

27 March 2019

Committee Secretariat  
Finance and Expenditure Committee  
Parliament Buildings  
Wellington 6011  
New Zealand

BY EMAIL: [fe@parliament.govt.nz](mailto:fe@parliament.govt.nz)

Dear Sir/ Madam

**Submission on Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill – Supplementary Order Paper No. 193**

We are writing to submit on Supplementary Order Paper No. 193 (“SOP”) to the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill.

We submit that the proposed provisions should be clarified to ensure that the power (by Order of Council or Inland Revenue exemption) can be exercised in cases when the drafting error, ambiguity and /or inconsistency results in undue difficulty in complying with the law, where there is an alternative and less onerous means of compliance that would be consistent with Parliament’s intent.

**Our submission**

We are an active member of the Corporate Taxpayer Group (CTG). We acknowledge and agree with the CTG’s submission on the SOP and support the proposed power, which will provide greater certainty for taxpayers seeking to apply tax legislation containing drafting errors, ambiguities and inconsistencies.

In particular, we support the CTG's third submission point that the proposed provisions should be clarified so that the power can be exercised where the drafting error, ambiguity and/inconsistency results in undue difficulty in complying with the law, where there is an alternative and less onerous means of compliance that would be consistent with Parliament's intent.

We submit that there should be an amendment to the power that enables the Commissioner to allow for an alternative method of complying with the Income Tax Act 2007 (the Act), consistent with the intended purpose of the law.

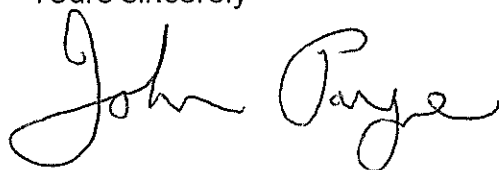
This amendment is appropriate as there are circumstances where the legislation has a specific compliance method that must be complied with, which can be difficult or unworkable for taxpayers to implement in practice. The purpose of the amendment is to enable the law to correctly reflect Parliament's intent when drafting the legislation. Parliament then has the opportunity to consider the position the Commissioner takes, and modify the law as is required.

As an example, the Guardians of NZ Superannuation cannot currently apply the foreign exchange hedging and FDR rules contained in subpart EM of the Income Tax Act 2007 to the NZ Super Fund. The prescriptive rules are unworkable in practice for the Fund for a number of reasons, including the volume of hedges and the approach to hedging on a whole-of-Fund basis. However, the Guardians has determined a practical solution to applying the rules, consistent with the intent of the law. The proposed amendment to the SOP could allow the Commissioner to exercise the power to (by Order of Council) temporarily address the drafting error, ambiguity or inconsistency to allow the less onerous means of compliance that would be consistent with Parliament's intent.

By including a provision that allows the Commissioner to exercise their power to allow an alternative means of complying with the Act, the Guardians could work with IRD to find a means to give effect to the intended purpose of this section.

Thank you for the opportunity to submit a response to your consultation. Please advise if you require any further information or clarification in relation to our submission.

Yours sincerely

A handwritten signature in black ink that reads "John Payne". The signature is written in a cursive, flowing style.

John Payne

Head of Tax