustee tax rate from 33% to 39% for the 2024–25 and later income years (beginning on 1 April 2024 for most trusts).

The current 33% trustee tax rate means that individuals are not subject to the 39% top personal tax rate on distributed tax-paid trustee income, even if they earn over $180,000 in (combined) personal income and distributed tax-paid trustee income. This is the under-taxation of trust income.

To buttress the proposed 39% trustee tax rate, beneficiary income derived by certain companies would be taxed as trustee income. This integrity rule is

targeted towards family trusts and will not affect the commercial use of trusts in large corporate groups.

While addressing under-taxation, the Bill proposes a $10,000 trustee income de minimis to mitigate over-taxation under a 39% trustee tax rate. Over-taxation arises when trustee income is taxed at a rate higher than the personal rates of the beneficiaries and settlors of the trust. Trustee income up to the de minimis threshold would be subject to the current 33% trustee tax rate. Trusts with trustee income greater than the de minimis would be subject to the 39% tax rate on all trustee income.

Targeted rules are proposed for the following trusts, which may face an increased risk of over-taxation:

- **Deceased estates:** trustee income of estates, which are taxed as trusts, would continue to be taxed at 33%. This rule would apply in the income year of death and the three income years following.
- **Disabled beneficiary trusts:** trustee income of eligible trusts settled for the care of disabled people would continue to be taxed at 33%.

The Bill proposes to exclude the following trusts from the 39% trustee tax rate, as they may also have limited ability to mitigate over-taxation:

- **Energy consumer trusts:** trustee income of energy consumer trusts will continue to be taxed at 33%.
- **Legacy superannuation funds:** eligible superannuation funds would be subject to the same tax treatment as widely-held superannuation funds (28% tax rate).

Global Anti-Base Erosion rules for New Zealand

The Bill proposes to introduce the Global Anti-Base Erosion (GloBE) rules in New Zealand. The GloBE rules are a global minimum tax developed by the Inclusive Framework on BEPS (IF), made up of delegates from over 130 countries and led by the Organisation for Economic Co-operation and Development (OECD). Under the rules, multinational enterprises (MNEs) with annual revenues above €750 million in two of the preceding four years are subject to tax of at least 15% on their mobile income in every country where that income is earned. The rules require implementation by a critical mass of countries to be effective – it is now clear that this critical mass exists.

The GloBE rules included in this Bill would introduce a multinational top-up tax that consists of an income inclusion rule (IIR) – including a domestic IIR (DIIR) – and an undertaxed profits rule (UTPR). The rules would apply to in-scope MNEs headquartered in New Zealand as well as MNEs headquartered outside of New Zealand if they have an intermediate parent located in New Zealand or a liability under the UTPR.

Whether an in-scope MNE has a multinational top-up tax filing and (potentially) payment obligation would be determined by applying the OECD-published Model Rules, Commentary and Agreed Administrative Guidance. The Bill proposes that,

instead of repeating or translating these texts into New Zealand tax law, they would be incorporated by reference.

Proposed amendments also address:

- deductibility of, and availability of imputation and foreign tax credits for, top-up taxes
- the interaction between the GloBE rules and double tax agreements
- applicability of changes to OECD guidance or commentary
- information reporting, registration, and filing requirements
- penalties for non-compliance, and
- other administrative matters.

Modifications to the Model Rules to ensure that they work as intended in New Zealand would be contained in a Schedule.

The proposed effective dates of the GloBE rules in New Zealand are now 1 January 2025 for the IIR and UTPR, and 1 January 2026 for the DIIR. The first compliance obligation will not be until 18 months after the end of the first fiscal year an MNE is in scope of New Zealand's GloBE rules.

Restoring interest deductibility for residential investment property

The Bill proposes to phase back in the ability to claim interest deductions for residential investment properties.

The interest limitation rules were introduced in 2021 and deny a deduction for interest incurred for residential investment property. For property acquired on or after 27 March 2021, interest deductions have been denied in full since 1 October 2021. For property acquired before 27 March 2021, and borrowings drawn down before 27 March 2021, the ability to claim interest deductions is being phased out.

It is proposed that the ability to claim interest deductions will be phased back in with 80% of deductions allowed from 1 April 2024 to 31 March 2025 and 100% allowed from 1 April 2025 onwards. Phasing back in of interest deductibility will be allowed for all taxpayers, whether they acquired their property, or drew down lending, before or after 27 March 2021.

Returning the bright-line test to two years

The Bill proposes that the current 10-year, 5-year new build, and 5-year bright-line tests be repealed and replaced by a new 2-year bright-line test. This will return the bright-line test to its original purpose of ensuring land speculators pay their fair share of tax on gains from property sales.

Given this objective, it is proposed that other policy settings are also returned to those that existed when the original 2-year bright-line test was introduced. In particular, it is proposed that the complex apportionment rules for the main home exclusion be removed. This will mean that the main home exclusion will apply if the land has been used predominantly (ie, more than 50% of the land area) for most of the time the person owned the land (ie, more than 50% of the

period) for a dwelling that was the person's main home. The main home exclusion will also be modified so that the period when a dwelling is being constructed on the land is ignored in determining whether the land has been used predominately as a main home for most of the period.

It is also proposed to extend the rollover relief rules. The rollover relief rules essentially allow a transfer between specified people to be ignored for the purposes of the bright-line test. The current rules only apply to a very limited set of transfers. It is proposed that these rules be extended to apply to all transfers between associated persons, provided they have been associated for at least 2 years before the transfer.

ACC and MSD lump sum backdated payments

The Bill proposes to alter the tax treatment of ACC and MSD backdated lump sum payments to address the tax disparity that arises when the timing of the receipt of the lump sum results in a higher tax liability than would arise if the amount had been spread over the periods to which it relates (i.e., an amount that should have been paid over multiple years but is paid as a lump sum in a single year). The proposed treatment would approximate the lower amount of tax that would be owing if the payment had been paid over the relevant earlier years.

For backdated ACC compensation payments that consist of a lump sum and relate to more than one income year, the Bill proposes that the tax rate that would apply would be:

- 10.5% if the recipient's average basic tax rate calculated over the four previous years is less than 10.5%, or
- the recipient's average basic tax rate calculated over the four previous years, or
- the recipient's basic tax rate for the year they receive the payment if that rate is higher than 10.5% and lower than their average basic tax rate for the four previous years.

For backdated MSD benefit payments that consist of a lump sum that relates to more than one income year the Bill proposes that the tax deducted by MSD would be treated as the final amount of tax owed.

Removal of commercial building depreciation

The Bill proposes to remove depreciation deductions for commercial buildings with an estimated useful life of 50 years or more. The Bill also proposes to remove the ability of the Commissioner of Inland Revenue to set special depreciation rates for these buildings. A new transitional provision for commercial fit-out will be made available for buildings acquired in or before the 2010–11 income year. Deductions taken under the new transitional provision and a former transitional provision will be included when calculating depreciation recovery income for buildings sold. These changes will apply for the 2024–25 and later income years.

Disposals of trading stock at below market value

The Bill proposes to limit the application of a valuation rule in the Income Tax Act 2007 to address instances of overreach.

The valuation rule deems a person who disposes of trading stock at below market value to derive as income the market value of the trading stock on the date of disposal. The valuation rule would be limited so that it only applies in the following instances:

- Where trading stock is disposed of to an associated person.
- Where a person disposes of trading stock to themselves for their own use or consumption.
- Where trading stock is not disposed of in the course of carrying on a business for the purpose of deriving assessable income, or excluded income, or a combination of both.

A further amendment would ensure the valuation rule does not apply to trading stock disposed of outside the course of carrying on a business to a donee organisation (whether or not that donee organisation is associated with the person making the disposal). This amendment would remove the current disincentive to gift trading stock to donee organisations.

The proposed amendments would take effect for all trading stock disposed of below market value on or after 1 April 2024.

Offshore Gambling Duty

Amendments are proposed to the Gaming Duties Act 1971 to introduce a new type of gaming duty, known as the offshore gambling duty.

The offshore gambling duty would apply to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents. It would be 12% of the offshore gambling profits made by these persons on or after 1 July 2024.

The offshore gambling duty rules have generally been designed to align with the existing rules for GST on remote services to allow existing systems and calculations for GST to be adapted to apply the offshore gambling duty.

The main difference from the GST remote services rules is that the proposed offshore gambling duty is calculated by excluding amounts for which the offshore gambling operator is required to pay "consumption charges" to the Department of Internal Affairs. Consumption charges are a 10% charge on betting on sports and racing by New Zealand residents conducted through offshore operators.

Government payment of employer contribution to qualifying paid parental leave recipients

The Bill proposes the Government pay a three percent employer style KiwiSaver contribution into the KiwiSaver accounts of paid parental leave (PPL) recipients

who pay three percent of their PPL payments into their KiwiSaver accounts. This would take effect from 1 July 2024 and help to increase the retirement savings of people who take time away from work on PPL.

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

The Bill proposes extending the existing temporary five-year income tax exemption on the income of non-resident offshore oil rig and seismic vessel operators.

The current exemption, which is due to expire on 31 December 2024, would be extended for a further five years until 31 December 2029. The exemption removes the incentive for rigs and seismic vessels to "churn" (i.e., to move in and out of New Zealand waters within 183 days to ensure income is not taxable under many of our double tax agreements), a process which is inefficient and has negative environmental impacts.

Tax rollover relief in response to recent flood events

The Bill proposes tax rollover relief for assets destroyed or made economically useless by the January-February North Island flood events. The effect of the proposed rollover relief would be to defer the recognition of income from the receipt of insurance proceeds for a destroyed business asset, provided there was a commitment to rebuild or replace the destroyed revenue account buildings or depreciable assets.

This would provide some cash flow benefits for insured businesses severely affected by the floods to assist them in their rebuild or replacement, and it would limit the windfall revenue gain that the Government would otherwise receive from the events.

A maximum five-year rollover/deferral period is proposed from the 2022–23 income year. If the asset has not been rebuilt or replaced by the 2027–28 income year, the suspended income would be brought to account in that year. If the business decided in an earlier income year to cease business or not to rebuild or replace the asset, the suspended income would be brought to account in that earlier year.

Similar rollover relief is also proposed for agricultural land improvements that have been destroyed as a result of the flood events.

Turning off bright-line and other timing tests

A joint government and local authority buy-out scheme was agreed to enable the purchase of properties that were no longer habitable following the Auckland floods and Cyclone Gabrielle. Some owners of residential rental properties who receive such a buy-out offer may find themselves subject to the various land-based timing tests that treat gains in value as taxable if they have been held for less than the relevant minimum time period. The Bill therefore proposes turning

off the bright-line and other time-based tests for such buy-outs. It will also extend to properties bought out by the Nelson City Council in response to the August 2022 Nelson floods.

Deductibility of co-operative company dividends

The Bill proposes temporarily extending Fonterra's existing ability to deduct certain distributions to its shareholders following a recent change in its constitution. These deductions would be consistent with the deductions that would have been available had Fonterra continued to apply its previous constitution.

This extension is proposed to apply for the 2022–23 to 2024–25 income years to provide time for officials and Fonterra to develop a solution to apply beyond the 2024–25 income year.

Other items

The Bill also contains items that would:

- Grant six 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.