

4 May 2023

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill

Purpose

1. We have considered whether the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (IRD 23491/3.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

4. The Bill is a taxation omnibus Bill that would amend the following Acts:
 - a. Income Tax Act 2007;
 - b. Tax Administration Act 1994 (TAA);
 - c. Goods and Services Tax Act 1985;
 - d. Child Support Act 1991;
 - e. KiwiSaver Act 2006;
 - f. Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Act 2022; and
 - g. Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023.
5. Key amendments include:
 - a. Setting the annual tax rates for the 2023-24 tax year;
 - b. Changing the trustee tax rate to 39%;
 - c. Introducing Global Anti-Base Erosion rules (GloBE), a global minimum tax designed so that multinational enterprises (MNEs) with annual revenue above €750 million are subject to tax of at least 15% on their mobile income in every country where that income is earned;
 - d. Providing for government payment of employer-style KiwiSaver contributions to recipients of government paid parental leave (PPL), provided the individual also

makes KiwiSaver contributions as a deduction from their government PPL payments;

- e. Changing the tax treatment for ACC and MSD lump sum backdated payments that are spread over more than one tax year to address the tax disparity that arises if the receipt of the lump sum would result in a higher tax liability than if the payment had been spread over the periods to which it relates;
 - f. Granting six charities overseas donee status and removing others that have ceased operations;
 - g. Extending a tax exemption for non-resident offshore oil rig and seismic vessel operators; and
 - h. Providing tax rollover relief in response to the recent flooding events in the North Island in January and February.
6. The Bill also includes a number of remedial matters and some minor amendments, including correcting cross-references and minor faults of expression.

Consistency of the Bill with the Bill of Rights Act

Section 14 - Freedom of expression

7. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind and in any form. This right has been interpreted as including the right not to be compelled to say certain things or provide certain information.¹

Reporting requirements

8. The Bill introduces several new requirements around reporting to the Commissioner of Inland Revenue (the Commissioner).
9. Clause 68 replaces section 78G(2) in the TAA. This section allows the Commissioner to prescribe a format for a country-by-country report that must be submitted by a large multinational group.
10. Clause 69 inserts new sections 78H-78J into the TAA. These sections include certain requirements for MNEs to provide information. For example: an entity that meets certain criteria must apply for registration of the MNE group and provide information as part of that application (new section 78H(3)-(4)), and an entity that is part of an MNE and located in New Zealand must meet certain annual reporting requirements (new section 78I).

Notice requirements

11. The Bill also contains certain notice and information requirements that must be met for people to be able to rely on the provisions allowing tax rollover relief in relation to recent flooding events in the North Island which will be inserted into the Income Tax Act 2007 (see, for example, clause 25, which introduces new section EZ 23BE(10) and (12)). These provisions require people to provide certain types of information to the Commissioner and therefore prima facie engage the right to freedom of expression.

¹ See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

Is the limitation justified and proportionate under s 5 of the Bill of Rights Act?

12. A provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act. The s 5 inquiry asks whether the objective of the provision is sufficiently important to justify some limitation on the freedom of expression; and if so, whether the limitation is rationally connected and proportionate to that objective and limits the freedom of expression no more than reasonably necessary to achieve that objective.²
13. The reporting requirements for MNEs are aimed at achieving a consistent global standard that is aimed at ensuring MNEs are subject to certain minimum tax in countries where they earn income. We consider the reporting requirements to be rationally connected to this important objective and a proportionate way to achieve it, noting that the information is likely to be of limited expressive value and the Commissioner would not have any other way to access this information.
14. The requirements to provide information when giving notice to rely on the tax rollover relief provisions for flood affected property are aimed at ensuring that those applying for the relief qualify for it. We consider that providing appropriate relief is an important objective, and that requiring persons to provide information about the damaged property they are seeking relief for is rationally connected to this objective and proportionate.

Conclusion

15. We consider that any limits on freedom of expression in the Bill are justifiable and therefore that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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² *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1.