

2 March 2017

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill

Purpose

1. We have considered whether the Taxation (Annual Rates for 2017–18, Employment and Investment Income, 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 with the latest version of the Bill (PCO 19964/11.11). We will provide you with further advice if the final version of the Bill includes changes that affect the conclusions of 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 which amends the Income Act 2007, the Tax Administration Act 1994 and seven other pieces of legislation.
5. The main objectives of the Bill are to modernise and improve the settings for the administration of the tax system through a series of measures relating to employment and investment income information, the electronic filing threshold for goods and services tax ('GST'), amendments to the pay as you earn ('PAYE') rules, and amendments to penalty and interest rules.
6. The Bill also contains proposals aimed at improving current tax settings within a broad-base, low rate framework where the tax treatment of alternative forms of income and expenditure is intended to be as even as possible.

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 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. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹

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

8. The Bill has a number of requirements for the provision of certain information including:
 - a. employers being required to provide PAYE information to Inland Revenue on a payday basis (rather than on a monthly basis)
 - b. employers being required to provide information about new and departing employees (before the next return of payday information)
 - c. employers being required to disclose the value of share benefits employees receive under employee share schemes (and any tax they choose to withhold under the PAYE rules), and
 - d. investors being required to disclose certain investment income information (in order to reduce compliance costs and allow Inland Revenue to pre-populate tax returns).
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 it can be considered a reasonable limit that is justifiable in terms of s 5 of that Act.
10. We consider that the limitation is justified under s 5 of the Bill of Rights Act because:
 - a. the objective of ensuring Inland Revenue has all information relevant to administer the tax system is sufficiently important
 - b. requiring the people who hold that information to provide the information to the Commissioner is rationally connected to that objective
 - c. the above clauses only require the provision of certain factual information that is relevant to the specific objectives so impair this right no more than is reasonably necessary, and
 - d. given the importance of taxation to the function of Government the above limits are proportionate to the importance of the objective.
11. For these reasons, we conclude that any limits to the freedom of expression imposed by the Bill are justified under s 5 of the Bill of Rights Act.

Conclusion

12. 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