



Tax policy report: Memorandum for Cabinet - approval for introduction of Budget 2010 tax bills

Date:	13 May 2010	Priority:	High
Security Level:		Report No:	T2010/778 PAD2010/091

Action sought

	Action Sought	Deadline
Minister of Finance	Agree recommendations and sign and refer memorandum to Cabinet Office, and Refer copies of this report and submission to the Hon Peter Dunne	By 10 am Friday 14 May

Contact for telephone discussion (if required)

Name	Position	Telephone	
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13 May 2010

Minister of Finance

Memorandum for Cabinet - approval for introduction of Budget 2010 tax bill

Executive summary

Attached is a draft memorandum intended for consideration by the Cabinet at its scheduled meeting on 17 May 2010.

This submission seeks approval for the introduction of the Taxation (Budget Measures) Bill to give effect to the Government tax reform package for Budget 2010.

Bill contents and Standing Orders issue

The Taxation (Budget Measures) Bill, proposed for introduction on 20 May 2010, will introduce amendments to the following Acts:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- Government Superannuation Fund Amendment Act 1969
- National Provident Fund Restructuring Act 1990
- New Zealand Superannuation and Retirement Income Act 2001
- Social Security Act 1964
- War Pensions Act 1954

This memorandum seeks approval for the Taxation (Budget Measures) Bill to be introduced on 20 May 2010. A CAB 100 is attached.

Late filing and payment penalties, and Use of Money interest

As discussed with you on 11 May 2010, the Taxation (Budget Measures) Bill includes provisions allowing the Commissioner of Inland Revenue not to impose, or to remit late filing and payment penalties, and use of money interest, that arise following the GST increase, provided the error can reasonably be attributed to the change in the GST rate. We recommend that this apply where:

- The lateness or error is reasonably attributable to the change in GST rate;
- No shortfall penalty applies; and
- The GST taxable period or periods to which the penalties and use of money interest relate are either the taxable period that includes 1 October 2010, or, if more favourable to the taxpayer, the taxable period that includes 1 October 2010 and any other later taxable period that ends before 31 December 2010.

There are no fiscal consequences to this recommendation as no increase in penalties or interest has been factored into the baseline in anticipation of the GST rate change.

Recommended action

We recommend that the Minister of Finance:

(a) **Agree** that the legislation include temporary provisions to allow the Commissioner of Inland Revenue not to impose, or to remit penalties and use of money interest, where:

- The lateness or error is reasonably attributable to the change in GST rate;
- No shortfall penalty applies; and
- The GST taxable period or periods to which the penalties and use of money interest relate are either the taxable period that includes 1 October 2010, or, if more favourable to the taxpayer, the taxable period that includes 1 October 2010 and any other later taxable period that ends before 31 December 2010.

Agreed/Not agreed

(b) **Note** there are no fiscal consequences to agreeing to recommendation (a);

Noted

(c) **Direct** Inland Revenue to give effect to recommendation (a) by including in the Taxation (Budget Measures) Bill 2010

Directed

(d) **Sign and refer** the memorandum to Cabinet Office by 10 am Friday 14 May 2010.

Sign and referred

(e) **Refer** copies of this report and submission to your colleague the Hon Peter Dunne, Minister of Revenue.

Signed and referred

Steve Mack
for Secretary to the Treasury

Warren Cole
Manager, Tax Law Drafting
Inland Revenue

Hon Bill English
Minister of Finance

The Chair
Cabinet

Approval for introduction of the Taxation (Budget Measures) Bill

Proposal

1. This submission seeks approval for the introduction of the Taxation (Budget Measures) Bill to give effect to the Government tax reform package for Budget 2010.
2. The Taxation (Budget Measures) Bill, proposed for introduction on 20 May 2010, will introduce amendments to the following Acts:
 - Income Tax Act 2007
 - Tax Administration Act 1994
 - Goods and Services Tax Act 1985
 - Government Superannuation Fund Amendment Act 1969
 - National Provident Fund Restructuring Act 1990
 - New Zealand Superannuation and Retirement Income Act 2001
 - Social Security Act 1964
 - War Pensions Act 1954

Policy

3. The bill is to give effect to tax reforms to be announced in Budget 2010. The reforms are intended to boost economic growth by improving incentives to work, save and invest; to improve the fairness, coherence and integrity of the tax system by reducing opportunities to avoid tax and gain unfair access to social assistance; and to make the tax system more supportive of New Zealand's competitiveness. The specific measures are detailed in CAB Min (10) 12/10 (12 April 2010) and CAB Min (10) 13/24.
4. The proposed increase in GST from 12.5% to 15% may be contentious, despite the comprehensive package of compensatory measures for those on fixed incomes that form part of the package.
5. A bill is necessary to give effect to all components of the package because tax is statutory in nature and can only be amended by legislation.
6. Consistent with the authority delegated to us by Cabinet, the Minister of Revenue and I have instructed that the following aspects of the policy be incorporated in the legislation:

- Allowing taxpayers that receive a capital contribution the option to amortise the contribution as income over 10 years as an alternative to reducing the depreciable cost of an asset;
- Clarifying that the prohibition on obtaining a special depreciation rate for a building applies to all applications received after 20 May 2010 (Budget Day);
- Providing that adjustments to the abatement threshold for Working for Families tax credits may be made by Order in Council; and
- Removal of the late filing and late payment penalty and interest for GST returns and payments of GST if it is reasonably attributable to a change in the GST rate and there is no other fault of the taxpayer that is subject to a shortfall penalty.

7. In addition, last year the Minister of Revenue announced that certain categories of buildings that were acquired before 30 July 2009 (the date on which Inland Revenue released a relevant draft interpretation statement) are to be treated as not being a building for tax purposes if the buildings were not treated by Inland Revenue as a building before the release of the draft interpretation statement. As the effect of this announcement overlaps the building depreciation changes in the bill, I recommend that the effect of this announcement be incorporated in the bill. The practical effect of this action is that one type of building with an estimated useful life of 50 years (car park buildings) will continue to be depreciable if they were acquired before 30 July 2009. While this would be generally inconsistent with the treatment of other buildings, I consider it important that we give effect to specific Government announcements.

8. The effect of agreeing to this is that the following categories of buildings will be treated as not being a building for income tax purposes if acquired by the taxpayer before 30 July 2009:

- (a) barns, including barns (drying)
- (b) car parking buildings
- (c) chemical works
- (d) fertiliser works
- (e) powder drying buildings
- (f) site huts

9. In addition to allowing depreciation on those carpark buildings, the other impact of treating these as not being a building is that the taxpayer will be allowed a tax deduction if sold for a loss, the accelerated depreciation rate will be based on double declining balance instead of 1.5 times declining balance, and they will qualify for 20% depreciation loading.¹

Regulatory impact analysis

10. A Regulatory Impact Statement was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet Committee approval of the policy relating to the bill was sought. CAB Min (10) 12/10 and CAB Min (10) 13/24 refer.

¹ As this will only apply to assets acquired before 30 July 2009, the removal of loading for assets acquired after Budget day will not be relevant.

Compliance

11. The bill complies with each of the following:

- The principles of the Treaty of Waitangi;
- The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- The principles and guidelines set out in the Privacy Act 1993;
- Relevant international standards and obligations; and
- The *LAC Guidelines: Guidelines on Process and Content of Legislation*, a publication by the Legislation Advisory Committee.

Consultation

12. Inland Revenue, the Treasury, the Ministry of Social Development, and the Ministry of Justice were consulted in the preparation of this submission. Under section 73 of the New Zealand Superannuation and Retirement Income Act 1991, the Minister of Finance is required to bring to the attention of the House consultation undertaken on proposed amendments to that Act. A statement by the Minister of Finance on the consultation undertaken on the proposed amendment to section 15 of that Act has been included in the Explanatory Note to this bill. The statement will also be presented to the House when the bill is introduced.

Binding on the Crown

13. The bill amends the principal Acts listed in paragraph 3 and, where those Acts bind the Crown either in whole or part, does not change that position.

Creating new agencies or amending law relating to existing agencies

14. The legislation resulting from this bill will not create a new agency.

Allocation of decision-making powers

15. The proposed legislation does not involve the allocation of decision-making powers between the executive, the courts and tribunals.

Associated regulations

16. Regulations are not required to bring the bill into operation. However regulations will be required to be made by 3 September 2010 to amend the Student Allowances Regulations 1998 to prevent the tax cuts from flowing on to Student Allowances. Regulations will also be required to exempt the Ministerial welfare payment to recipients of main benefits, student allowances, and superannuitants and veterans pension recipients from a person's income for the purposes of the Social Security Act 1964, the Social Security (Long-term Residential Care) Regulations 2005, Social Security (Temporary Additional Support) Regulations 2005. The disability allowance, child

disability allowance, childcare assistance and foster care allowance will need to be increased by regulation. Finally, this Bill includes authority for adjustments to the Working for Families abatement threshold to be made by Order in Council.

Deemed regulations

17. The proposed bill does not include a provision empowering the making of deemed regulations.

Definition of Minister/department

18. The bill contains no definition of Minister, department (or equivalent agency) or chief executive of a department.

Commencement of legislation

19. Each provision in the bill comes into force on the date specified for that provision.

Parliamentary stages

20. The bill should be introduced on 20 May 2010, and passed as soon as possible under urgency.

21. No select committee referral is proposed.

Recommendations

22. The Minister of Finance recommends that the Cabinet:

1. **Note** that, together with the Minister of Revenue, and acting under the delegation to us in CAB Min (10) 12/10) to propose minor consequential amendments that relate to the Budget 2010 tax reform package, we have directed that the legislation include amendments to:
 - i. allow taxpayers who receive capital contributions the option to amortise them as income over 10 years as an alternative to adjusting cost for depreciation;
 - ii. prohibit the granting of a special depreciation rate for a building included in an application received after 20 May 2010;
 - iii. permit adjustments to the abatement threshold for Working for Families tax credits to be made by Order in Council; and
 - iv. allow the Commissioner of Inland Revenue to not impose, or to remit late filing and payment penalties, and use of money interest, that arise following the GST increase. This would apply for a short period of time and would only apply where the error can reasonably be attributed to the change in the GST rate.
2. **Agree** that, as announced by the Minister of Revenue last year, the following categories of buildings will be treated as not being a building for income tax purposes if acquired by the taxpayer before 30 July 2009:

- (a) barns, including barns (drying)
 - (b) car parking buildings
 - (c) chemical works
 - (d) fertiliser works
 - (e) powder drying buildings
 - (f) site huts
3. **Note** that the fiscal consequences of agreeing to recommendation 2 are within the scope of the costing already made in relation to depreciation changes and will not impact the revenue forecasts.
4. **Note** that the bill has a category 2 (must be passed in the year) priority in the legislation programme.
5. **Note** that the provisions in the bill are to give effect to the Tax Reform Package for Budget 2010 by amending the:
 - Income Tax Act 2007
 - Tax Administration Act 1994
 - Goods and Services Tax Act 1985
 - Government Superannuation Fund Amendment Act 1969
 - National Provident Fund Restructuring Act 1990
 - New Zealand Superannuation and Retirement Income Act 2001
 - Social Security Act 1964
 - War Pensions Act 1954
6. **Approve** the introduction of the Taxation (Budget Measures) Bill, subject to the final approval of government caucuses.
7. **Agree** that the bill be introduced on 20 May 2010 and passed as soon as possible under urgency.

Hon Bill English
Minister of Finance