

27 October 2022

SUBMISSION ON TAXATION (ANNUAL RATES FOR 2022-23, PLATFORM ECONOMY, AND REMEDIAL MATTERS) BILL (NO 2)

SUBMITTER CONTACT INFORMATION

Chelydra Percy
Chief Executive Officer

This submission is made on behalf of the organisation Building Research Association of New Zealand Incorporated.

PREFACE

1. The Building Research Association of New Zealand Incorporated (BRANZ Inc.) welcomes the opportunity to provide a submission to Parliament's Finance and Expenditure Committee (Committee) on the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) (the Bill).
2. We support the overall intent of the Bill which aims to ensure the tax system is fair, simple, efficient and clear.
3. In this submission, we focus solely on the parts of the Bill which propose to make amendments to the Goods and Services Tax (GST) treatment of charges payable under legislation. The relevant clauses of the Bill are 105 (1), (3) and (11), 133, 135 and 137.
4. We:
 - 4.1. provide an overview of the role of BRANZ, including its legislative basis via the Building Research Levy (BRL) Act 1969;
 - 4.2. explain the Inland Revenue Department Private Ruling (BR Prv 21/15). This ruling has deemed that levies imposed under the BRL Act are not consideration for the making of supplies and therefore are not subject to goods and services tax (GST);
 - 4.3. note that the Bill, as currently drafted, is contrary to this Private Ruling;
 - 4.4. note the basis for this submission assumes that the general principles of the GST Act (section 78) apply;
 - 4.5. highlight the impact of the Bill, if enacted as is, on the costs of building and construction for homeowners who are already experiencing significant cost increases and other challenges;
 - 4.6. recommend that the Committee:
 - 4.6.1. recommends the Bill gives effect to Inland Revenue's Private Ruling BR Prv 21/15. This would add the Building Research Levy in the Schedule of Non-taxable legislative charges per clause 137 of the Bill.
 - 4.7. Should the recommendation in paragraph 4.6.1 above not be accepted, BRANZ recommends that:

4.7.1. clarity is provided via a Tax Information Bulletin regarding the application of section 78 of the GST Act to the Building Research Levy, that is that the Levy be increased by the amount of GST (currently 15%).

5. A representative of BRANZ Inc. would like to make an oral submission to the Committee.

ABOUT BRANZ

6. BRANZ¹ is a multi-faceted, independent science-led organisation. We use independent research, systems knowledge and our broad networks to identify practical solutions that improve Aotearoa New Zealand's building system performance. BRANZ is driven by the knowledge that to thrive as a society, New Zealanders need a built environment that is safe, healthy and performs well. BRANZ invests the Building Research Levy to improve the building system performance by co-creating enduring solutions that make a real difference in the lives of people in Aotearoa New Zealand.
7. The BRANZ vision is to *Challenge Aotearoa New Zealand to create a building system that delivers better outcomes for all.*

Legislative mandate

8. The BRL Act of 1969² established BRANZ as an incorporated society. Through this Act, authority is given to levy building contractors, to provide money for research into improved techniques and materials for use in the building industry.
9. The BRL Act (Section 8(1)) sets out how the Levy can be used "for the purposes of promoting and conducting research and other scientific work in connection with the building construction industry". It also, at Section 8(2), sets out other functions for which the Levy can be used. This includes the maintenance of a library, publications, provision of advice and dissemination of information, and investment in capital assets to support research.
10. As such the Levy is invested in research for the public good rather than charged in return for a supply of goods or services.

GIVING EFFECT TO THE PRIVATE RULING AND GST ACT PROVISIONS

11. BRANZ Inc. has an Inland Revenue Private Ruling (BR Prv 21/15) which is made under section 91E of the Tax Administration Act 1994. This current ruling was granted in March 2021 and applies for the period beginning 1 July 2021 and ending 30 June 2028. This ruling is similar to the original Private Ruling of 2003 and subsequent extensions granted.
12. This Private Ruling is of relevance to the Bill, because the ruling states that (emphasis added):

"Levies imposed under section 5(1) of the Building Research Levy Act 1969 are not consideration for any supply and therefore **are not subject to the imposition of GST** under section 8(1) of the [GST] Act."

13. We note that the term "charge" in the Bill is broad ranging, so could be applied to the Building Research Levy. The Bill's proposed amendments make a provision for charges under legislation to be treated as a consideration for a supply and therefore be subject to GST (clause 105(3) of

¹ <https://www.branz.co.nz/>

² <https://www.legislation.govt.nz/act/public/1969/0023/latest/DLM391231.html>

the Bill). We therefore conclude that the Bill as currently drafted will result in the Private Ruling ceasing at the time of the law change taking effect.

14. We note that there is provision in clause 137 of the Bill for a schedule of Non-taxable legislative charges. And that if a charge as per clause 105(3) of the Bill (proposed section 5(6EC) of the GST Act) is listed in this schedule that section 6EC does not apply.

15. In the commentary to the Bill includes the following comments (emphasis added):

“The proposed transitional regulation-making power would enable the Minister of Revenue to recommend an Order in Council be made where the Minister is satisfied that adding a charge (which includes either a specifically named charge, or a class of charge) to the schedule is desirable, having regard to whether adding the charge, or class of charges, to the schedule **would be consistent with the approach taken for similar charges in the past...**The proposed schedule and regulation-making power are intended to recognise that there **may be circumstances in the future where a specific charge should not be affected by the proposed rules.**”

16. Given BRANZ has had the Inland Revenue Private Ruling for nearly 20 years that the Building Research Levy is not a supply subject to GST, we believe that this Levy should be included in the schedule to the GST Act proposed at clause 137 of the Bill.

IMPACT ON HOMEOWNERS SHOULD BE GIVEN FURTHER CONSIDERATION

17. BRANZ supports a tax system that is fair, simple, efficient and clear.

18. We, however, consider that there has not been sufficient investigation or consultation into the impacts on the building and housing systems. Should this Bill be passed as is, it is our assumption that homeowners would bear the GST on the Building Research Levy.

19. In making that assumption section 78 (2) (a) of the GST Act is relevant. This states:

“Where an alteration in the law is made and a supplier has, at any time entered into any agreement or contract in respect of the supply of goods and services with a recipient, unless express provision for the exclusion of any such alteration in the law is contained in the agreement or contract, every such agreement or contract shall be deemed to be modified as follows:

- a) where the alteration in the law renders that supply liable to be charged with tax or increases the amount of any tax charged or chargeable in relation to that supply, the supplier may add to the agreed price in the said agreement or contract the amount of that tax or the increase of that tax;”

20. On this basis, as the BRL Act pre-dates the GST Act, the agreed Levy should be considered GST-exclusive and thus the imposition of GST will increase the Levy payable.

21. Whilst the amount may seem relatively low, this is yet another cost to building and construction, which will be borne by homeowners. This will be on top of significant cost increases occurring alongside the other well documented challenges currently facing the building and construction industry, such as access to labour and materials due to supply chain issues.

RECOMMENDATIONS

22. BRANZ recommends that:

22.1. the Bill gives effect to Inland Revenue's Private Ruling BR Prv 21/15. This would add the Building Research Levy in the Schedule of Non-taxable legislative charges per clause 137 of the Bill.

23. Should the recommendation in paragraph 22 above not be accepted, BRANZ recommends that:

23.1. clarity is provided via a Tax Information Bulletin regarding the application of section 78 of the GST Act to the Building Research Levy, that is that the Levy be increased by the amount of GST (currently 15%).