

6 September 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)

Purpose

1. We have considered whether the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) (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. The Bill is an amended version of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill on which we provided advice on 19 August 2022. This Bill is substantively the same as the first Bill, save for the removal of the provisions relating to GST charged on managed funds.
3. 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 25015/3.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
4. 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

5. The Bill amends the following Acts:
 - a. Income Tax Act 2007;
 - b. Goods and Services Tax Act 1985;
 - c. Tax Administration Act 1994;
 - d. Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Act 2022;
 - e. Income Tax Act 2004;
 - f. Companies Act 1993;
 - g. Insolvency Act 2006.
6. The proposals in the Bill fall into three categories:
 - a. Setting the annual rates of income tax for the 2022-23 tax year.
 - b. Improving current tax settings to ensure that taxes are fair and efficient and impede economic growth as little as possible, compliance costs are kept low and opportunities for avoidance and evasion are minimised.

- c. Improving the settings for tax administration, and the goods and services tax (GST) regime, KiwiSaver and social policy rules administered by Inland Revenue (IRD).
7. The Bill proposes to implement rules designed by the Organization for Economic Cooperation and Development that were developed in response to the rapid growth of the digital economy. These rules create a reporting framework for activities on digital platforms and in the sharing and gig economy.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

8. 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,¹ and has been interpreted as including the right not to be compelled to say certain things or to provide certain information.²
9. The Bill creates several new information-requiring provisions, which can be broadly split into three categories:
 - a. A requirement to provide information to the Commissioner of Inland Revenue (the Commissioner) (clauses 91, 93, 94, 136, 141, 142, 143, 145, 149, 151, 153, 154 and 156);
 - b. A requirement for a seller to provide information to the operator of an electronic marketplace (clauses 130, 179); and
 - c. A requirement for an operator of an electronic marketplace to provide a statement to the underlying supplier (clause 109).
10. To support the implementation of these provisions, the Bill also proposes new civil penalties that could apply where a person fails to comply with the information-requiring provisions.
11. These provisions engage the right to freedom of expression affirmed under s 14 of the Bill of Rights Act as they require persons to provide information as part of their compliance with New Zealand tax laws.

Discussion

12. 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:³

¹ RJR MacDonald Ltd v Canada [1995] 3 SCR 199 (SCC).

² See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (977).

³ *Hansen v R* [2007] NZSC 7 at [272].

- 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?
13. We consider that, on balance, any limitations on s 14 of the Bill of Rights Act contained in the Bill are justified under s 5 of that Act because:
- a. the objective of requiring information from persons participating in the tax system is to ensure the accurate imposition of tax, which we consider to be a sufficiently important objective. It also helps to minimise opportunities for avoidance and evasion ensuring that the tax system is fair and efficient, which is crucial to encouraging voluntary compliance;
 - b. requiring people to provide certain information to the Commissioner, to operators of digital marketplaces and to underlying suppliers is essential for calculating accurate tax imposition, and therefore rationally connected to the objective;
 - c. the clauses we have identified require persons to provide specified information, or non-specified information which is limited to information that may be required for the Commissioner to calculate accurate imposition of tax, which we consider impairs the right to freedom of expression no more than reasonably necessary;
 - d. given the importance of taxation and 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.

Conclusion

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



Jeff Orr
Chief Legal Counsel
Office of Legal Counsel