

14 July 2023

Committee Secretariat  
Finance and Expenditure Committee  
Parliament Buildings  
Wellington

Via online form.

**Re: Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill**

Dear Committee Secretariat,

The Association of Digital Services Providers Australia New Zealand (DSPANZ) welcomes the opportunity to make this submission on behalf of our members and the business software industry. This submission has been prepared with input from the [Digital Advisory Group](#) and its associated [payroll working group](#).

**About DSPANZ**

Digital Service Providers Australia New Zealand is the gateway for the government into the dynamic, world-class business software sector in Aotearoa New Zealand and Australia. [Our 90+ members](#) range from large, well-established companies to new and nimble innovators working at the cutting edge of business software and app development on both sides of the Tasman.

Our submission provides feedback on the following amendments: trustee tax rate - deceased estates; taxation of backdated lump sum payments; and remedial items - correcting extra pay inaccuracy.

More broadly, DSPANZ recognises there may be a short time between the legislation passing and when many amendments take effect. We encourage the government to work alongside DSPs if they are expecting shorter timelines for implementation.

DSPANZ welcomes the opportunity to provide further feedback on our submission. Please contact Maggie Leese for more information.

Yours faithfully,

**Matthew Prouse,**  
**President & Director**  
**DSPANZ.**

**Allen Knight,**  
**Director & Digital Advisory Group Co-Chair**  
**DSPANZ.**



# Trustee Tax Rate - Deceased estates

The proposed exemption from the 39% tax rate for deceased estates, outlined in *section HC 8B (1) and (2)*, will require complex calculations and create unnecessary compliance costs for estates. It is also unclear how Inland Revenue plans to handle assessing the resulting tax liabilities that would arise in estates.

## **Complexity of the calculations**

Under the current legislation, the preparer applies a 33% tax rate to the estate's income when preparing an estate tax return.

Based on the proposed legislation, the preparer will be required to calculate a custom tax rate for each of the first two tax years of the estate and also prepare a part-year tax calculation to split the income into two periods in the second tax year. Only in the third year would the calculation revert to the simplicity of the current legislation, albeit at the 39% tax rate.

The proposed approach in the legislation is technically a pure approach. However, the level of complexity is significant for the typically minor income and expenses that most deceased estates would have.

## **Unnecessary compliance costs**

With complexity comes cost, and assuming the executors of estates have a professional to prepare the estate tax returns, the complex calculations will mean higher costs. These additional costs will likely outweigh the tax reduction achieved by applying the proposed estate tax calculation. These costs would ordinarily be met out of the estate's income, thereby reducing the income available to distribute to beneficiaries.

In turn, if executors prepare the estate tax returns themselves, there is a high chance that the layperson executor will make an error in the calculation of the tax liability due to the complexity of the calculations, creating a risk for themselves of exposure to tax liabilities arising from preparing incorrect tax returns.

## **Practicalities of filing the estate tax return**

If the proposed legislation goes ahead, we raise concerns over the practicalities of filing estate tax returns using myIR or Gateway Services. Currently, it is simple for Inland Revenue to check that the Tax on Taxable Income value filed in the estate's IR6 is the expected value because it is Taxable Income x 33%.

It is unclear how Inland Revenue will know whether the tax has been calculated correctly if every estate has its own tax rate. While there is no guidance in the commentary on the reporting requirements, if the IR6 requires anything more than what currently exists on the tax return, it will add additional compliance costs for income tax returns with low income levels. In our view, either Inland Revenue will need to accept that the Tax on Taxable Income filed is correct, or they will need to add additional data points to the IR6 to check the tax themselves, which adds extra complexity and costs to preparing the IR6.

## **Recommendation**

DSPANZ recommends applying a flat tax rate (less than 39%) to deceased estates for two full tax years after the year of death.

Analysing the average income of estates and individuals in the year of death would provide a starting point for determining an appropriate flat tax rate. This rate could be based on where the average or median income sits in the range of the individual tax rate.

Applying the rate for two full tax years may mean that some estates only benefit from a lower flat tax rate for just over 12 months, while others benefit for nearly 24 months, depending on the individual's date of death. However, all estates will benefit from continuing to have simple tax compliance.

## **Taxation of backdated lump sum payments**

The commentary has no guidance on how taxpayers receiving a backdated ACC payment must disclose this income in their tax return. We can only assume that backdated ACC payments will be differentiated from regular ACC payments in myIR and that the income and associated custom tax liability will be included in the tax return separately.

For the first two methods outlined in the Bill, Inland Revenue would provide the withholding rate to ACC. However, it is unclear how taxpayers would decide to apply the third method - the 'lower of' test. Presumably, they choose to include the income and tax withheld alongside any other Income with Tax Deducted, and it then gets taxed alongside any other income received in the year.

## **Recommendation**

When proposed legislative changes directly affect tax return data points, the policy-based commentary should include guidance on the proposed implementation.

## **Remedial items - Correcting extra pay inaccuracy**

While this amendment will benefit payroll software providers in more accurately taxing extra pay, we would like to see two changes that will better clarify the intent of the legislation and account for situations where there are not two pay periods available or changes to a pay frequency.

### **Including the reference to "paid" pay periods**

The Bill commentary makes it clear that the last two "paid" pay periods should be used when determining the amount of tax that applies to extra pay. However, this is not explicitly stated in the Bill. There is also no definition for "pay period" included in the Bill.

## **Recommendation**

DSPANZ recommends including "paid" within *Section RD 17 (1) (b)* to align better the intent of the legislation with how extra pay should be taxed in practice. For example, this section

could be changed to: “the annualised value of the PAYE income payments for the last two paid pay periods before the one containing the extra pay.”

We also recommend using the following definition for pay period “a regularly recurring period of time for which an employee is paid”. We highly recommend consulting with payroll software providers on the definition used in the legislation.

### **Situations where there are not two paid pay periods available or changes to a pay frequency**

The Bill does not include information on how employers should treat situations where there are not two paid pay periods prior to the pay that contains the extra pay or where there has been a change in the pay frequency. For example, if an employee has received a sign-on bonus, there may not be two paid pay periods available to calculate the tax for this extra pay.

### **Recommendation**

To help employers navigate these situations, we recommend including the following in the legislation or guidance material: “where there are no prior paid pay periods before the one containing the extra pay, the annualised earnings can be calculated by annualising the current pay period earnings.” Inland Revenue should also provide examples in their guidance where there are not two paid pay periods available.