

Taxation Principles Reporting Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation Principles Reporting Bill and recommends by majority that it be passed. We recommend all amendments by majority. References to “we” in the body of the report should be read as referring to the majority.

About the bill as introduced

The Taxation Principles Reporting Bill would establish a statutory framework requiring the Commissioner of Inland Revenue to report annually about this country’s tax settings against a set of core principles such as equity, efficiency, and certainty. The purpose of the report would be to improve the public’s understanding of the tax system, and to encourage informed debate about its future.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. A number of matters were raised in submissions relating to principles of legislative quality, which we have sought to address in our recommended amendments. We wish to bring the House’s attention to our proposed amendment to clause 8 in particular, which as introduced would place a significant limit on the bill’s justiciability. We also wish to draw to the House’s attention our recommended amendment to clause 14, which as introduced represented a significant “Henry VIII” clause. These amendments are discussed in more detail below.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Commencement date

Clause 2 as introduced provides for the bill to come into force on 1 July 2023. This would give the bill retrospective effect, since that date has now passed. Chapter 12 of the Legislation Design and Advisory Committee guidelines states that legislation should have prospective, not retrospective effect.

We intend that the first of the reports provided for in Part 2 of the bill should be presented in December 2023. The commencement should therefore be before this date. We recommend amending clause 2 to set the commencement date as the day after the date on which the bill receives the Royal assent. This would allow the House time to complete its consideration of the bill and avoid a retrospective commencement date.

Definition of “Commissioner’s report”

Clause 4 as introduced defines the Commissioner’s report by referring to clause 3. Clause 3 sets out the purpose of the bill, which is to oblige the Commissioner to report on “New Zealand’s current taxation settings in relation to the taxation principles in this Act, as measured using the approved taxation principles measurements”.

We think the definition of Commissioner’s report in clause 4 should be amended to state clearly what the Commissioner’s report is expected to contain, namely the wording quoted above from clause 3. The “approved taxation principles measurements”, as defined, would be those set out in clause 13 as well as any additional measures approved by the Commissioner under clause 14.

To this effect, we recommend amending the definition of Commissioner’s report provided in clause 4, and deleting the part of clause 3 that would be transferred to clause 4.

Te Tiriti o Waitangi obligations

Clause 6 as introduced would require the bill to be applied in a way that is consistent with the public service’s obligations in relation to Te Tiriti o Waitangi. We acknowledge the importance of this requirement, and note that the Public Service Act 2020 already outlines the role of the public service in supporting the Crown in its relationship with Māori under the Treaty. We think that a standalone clause reiterating this obligation is unnecessary.

Moreover, our proposed insertion of clause 11(4) (see below) would require the Commissioner to take into account the impact of the tax system on different communities of taxpayers within New Zealand, including Māori. We therefore recommend deleting clause 6.

Rights and duties under revenue Acts

Clause 7 provides that the Commissioner’s rights and obligations in respect of their duties under the Tax Administration Act 1994 and other revenue Acts would not apply to their duties under the bill, except to the extent to which they relate to taxpayers’ information. It also provides that the bill would not affect quantification of a tax-

payer's liability under a revenue Act, nor any other taxpayer right or obligation under a revenue Act, except to the extent to which they relate to taxpayers' information.

The purpose of clause 7 is to ensure that the Commissioner's duty to report information on the tax system in relation to a set of tax principles would be separate from their duty to determine the amount of tax individual taxpayers should pay, and to collect the highest amount of net revenue possible that is practicable within the law.

Some submitters suggested that clause 7 as introduced would narrow the application of revenue Acts by more than is necessary to achieve this purpose. For example, they stressed that the bill should not override the fundamental obligation of Inland Revenue under the Tax Administration Act to protect the integrity of the tax system and to act independently of Ministerial direction. We agree, and therefore recommend amending clause 7 to remove the blanket disapplication of revenue Acts for the purpose of the bill, and replace it with a narrower reference to the specific duty under revenue Acts that would not apply, namely the duty to collect the highest amount of net revenue possible that is practicable within the law. We also recommend inserting clause 7(2) to confirm that the bill would not affect quantification of a taxpayer's liability under a revenue Act.

Justiciability

Clause 8 would preclude Commissioner's reports and the bill generally, including the taxation principles, from being used as evidence as to any matter of law or fact. It would also preclude them from being used in the interpretation of any matter of law or fact. The intent of the clause is to prevent the courts from using the bill's provisions as evidence to interpret the meaning of tax law in other revenue Acts, such as the application of a law to impose tax or allow a deduction.

We are concerned that clause 8 as introduced might prevent the Commissioner from being challenged through judicial review for failing to meet their obligations under the bill. Also, clause 8 as introduced would appear to regulate the use of the reports and taxation principles by academics, media, and the general public, which runs counter to one of the bill's stated objectives. We therefore recommend amending clause 8 to allow for judicial review as to the Commissioner's duties in the bill, and to narrow the restriction on the bill's use in the interpretation of law or fact for use in legal proceedings.

Frequency of interim and full reports and information used

Clause 11 would require the Commissioner to give the Minister an interim report annually, and a full report every three years. Clause 11(1) would require the interim report to be given to the Minister before the end of each calendar year, for the tax year that ends in the calendar year, using the best information for that tax year that the Commissioner has on hand at that time.

We note that some taxpayers are provided with an extension of time to complete filing, which can be up to a year after the end of the tax year. The best information for an interim report may only be available for the relevant tax year after the calendar

year has ended. We therefore recommend deleting the words “for that tax year” from clause 11(1).

Similarly, information used in the triennial reports might need to draw on information from tax years before the three tax years ending in the calendar year in which it is completed. We recommend allowing for this by inserting the words “using the best information that the Commissioner has on hand at that time” into clause 11(2). We understand that it is not the intent of the bill to present an interim report in years in which a full report is presented. We recommend inserting clause 11(3) to make this explicit.

Finally, we think the Commissioner’s report should inform the public of how different communities of taxpayers in New Zealand, such as Māori, experience the tax system in relation to the principles set out in the bill. This would reflect the public service obligation under the Public Service Act 2020 to support the Crown–Māori relationship. We recommend inserting clause 11(4) to provide for this.

Power to exclude measurements

Clause 14 sets out an approval procedure for the inclusion and exclusion of taxation principles measurements beyond the minimum set described in clause 13. Clause 14(1)(c) would require the Commissioner to notify a proposed new measurement by publishing a description of it, in a publication of the Commissioner’s choosing, at least 2 months before using it in a report.

We think the same requirement should apply when excluding a measurement that the Commissioner has included under clause 14(1), but that is subsequently judged by the Commissioner to be inappropriate for the purpose of the legislation. We recommend providing for this in clause 14(2).

Clause 14(2) as introduced would allow the Commissioner to exclude not just new measurements, but any measurements that they decide are inappropriate for the purpose of the legislation, including those described in clause 13. We think this is inappropriate. It would run counter to the intent of the bill, because the measurements described in clause 13 are intended to serve as an enduring minimum set of measurements.

Moreover, clause 14(2) as introduced would allow primary legislation to be overridden by secondary legislation. It is a type of “Henry VIII” power that would authorise a body other than Parliament to amend, suspend, or override primary legislation. The Regulations Review Committee has expressed the view that a Henry VIII provision should be included in a bill only in exceptional circumstances.

We recommend inserting into clause 14(2) the words “has included under subsection (1) but subsequently”, to make clear that the Commissioner’s power to exclude measurements would apply only to new measurements, beyond those set out in clause 13.

Approval procedure in clause 14 is not secondary legislation

As introduced, clause 15 makes clear that the approval procedure in clause 14 for the inclusion or exclusion of taxation principles measurements is not secondary legislation. We understand that a recent change in approach to secondary legislation makes clause 15 obsolete. Secondary legislation is now defined as an instrument that is made under an Act if the Act states that the instrument is secondary legislation. In the absence of a clause stating explicitly that the approval procedure was secondary legislation, it would correctly be assumed not to be. We therefore recommend deleting clause 15.

Frame the principles in relation to the overall purpose of the tax system

Schedule 1 sets out the seven principles against which the tax system would be measured in reports by the Commissioner. We think these principles should be considered not individually but as a package, because they overlap and conflict and so require trade-offs and blending. We think the key principles, which relate to how a tax system is designed, should be framed in relation to the overall purpose of a tax system, which is to raise revenue, and in some cases to correct behaviour or market failures. We recommend inserting an introduction to the list of principles in Schedule 1 to this effect.

Descriptions of the taxation principles

We recommend several amendments to the descriptions of the taxation principles set out in Schedule 1. Our main changes are discussed below; others are stylistic and we do not discuss them.

Description of the principle of horizontal equity

In addition to stylistic changes, we recommend inserting the word “economic” before “income” in the first sentence of this description. “Economic income” is the term used in the description of the principle of vertical equity (see below), and we think it should be used consistently.

Description of the principle of efficiency

We think it is important to make a clear distinction between this principle and the principle of (reasonable) compliance and administrative costs, and to recognise costs to the economy beyond those arising from tax-induced distortions to the use of economic resources. We therefore recommend amending this description to “Efficiency is the extent to which tax revenue is raised in ways that minimise costs to the economy, including distortions”.

Description of the principle of vertical equity

In addition to stylistic changes, we recommend inserting the word “average” before “rate”. We also recommend amending the description to allow for the fact that there is a live debate within tax policy about whether GST (goods and services tax) is a

regressive tax or merely a flat, non-progressive, tax, depending on what it is measured against.¹ We recommend inserting the words “relative to income” after “GST is regressive” and “no lower rate of tax”. We recommend this change because some economic income will not be taxed for both cohorts, and the principle could otherwise be read to assume that all economic income is taxed, albeit some at a lower than average tax rate. The examples of economic income that are not taxed include many capital gains, imputed income, and the inflationary component of income.

Description of the principle of revenue integrity

Several submitters discussed the importance of coherence in the tax system. They suggested that a tax system that lacks coherence is more vulnerable to opportunities for tax avoidance. We agree, and therefore recommend adding “the extent to which the tax system is coherent” to the description of the principle of revenue integrity.

Description of the principle of certainty and predictability

In addition to stylistic changes, we recommend inserting the words “the extent to which the tax system is transparent”, since we think that transparency makes an important contribution to certainty and predictability in the tax system.

Description of the principle of flexibility and adaptability

In addition to stylistic changes, we recommend inserting the words “or comparative wellbeing” at the end of the description, after the word “inequality”. This would emphasise the bill’s purpose as outcome-focused.

National Party differing view

National believes that this bill is unnecessary. Tax policies are the purview of the Government of the day and tax policies change as new Governments are elected. This bill is an attempt by the current Labour Government to enshrine its own views on future governments. Furthermore, as the Legislation Design and Advisory Committee pointed out in their submission, the intent of the bill could be achieved through non-legislative arrangements, such as a Cabinet Direction.

Other significant issues identified by submitters, including The Law Society, Chartered Accountants Australia & New Zealand, and tax specialist firms, include the concern that the development of the Bill did not follow the Generic Tax Policy Process; it extends the excessive and invasive power to the IRD to require information from taxpayers in order to report annually on the Tax Principles; it has a significant risk that the bill will create “unintended and unforeseen consequences that need to be addressed”; and it allows the IRD to make changes to the specific Principles without reference to Parliamentary oversight.

¹ Encyclopædia Britannica defines a regressive tax as a “tax that imposes a smaller burden (relative to resources) on those who are wealthier”.

Finally, many submitters highlighted that the principles contained in the bill introduce new terms such as “economic income” in the legislation, whereas the IRD’s current nomenclature refers to “taxable income”. Many thought the adoption of such terms politicised the purposes of the bill and was unhelpful. The Minister of Revenue was even warned by Treasury that “the statutory reporting framework adopted in the Bill could present a risk to the integrity, independence, and endurance of the reporting framework”.

If this bill is enacted, National will repeal the Act when elected to Government.

ACT Party differing view

ACT will not be supporting this Bill as proposed. It is viewed as not necessary by our Party and does not enhance the existing New Zealand tax principles practised by the industry. The bill should be suspended until a new Parliamentary cycle is confirmed.

Appendix

Committee process

The Taxation Principles Reporting Bill was referred to the committee on 18 May 2023. We called for submissions on the bill with a closing date of 9 June 2023. We received and considered submissions from 33 interested groups and individuals. We heard oral evidence from 17 submitters in Wellington.

We received advice on the bill from the Inland Revenue Department and our independent adviser, Sir Rob McLeod. The Office of the Clerk provided advice on the bill's legislative quality. Inland Revenue and the Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 14.

Committee membership

Ingrid Leary (Chairperson)

Andrew Bayly

Hon Dr David Clark

Anna Lorck

Dan Rosewarne

Damien Smith

Chlöe Swarbrick

Hon Phil Twyford

Simon Watts

Helen White

Nicola Willis

Hon Michael Woodhouse also participated in our consideration.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Barbara Edmonds

Taxation Principles Reporting Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation Principles Reporting Act **2023**.

2 Commencement

This Act comes into force on ~~1 July 2023~~ the day after the date on which it receives the Royal assent. 5

Part 1 Preliminary provisions

3 Purpose

The purpose of this Act is to oblige the Commissioner to report on New Zealand's current taxation settings ~~in relation to the taxation principles in this Act, as measured using the approved taxation principles measurements.~~ 10

4 Interpretation

In this Act, unless the context otherwise requires,—

approved taxation principles measurements means measurements, described in **section 13**; or approved in accordance with **section 14** 15

Commissioner means the Commissioner of Inland Revenue

Commissioner's report means a report, prepared by the Commissioner, on New Zealand's current taxation settings in relation to the taxation principles in this Act, as measured using the approved taxation principles measurements described in **section 3** 20

Minister means the Minister of Revenue; or, if there is no Minister of Revenue, the Minister responsible for the Inland Revenue Department

revenue Act means an Act listed in schedule 1 of the Tax Administration Act 1994, including this Act 25

tax year has the same meaning as in the Income Tax Act 2007

taxation principles means the tax system principles provided in **schedule 1** of this Act.

5 Act binds the Crown

This Act binds the Crown. 30

6 ~~Te Tiriti o Waitangi obligations apply~~

~~This Act must be applied consistent with the public service's obligations in relation to Te Tiriti o Waitangi.~~

7 No effect on revenue~~Revenue Acts not binding: no rights and obligations other than secrecy and privacy~~

- (1) Despite this Act being a revenue Act, the Commissioner's duty, under section 6A(2) of the Tax Administration Act 1994, to collect over time the highest net revenue that is practicable within the law does not apply~~Commissioner's rights and obligations in respect of the Commissioner's duties under the Tax Administration Act 1994 and other revenue Acts do not apply~~ to the Commissioner's duties under this Act, ~~except to the extent to which they relate to taxpayers' information. Further, this Act does not affect quantification of a taxpayer's liability under a revenue Act, nor does it affect any other taxpayer right or obligation under a revenue Act, except to the extent to which they relate to taxpayers' information.~~

- (2) This Act does not affect quantification of a taxpayer's liability under a revenue Act or in legal proceedings (see **section 8**).

8 Justiciability

- (1) Commissioner's reports and this Act (including the taxation principles) may not be used as evidence as to any matter of law or fact in legal proceedings other than in judicial review proceedings as to the Commissioner's duties in preparing a Commissioner's report.~~Further, Commissioner's reports and this Act (including the taxation principles) may not be used in the interpretation of any matter of law or fact.~~

- (2) Commissioner's reports and this Act (including the taxation principles) may not be used in the interpretation of any matter of law or fact in legal proceedings other than in judicial review proceedings as to the Commissioner's duties in preparing a Commissioner's report.

9 Information and privacy

In performing the Commissioner's obligations under this Act,—

- (a) the Commissioner may use any information the Commissioner holds, if the information was gathered and is held, lawfully, for any purpose, including if the information was gathered lawfully and specifically to help the Commissioner perform the Commissioner's obligations under this Act; and
- (b) the Commissioner must ensure that all information in a Commissioner's report is anonymised and aggregated.

10 Consequential amendments

Schedule 2 provides consequential amendments to other Acts.

Part 2

Taxation principles reporting

11 Duty to report: annual interim and triennial full

- (1) The Commissioner must give the Minister an interim Commissioner's report annually, before the end of a calendar year, for the tax year that ends in the calendar year, using the best information ~~for that tax year~~ that the Commissioner has on hand at that time. 5
- (2) Once every 3 calendar years, starting with the 2025 calendar year, the Commissioner must give the Minister a full Commissioner's report, before the end of the calendar year, for the 3 previous tax years that end in the calendar year, using the best information that the Commissioner has on hand at that time. 10
- (3) The Commissioner must not prepare an interim Commissioner's report in a calendar year in which the Commissioner prepares a full Commissioner's report.
- (4) A Commissioner's report must take into account the impact of the tax system on different communities of taxpayers within New Zealand. 15

12 Presentation and publication

- (1) The Commissioner must publish a copy of the interim Commissioner's report at the Commissioner's expense as soon as it is reasonably practicable after the Commissioner gives the Minister the report.
- (2) The Minister must present a copy of the full Commissioner's report to the House of Representatives as soon as it is ~~it is~~ reasonably practicable after the Commissioner gives the Minister the report. The Commissioner must publish a copy of the full Commissioner's report at the Commissioner's expense as soon as it is reasonably practicable after the Minister presents a copy of it to the House of Representatives. 20
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13 Approved taxation principles measurements

The approved taxation principles measurements for the purpose of this Act are as follows:

- (a) income distribution and income tax paid:
- (b) distribution of exemptions from tax, and of lower rates of taxation: 30
- (c) perceptions of integrity of the tax system:
- (d) compliance with the law by taxpayers.

14 Approved taxation principles measurements: approval procedure for inclusion and exclusion

- (1) The Commissioner may include measurements beyond the minimum set described in **section 13** for the purpose of this Act, if— 35

- (a) the Commissioner decides the new measurements are appropriate for inclusion as approved taxation principles measurements; and
- (b) the new measurements are within the direct responsibility of the Commissioner in relation to the tax system; and
- (c) the Commissioner publishes, in a publication of the Commissioner's choosing, a description of the new measurements 2 months or more before the Commissioner uses them in a Commissioner's report. 5
- (2) The Commissioner may exclude measurements that the Commissioner has included under **subsection (1)**, but subsequently decides are inappropriate for the purpose of this Act, if the Commissioner's decision to exclude the inappropriate measurements is published in a publication of the Commissioner's choosing 2 months or more before the Commissioner does not use them in a Commissioner's report. 10

15 ~~Approved taxation principles measurements: application of Legislation Act 2019~~ 15

~~The approval procedure for the inclusion and exclusion of approved taxation principles measurements under **section 14** is not secondary legislation for the purposes of the Legislation Act 2019, and does not have to be presented to the House of Representatives under section 114 of that Act, and may not be disallowed by Parliament under section 116 of that Act.~~ 20

Schedule 1

Tax system principles ~~Taxation principles~~

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1 Purpose of taxation

The main purposes of a tax system are to—

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- (a) raise revenue to finance government expenditure;
 (b) correct behaviour or market failures.

2 Key principles

The key principles considered for designing or changing a tax system, as measured by the approved taxation principles measurements, are set out in the following table:

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<u>Key</u> Taxation principle	Description
Horizontal equity	People <u>Horizontal equity</u> is the extent to which people with similar levels of <u>economic</u> income should pay similar amounts of tax. <u>In considering horizontal equity, the time value of money matters and the tax system should generally recognise the economic effect of income. The time value of money matters when considering horizontal equity. The tax system should generally recognise the economic effect of income, not its name, while acknowledging</u> In considering horizontal equity, there are important areas where exemptions to taxing economic income are justified in the pursuit of wider societal outcomes (eg, for example, not taxing the imputed rent or gains on an owner-occupied home).
Efficiency	<u>Efficiency</u> is the extent to which tax revenue is raised in ways <u>that minimise costs to the economy, including distortions</u> Tax revenue should be raised in ways that minimise distortions to the economy and the use of resources.
Vertical equity	The tax system should be progressive <u>Vertical equity</u> is the extent to which the tax system is <u>progressive</u> . Tax is progressive if people with higher levels of economic income pay a higher proportion of that income in tax. A progressive tax system does not mean that every tax should be <u>is</u> progressive (eg, for example, GST is regressive <u>relative to income</u>) but the overall system ought to be. In practice, wealthy people should at the very least pay no lower a rate of tax on their economic income than middle-income New Zealanders already do <u>wealthy people should pay no lower an average rate of tax relative to their economic income than middle New Zealanders.</u>
Revenue integrity	The revenue system should be <u>Revenue integrity</u> is the extent to which the tax system is coherent and sustainable over time and <u>minimises</u> opportunities for tax avoidance and tax evasion.
Compliance and administrative costs	Compliance and administrative costs <u>Compliance and administrative costs</u> is the extent to which <u>compliance and administrative costs</u> for taxpayers and the Government should be <u>are</u> reasonable, but this <u>minimising costs</u> is not justification for substantial unfairness in the tax system.

Certainty and predictability	People should be Certainty and predictability is the extent to which the tax system is transparent and taxpayers are able to determine their tax obligations before they are due.
Flexibility and adaptability	The tax system should keep Flexibility and adaptability is the extent to which the tax system keeps pace with changes in society, in particular technological and commercial developments, and changes in inequality <u>or comparative wellbeing</u> .

Schedule 2

Consequential amendments

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Tax Administration Act 1994

In schedule 1 of the Tax Administration Act 1994, insert, in appropriate alphabetical order, “Taxation Principles Reporting Act **2023**”. 5

Legislative history

18 May 2023

Introduction (Bill 253–1), first reading and referral to Finance and Expenditure Committee