

18 July 2016

Hon Christopher Finlayson QC, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Business Tax, Exchange of Information and Remedial Matters) Bill**

### **Purpose**

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1. We have considered whether the Taxation (Business Tax, Exchange of Information 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 (19696/9.0). We will provide you with further advice if the final version of the Bill 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) and s 19 (freedom from discrimination). Our analysis is set out below.

### **The Bill**

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4. The Bill amends the Income Act 2007, Tax Administration Act 1994 and Student Loan Scheme Act 2011.
5. The main objectives of the Bill are to simplify business taxation, implement the G20 and OECD standard for Automatic Exchange of Financial Account Information in Tax Matters and implement the recommendations of the Government Inquiry into Foreign Trust and Disclosure Rules.

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

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#### **Section 14 - Freedom of expression**

6. 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. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.<sup>1</sup>
7. There are a number of provisions in the Bill that compel the provision of specific information, including:

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<sup>1</sup> *RJR MacDonald v Attorney-General of Canada* (1995) 127 DLR (4th)

- a. clause 10 which outlines information that must be provided to the Commissioner when registering a foreign trust, when details of the foreign trust change and as part of an annual return
  - b. clause 24 which requires financial institutions and secondary contacts to provide reporting information under the Common Reporting Standard
  - c. clause 45 which requires users and providers of the accounting income method to provide the Commissioner with information for each instalment period, and
  - d. clause 102 which requires companies with shareholders who are provisional tax attributors to provide the Commissioner with information about those shareholders each year.
8. 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. The s 5 inquiry may be approached as follows:<sup>2</sup>
- a. does the provision serve an objective sufficiently important to justify some limitation of 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?
8. We consider that the limitation is justified under s 5 of the Bill of Rights Act because:
- a. the objective of ensuring the Inland Revenue Department has all information relevant to the level of tax to be paid by trusts, companies and individuals 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 information that is relevant to the tax status of the trusts, companies and individuals 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.
9. 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.

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<sup>2</sup> *Hansen v R* [2007] NZSC 7 [123].

## **Section 19(1) – Right to be free from discrimination**

9. Section 19 of the Bill of Rights Act affirms the right to be free from discrimination, including on grounds of national origins.
10. We have considered whether the differential rates for schedular payments in cls 88 and 99 constitute a limit on the freedom from discrimination. Clause 99 states that non-residents and holders of temporary entry class visas must make schedular payments of at least fifteen percent whereas all others must make payments of at least ten percent. Further, cl 88 states that the schedular payment rate for non-resident entertainers is 20 percent.
11. However, schedular payments are payments towards final tax and the presence of a different rate for schedular payments does not affect the amount of tax paid over the course of the year. For this reason, we conclude that there is not a material disadvantage and this clause does not limit the right to be free from discrimination.

## **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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