

Submission by



GROWING PROSPERITY AND POTENTIAL

to the

**Finance and Expenditure Select Committee**

on

**Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill**

**2 November 2022**

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# **TAXATION (ANNUAL RATES FOR 2022-23, PLATFORM ECONOMY AND REMEDIAL MATTERS) BILL**

## **SUBMISSION BY BUSINESSNZ<sup>1</sup>**

### **1.0 INTRODUCTION**

- 1.0 BusinessNZ welcomes the opportunity to make a submission to the Finance and Expenditure Select Committee on the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (referred to as 'the Bill').
- 1.1 While the Bill covers a variety of taxation policy issues, BusinessNZ would like to take the opportunity to outline our views on a selection of them that we believe are important for both New Zealand's taxation landscape and the wider New Zealand economy.

### **2.0 SUMMARY OF RECOMMENDATIONS**

2.0 BusinessNZ recommends that:

- (a) ***IRD provide a clearer cost/benefit analysis to ensure there is a clear understanding of the likely net effect of the platform economy changes on the New Zealand economy (p.4).***
- (b) ***The introduction of OECD's model rules for platform reporting in New Zealand is delayed until such time as another measure is introduced that is capable of reaching critical mass among participating countries. (p.5).***
- (c) ***That core elements of the OECD model rules are incorporated into New Zealand legislation and IRD provide clear and concise guidance material regarding the two documents the OECD model is based on (p.5).***
- (d) ***The Select Committee significantly increase the number of relevant activities and the total amount of consideration paid as part of the definition of an excluded seller for a sale of goods platform (p.5).***
- (e) ***The Select Committee give strong consideration to feedback from directly affected submitters regarding lead-in and transition issues for the proposed changes regarding GST in the gig and sharing economy (p.6); and***
- (f) ***The Fringe Benefit Tax (FBT) exemption does not proceed. Instead, this option is considered as part of a full review of FBT as part of Inland Revenue's future work policy programme (p.7).***

### **3.0 PARTICULARS OF THE BILL**

#### **PLATFORM ECONOMY – INFORMATION REPORTING**

- 3.0 The Bill seeks to implement an information and reporting framework that will require New Zealand-based digital platforms to provide IRD, on an annual basis, with data about sellers. Platforms that have been identified as being in-scope are those that have any sellers in the sectors involving:
- Rental of immovable property
  - Personal services
  - Sale of goods

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<sup>1</sup> Background information on BusinessNZ is attached as Appendix One.

- Vehicle rentals

- 3.1 BusinessNZ believes the current proposals as outlined in the Bill for information reporting will have a significant effect for any platform that will need to comply, not to mention the substantial penalties outlined for any non-compliance.
- 3.2 We note that during the initial public consultation for information reporting, the Discussion Document entitled *'The Role of Digital Platforms in the Taxation of the Gig and Sharing Economy'* provided two options for future implementation. First, a bespoke New Zealand solution, and second, the model rules designed by the OECD. Overall, submitters understood the need for IRD to have better access to information about sellers' activities on digital platforms in the gig and sharing economy. Also, support was strongest for the implementation of the OECD model rules.
- 3.3 BusinessNZ understands the need for our taxation system to recognise its place on the world stage, while at the same time ensuring the use of offshore rules meets the targets of good policy design and implementation. While we also believe that the implementation of OECD model rules is the best way forward, we are concerned that aspects of the proposals as outlined in the Bill currently run the risk of not meeting these targets, particularly when we are unsure if there is a clear problem to be solved by these proposals.

### **Likely net economic benefit?**

- 3.4 We note that there are already levers for IRD to use for requesting information on sellers on New Zealand platforms - a targeted approach to investigate any noticeable underreporting of income. Also, New Zealand has a double tax treaty with various countries, including those currently considering implementation of the OECD rules, which means IRD could make use of the "Exchange of Information" article if necessary. Therefore, given existing options available to IRD, any additional policy options in this area need to provide a clear and consistent net economic benefit for the country.
- 3.5 Unfortunately, BusinessNZ believes there is a strong potential for compliance costs associated with the introduction of the OECD rules to mount up for the business community. First, businesses will need to decide whether they will be caught by the new rules, which are very broad and could capture businesses who look to grow and innovate in how they run their businesses. Once that is established, they will then need to ensure their software system caters for the transfer of data to IRD. While some businesses will be clearly captured, others will be on the margins such as those who run some form of loyalty scheme. As we will discuss below, greater clarity around who will or will not be captured is needed.
- 3.6 Next, the OECD model rules require the platform operator to perform due diligence procedures (at least 3-yearly) on reportable sellers. Given the considerable compliance costs associated with this, we support steps within the OECD model to provide a grace period for existing sellers and to require information on new sellers only after the OECD rules are instigated. However, this still involves future compliance cost implications for those businesses affected.
- 3.7 Given both these one-off and ongoing compliance costs, BusinessNZ struggles to understand the composition of the cost/benefit analysis as outlined on pages 14/15 in the associated Regulatory Impact Statement (RIS). As it reads, total costs are estimated to be \$16.5m, which include the up-front system build cost of \$13.7m for IRD. There are also ongoing administration costs for IRD, which are estimated to be \$19.3m over the forecast period. However, there is no estimate of the private sector costs associated with the OECD option, apart from the impact estimated to be "*low to medium.*" On the benefit side of the equation, BusinessNZ assumes that the \$11m per annum outlined is the additional tax collected, yet total monetised benefits are estimated at \$27.5m over the forecast period. Overlaying this, costs and benefits associated with prepopulating of tax returns in the future have not been included.
- 3.8 On face value, the analysis shows total monetised costs of \$16.5m, and total monetised benefits of \$27.5m, which give the impression of a \$11m net benefit over an unspecified timeframe. Yet, as outlined above, there are significant costs, particularly for the private sector, that are missing from the analysis. In addition, there is a lack of consistency around annual versus forecast period timeframes to provide a clear picture for comparison purposes. Also, the forecast period is never stipulated. In addition, the \$27.5m for total monetised benefits over the unspecified forecast period tends to suggest that if the period is greater than two years, there are decreasing yearly returns regarding revenue for IRD. Putting aside the fact that a benefit of \$11m per annum seems a low number to justify the introduction of the regime to begin with, a lack of further information makes understanding the true outcome of the cost/benefit analysis very difficult. From our perspective, New Zealand will only benefit

from the new regime if there is clear evidence of significant under-reporting of income by New Zealand gig sellers. Therefore, it is difficult to support the OECD model if the explication of significant net benefit for the country is lacking.

**Recommendation: That IRD provide a clearer cost/benefit analysis to ensure there is a clear understanding of the likely net effect of the platform economy changes on the New Zealand economy.**

### Take-up with the rest of the world

- 3.9 In addition to the initial and ongoing compliance costs for those businesses having to comply with the OECD model, there is also consideration around costs New Zealand businesses may incur that their offshore competitors might not have to bear. Indeed, this point is picked up in the associated RIS, which states that *"the success of the information flows from model rules is also dependent on other countries signing up for improved information flows. This is because information will only be shared among tax authorities whose countries have implemented the rules."*
- 3.10 From our perspective, there seem to be somewhat conflicting stances by the Government. On one hand, the Government has taken the view that the OECD model - not the New Zealand bespoke rules - is the best way forward. While BusinessNZ generally agrees with this stance in this instance, if moves are to be made in this space, the fact that New Zealand is one of the few countries to have draft legislation released sends a signal that New Zealand is also trying to be world-leading. We believe there is a sizeable inherent risk by taking this position. Also, introducing an OECD model into New Zealand that is simply referred to within the legislation also sets a precedent around both accessibility and the capacity to be in command of any future changes or additions to the model.
- 3.11 Information reporting requirements will apply annually and will start from 1 January 2024. This means the first set of reporting will be due in early 2025. While one could argue that this will give businesses enough time to sufficiently have systems in place to collect and send off the data, it could also mean that the future OECD model landscape may be one where New Zealand finds itself one of the few countries signed up to the OECD model.
- 3.12 If New Zealand ends up as one of only a few countries signed up to the OECD model, this would significantly undermine the potential benefits sought. At present, there are only a handful of countries with an existing reporting regime, legislation approved, or draft legislation released. While we understand that implementation across the globe takes time and that it is likely that more countries will take part, any rushed steps by New Zealand towards implementation could lead to the overall costs for New Zealand heavily outweighing the benefits. Even worse would be the situation where the majority of other countries decided not to implement the OECD rules, leaving New Zealand as an outlier.
- 3.13 To provide some context, Table 1 below shows New Zealand's top trading partners by the percentage of imports and exports. Combined, these six countries represent close to two-thirds of all trade with New Zealand.

**Table 1: New Zealand's Main Imports and Exports by Country**

<i>Country</i>	<i>Import</i>	<i>Export</i>
China	24%	32.6%
Australia	12%	11.4%
United States	8.7%	10.5%
Japan	6.6%	5.9%
Germany	4.9%	1.4%
South Korea	4.6%	3.2%
<b>Total</b>	<b>60.8%</b>	<b>65%</b>

- 3.14 Of these countries, only Australia has draft legislation released. However, theirs is a bespoke model, not the OECD one. From BusinessNZ's perspective, it would seem premature to adopt the OECD proposals when there are currently very few countries doing the same.
- 3.15 If the proposal to introduce the OECD model is to proceed, BusinessNZ recommends that there be some form of measure that would trigger its adoption in this country. For instance, this could include a

percentage target based on the countries New Zealand typically trades with, a set number of the top ten countries New Zealand trades with, or simply a set number of countries signed up globally. If these measures were set at the appropriate level to achieve appropriate reciprocal benefit, then that would help to minimise the risk of the OECD model leading to overall costs for New Zealand.

***Recommendation: That the introduction of OECD's model rules for platform reporting in New Zealand is delayed until such time as another measure is introduced that is capable of reaching critical mass among participating countries.***

### **Greater clarity regarding guidance material**

3.16 Given the Government has decided to choose the OECD model over a bespoke New Zealand one, information around reporting requirements is based on two OECD documents, namely a 39-page document entitled *Model Rules for reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*, as well as a 19-page follow-up document entitled *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*. While we understand the need for the Government to refer to these documents to ensure there is direct model comparability across countries, from BusinessNZ's perspective the two documents are long and opaque. There appears to have been little work undertaken by the OECD to make them digestible and easy to comply with for businesses. Given the potential penalties that will be applied for non-compliance, we believe IRD needs to provide for the core rules in New Zealand legislation (we note the UK is adopting this approach) and clear guidance material regarding the OECD documents. Also, we would support steps towards IRD issuing rulings to taxpayers to confirm whether they are a 'reporting platform operation' and to confirm which activities are/are not caught.

***Recommendation: That core elements of the OECD model rules are incorporated into New Zealand legislation and IRD provide clear and concise guidance material regarding the two documents the OECD model is based on.***

### **Low threshold for inclusion**

3.17 OECD's *Model Reporting Rules for Digital Platforms* document provides amendments and additions in order to extend the scope of the model rules to cover the sale of goods and the rental of means of transportation. Specifically, Section I(B)(4) is amended to state that an excluded seller is any seller "for which the Platform Operator solely facilitates less than 30 Relevant Activities for the sale of Goods and for which the total amount of consideration paid or credited did not exceed 2,000 EUR during the Reportable Period." This means that for a predominantly 'sale of goods' website such as Trade Me, any person who sold 30 or more items, or items to the total value of approximately NZ\$3,500 over a calendar year, could have their details sent to IRD for tax purposes.

3.18 From BusinessNZ's perspective, the threshold for an excluded seller seems very low, and will likely capture significant numbers of people selling goods that have no profit motive. To provide some examples, a family may decide to list various household items given their parents' house is being sold for them to move into a retirement village. Alternatively, a person who has built up an accumulation of collectible items seeks to sell their collection over a year or so as they have no interest in keeping them anymore. These items were never originally purchased to make a profit, but rather for the enjoyment of the hobby. If we examine this from the value threshold, someone who sells their only car for \$4,000 with funds from the sale being used to purchase their replacement car would also be captured. In reality, none of the sellers in these examples would be considered a seller for tax purposes, yet their details will be sent to IRD for consideration of paying tax.

3.19 BusinessNZ believes the right data need to go to the right people for the right outcome. At present, the threshold for an excluded seller regarding the sale of goods is far too low. At its current level, IRD would likely receive considerable amounts of data that would likely be unused and unnecessary. Instead, BusinessNZ recommends that both the number of goods sold and total amount for consideration is significantly revised upwards for sellers.

***Recommendation: That the Select Committee significantly increase the number of relevant activities and the total amount of consideration paid as part of the definition of an excluded seller for a sale of goods platform.***

## **PLATFORM ECONOMY – GST**

- 3.20 The Bill proposes to introduce a 'focused approach' change that would require operators of electronic marketplaces (both offshore and in New Zealand) through which supplies of listed services (defined as those that are transportation services (which includes ridesharing and food and beverage delivery) and taxable accommodation) to account for GST on the listed services where those services are supplied to customers in New Zealand. These proposals represent a very specific focus on particular businesses, including the two main players in that market (namely Airbnb and Uber).
- 3.21 Specifically, the proposals include the introduction of the 'flat rate' regime for the benefit of underlying suppliers who are not registered for GST purposes (i.e. they do not exceed the GST registration threshold). If enacted, these rules will apply from 1 April 2024.
- 3.22 While BusinessNZ appreciates the need for consistent taxation policy across the business sector to ensure the playing field is as level as possible, there are also practical considerations that need to be recognised. We note the corresponding RIS stated that regarding the discussion document released in March 2022, "...submitters did not support implementing extended electronic marketplace rules for activities in the gig and sharing economy, noting the complexities involved and the lack of evidence available to suggest that the absence of GST on most supplies of services through gig and sharing economy digital platforms is distorting consumer decisions." Overall, BusinessNZ agrees with this view, especially given the lack of information around exactly who is or is not registered for GST within those sectors. Therefore, following analysis of submissions on the discussion document, we would have preferred an initial approach by IRD that looked to gather more relevant data to ascertain the extent of the problem that would determine whether industry-specific policies should be introduced in the first place.
- 3.23 Furthermore, the process of further data collection would have not only assisted in pinpointing the most advantageous policy path, but would have likely ensured more practical steps around implementation for the gig businesses affected in the transport and accommodation sectors. For example, New Zealand's overall accommodation sector has been adversely affected by COVID-19 through a significant drop in off-shore tourism, which will likely take a number of years to reverse. Given the full impacts of COVID have been relatively uneven, BusinessNZ believes that particular consideration should be given to those sectors that have experienced a higher degree of adversity due to COVID, if further disruption from policy changes is being contemplated.
- 3.24 One of the specific disruptions from this proposed policy relates to the passing-on of increased prices to consumers to account for the cost of GST. Given the current strong inflationary environment, there will likely only be so many costs businesses can sustain before such costs are passed on to their customers. We note the cost/benefit analysis in the RIS for these changes outlines the impacts of affected businesses' fully passing on to consumers the increase of costs due to GST, such change being regarded as a 'medium/high' impact. Also, it acknowledges the potential drop in demand due to higher prices, although this is viewed as 'low impact'. Feedback from within our membership has highlighted the fact that in comparison with other countries, New Zealand is one of the more price-sensitive markets, so the view that its impact is 'low' may be underestimating the potential negative outcomes from the proposed changes.
- 3.25 As mentioned above, the proposals will apply from 1 April 2024, which will allow around 12 months for systems and processes to be developed if the rules are enacted. While BusinessNZ supports steps towards providing those affected businesses with additional time to get their systems ready, we recommend that the Government take particular note of submitters directly affected by these proposals.

***Recommendation: That the Select Committee give strong consideration to feedback from directly affected submitters regarding lead-in and transition issues for the proposed changes regarding GST in the gig and sharing economy.***

## **FRINGE BENEFIT TAX EXEMPTION FOR CERTAIN PUBLIC TRANSPORT FARES SUBSIDISED BY EMPLOYER**

- 3.26 The Bill proposes to exempt Fringe Benefit Tax (FBT) for public transport fares (train, bus, ferry, tram or cable car services) that are subsidised by an employer mainly for the purpose of their employees travelling between home and their place of work. The Government has noted that the current FBT exemption for on-premises car parking does not align with the general principle of tax neutrality. This means the current rules may encourage employers to choose providing their employees with private

car parks on their premises over providing them with public transport fringe benefits. Therefore, the Government believes a bias may be present towards less environmentally friendly modes of transport.

- 3.27 Another problem regarding FBT is that at a practical level, the proposal to exempt it for public transport fares may see little take-up by employers. This is because there will be no exemption if employees are reimbursed directly through payroll, given that falls under the employment income rules and not the FBT rules. This means that to obtain the benefit of the proposed exemption, an employer would need to either purchase a public transport pass directly and give them to their employee, or come to an arrangement with a public transport provider to pay a portion of the fare directly to the public transport provider. This does not seem administratively feasible, particularly for smaller businesses. Likewise, public transport providers are unlikely to want to enter into arrangements for invoicing employers for public transport costs with a large number of employers. BusinessNZ notes that if the Government is serious about encouraging employers to fund employee travel, that the recently announced [National Ticketing Solution](#) should be designed in a way that facilitates this in a low compliance cost way.
- 3.28 BusinessNZ is also concerned that a piecemeal approach to sorting out FBT issues is not the best way forward for long-term tax policy development. This is noted in the RIS that examines both the pros and cons of this option going forward. Apart from recognising the fact that the exemption would in practice be fairly limited in its application, two key points made in the RIS were first, that it creates an additional economic distortion relative to other fringe benefits, and second, that it could incentivise calls for other FBT exemptions (for example, why isn't there an exemption for the provision of an employer provided bike or other form of more environmentally friendly transport options), adding further distortion and undermining the integrity of the tax system. From BusinessNZ's perspective, these are significant issues that could lead to further unravelling of the integrity of FBT tax policy.
- 3.29 In terms of the wider issues relating to the FBT system as a whole, we note that IRD recently undertook a regulatory stewardship review of FBT, which culminated in a report issued in August this year.<sup>2</sup> The review recommended FBT be included in a future work policy programme for IRD, including full consultation through the Generic Tax Policy process. Three approaches to this were suggested, including a full review of FBT, which would be similar to that undertaken in 2003, including re-establishing the remuneration basis of the tax.
- 3.30 Rather than this fragmentary approach around FBT and public transport fares, BusinessNZ believes a better approach would be a full review of FBT. Such a review is long overdue, especially given the changing landscape of the workforce and work environment since its last full review nearly 20 years ago. Therefore, rather than the proposed change as outlined in the Bill, consideration around this should instead be included as part of a full FBT review that IRD could undertake from 2023.

***Recommendation: That the Fringe Benefit Tax (FBT) exemption does not proceed. Instead, this option is considered as part of a full review of FBT as part of Inland Revenue's future work policy programme.***

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<sup>2</sup> <https://taxpolicy.ird.govt.nz/-/media/project/ir/tp/publications/2022/2022-other-fbt-regulatory-stewardship-review/2022-other-fbt-review-pdf.pdf?modified=20220828234102&modified=20220828234102>

## Appendix One - Background information on BusinessNZ



BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).