

3 September 2021

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill**

**Purpose**

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1. We have considered whether the Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (Bill of Rights Act).
2. 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**

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3. The Bill is an omnibus taxation Bill and introduces amendments to the following Acts:
  - a. Goods and Services Tax Act 1985;
  - b. Income Tax Act 2007;
  - c. Tax Administration Act 1994;
  - d. Child Support Act 1991;
  - e. KiwiSaver Act 2006;
  - f. Student Loan Scheme Act 2011; and
  - g. Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020.
4. The main policy proposals in the Bill have been developed in accordance with the Generic Tax Policy Process and fall into three categories:
  - a. Setting the annual rates of income tax for the 2021-2022 tax year;
  - b. Proposals aimed at improving the current settings to ensure that taxes are fair and efficient and impede economic growth as little as possible, keeping compliance costs low and minimising opportunities for avoidance and evasion; and
  - c. Proposals aimed at improving the settings for tax administration, the goods and services tax (GST) regime, KiwiSaver and social policy rules administered by Inland Revenue (IRD).

## Consistency of the Bill with the Bill of Rights Act

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### Section 14 – Freedom of expression

5. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression including the freedom to seek, receive, and impart information and opinions of any kind in any form. This right extends to all forms of communication,<sup>1</sup> and has been interpreted as including the right not to be compelled to say certain things or to provide certain information.<sup>2</sup>
6. Clause 12 of the Bill inserts new section 12C to the Goods and Services Tax Act, which gives the requirements for the information that must be provided to the New Zealand Customs Service by a person who imports goods as part of a supply of distantly taxable goods.
7. Clause 19 of the Bill inserts new headings and new sections 19E to 19P. New sections 19K to 19N require registered persons to issue such taxable supply information when a taxable supply is made and supply correction information to be issued when an error in taxable supply information is recognised.
8. These provisions limit the right to freedom of expression in s 14 of the Bill of Rights Act, as they create requirements on registered persons to provide information (records of the supply of taxable goods) in specific circumstances.

### Discussion

9. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if the limit is justified under s 5 of the Bill of Rights Act. The s 5 inquiry asks:<sup>3</sup>
  - a. does the provision serve an objective sufficiently important to justify some limitation on the right or freedom?
  - b. if so, then:
    - i. is the limit rationally connected with the objective?
    - ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
    - iii. is the limit in due proportion to the importance of the objective?
10. We consider that, on balance, the limitations contained in the Bill are justified under s 5 of the Bill of Rights Act because:
  - a. the objective of requiring appropriate tax records, to ensure the accurate imposition of tax, is sufficiently important to justify some limitation on s 14;

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<sup>1</sup> *RJR MacDonald Ltd v Canada* [1995] 3 SCR 199 (SCC).

<sup>2</sup> See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

<sup>3</sup> *Hansen v R* [2007] NZSC 7 at [272].

- b. requiring people to record that information and provide it to certain agencies or people in specific circumstances is rationally connected to that objective;
- c. new sections 12C, and 19K to 19N impair s 14 no more than is reasonably necessary, noting that they only require the provision of certain information relating to the supply of goods and services that is relevant to its specific objective, and the information that may be required is of limited expressive value; and
- d. given the importance of taxation, the efficiency of its administration to the function of Government, and that registered persons covered by the Bill have chosen to engage in sales activities which have a reasonable expectation of regulation and reporting, the above limits are proportionate to the importance of the objective.

11. For these reasons, we consider that any limits within the Bill on the right to freedom of expression are justified in terms of s 5 of the Bill of Rights Act.

## **Conclusion**

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12. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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