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Tax Alert

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New tax year, new tax legislation – updates on the Annual Rates Act 2022-23

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New tax year, new tax legislation – updates on the Annual Rates Act 2022-23

By Robyn Walker, Amy Sexton and Viola Trnski

The Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act (the Act) finally received Royal Assent on 31 March 2023. In our September 2022 issue of Tax Alert, we took a look at a number of the proposed changes in what was then the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) (the Bill). In this article, we highlight some of the most widely applicable changes in the Act, some changes will be featured in separate articles. We note that the Act contains many amendments (it has approximately 200 new clauses with 42 different application dates), and we can't cover them all.

Employee benefits for North Island flooding events

Three new sections were inserted by Supplementary Order Paper (SOP) No 319 to provide income exemptions for flood-related costs, this includes:

- Employer's welfare contributions of up to $5,000 and accommodation provided to employees will be exempt from tax, provided certain provisions are met.
- Certain fringe benefits of up to $5,000 (when combined with the value of any cash payments) provided to employees will not be treated as a fringe benefit, provided certain provisions are met.
- Accommodation expenditure for employees working on limited-duration rebuild or recovery projects will be exempt from tax, provided certain provisions are met.

Note there is a total cap of $5,000 of combined cash and fringe benefits per employee.

Cross-border workers

- Controversial proposals to simplify the application of non-resident contracts tax (NRCT) in return for extensive information reporting requirements have been removed from the Bill, we expect new proposals to be consulted on later in 2023. Other proposals to improve the flexibility of the NRCT regime are proceeding.

- Amendments are made to make the PAYE, FBT and ESCT rules more flexible.
- Where employees are working in New Zealand and the employer has no presence here, the employee will be required to pay tax in relation to certain fringe benefits and superannuation contributions. This will be incorporated within the IR56 process.

More details in relation to these rules will be included in our May Tax Alert.

Platform economy

Information Reporting

- The Act implements the OECD information reporting and exchange framework for platforms facilitating accommodation, personal services, the sale of goods and the rental of vehicles. The rules are proceeding largely as originally proposed, with the exception that the implementation of the rules for the sale of goods and rental of vehicles is deferred for up to three years. Other platforms will need to commence collating data to report from 1 April 2024.

GST marketplace rules

- Ride-sharing and accommodation platforms will need to charge GST on supplies made by underlying suppliers. The proposals are proceeding largely as originally proposed, but with some modifications to simplify the rules.

Non-active trusts

- The Act increases the number of circumstances in which a trust can declare itself to be 'non-active'; the benefit of this is being excused from complying with the trust disclosure rules.

Built to rent exemption from interest limitation rules

- There will be an in-perpetuity exemption from the interest limitation rules for build-to-rent dwellings. To qualify there will need to be 20 or more connected dwellings and the landlord must offer fixed-term tenancies of no less than 10 years.

Dual resident companies

- Amendments will allow dual resident companies to offset tax losses, be a member of a consolidated group and retain imputation credit accounts.
- Some integrity measures are introduced for which will apply to companies which become resident in another country under a double tax agreement (DTA). There have been some changes to the original proposals including:
  - The proposed changes removing the exemption which applied to dividends paid within wholly-owned New Zealand groups for certain dividends paid to DTA non-resident companies have been modified. To the extent to which a dividend has been fully imputed, there will be no liability to withhold NRWT from the dividend.
  - Imputation credits will be able to be attached retrospectively to dividends paid to companies that are later determined to be DTA non-resident.
  - Australia-New Zealand dual resident companies' dividends paid are to be excluded.
  - Corporate migration rules will not be triggered if a company inadvertently becomes DTA non-resident and the company has not taken a tax position that they are a DTA non-resident.

The Act increases the number of circumstances in which a trust can declare itself to be 'non-active'; the benefit of this is being excused from complying with the trust disclosure rules.

This article only provides a short summary of some of the changes in the new Act. If you would like further information on how the Act may impact you or your business, please contact your usual Deloitte advisor.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Amy Sexton
Associate Director
Tel: +64 9 953 6012
Email: asexton@deloitte.co.nz

Viola Trnski
Consultant
Tel: +64 9 956 9755
Email: vtrnski@deloitte.co.nz

New FBT exemptions for bikes and public transport explained

By Robyn Walker

The Fringe Benefit Tax (FBT) rules are home to three new exemptions from 1 April 2023:

1. Employer-subsidised public transport, mainly for the purpose of travelling between home and work ("the public transport exemption")
2. The provision of a 'self-powered or low-powered' vehicle (i.e. a bike or scooter) mainly for the purpose of travelling between home and work ("the bike exemption")
3. Employer contributions toward 'vehicle-share services' (i.e. bikes and scooters) used mainly for the purpose of travelling between home and work ("the vehicle-share exemption")

Why do we have these new exemptions

At its heart, the reason we have a new exemption for public transport is not because of a belief that public transport is better for the environment than cars (even though it is), but because of continued distortions caused by the inability to apply FBT to employer-provided car parks (taxing car parks was proposed and then abandoned due to practical issues and compliance costs in 2013). This was made clear in the regulatory impact assessment accompanying the most recent tax changes, where Inland Revenue officials expressed a preference for another go at taxing car parks over exempting public transport. Despite the reluctance of Inland Revenue, the Government was in favour of introducing this new exemption.

In response to the proposed public transport exemption, over 400 submissions were made on the proposal also pointing out that a logical step would be to exempt bikes from FBT. While the notion was rejected by the Finance and Expenditure Committee and Officials, the Green Party of Aotearoa New Zealand backed the submitters and prepared a Supplementary Order Paper (SOP) proposing to add the extra FBT exemptions. The SOP was adapted and slightly amended by the Labour Party and added into legislation on 14 March 2023.

Practical Implications

It's unlikely that lots of employers are going to rush out and buy bikes and scooters for employees, but the availability of these new FBT exemptions provides employers with more options when they're considering how to remunerate employees, considering sustainability issues, and also thinking about how to encourage remote employees back into the office.

While taking public transport, cycling or scootering to work will suit some employees, it's not going to be an option that all employees will be able to take up; so, for equity reasons, it's possible that the higher value new exemptions will form part of a 'salary sacrifice' arrangement (i.e. before tax remuneration is reduced by the value of the benefit being provided) rather than being an extra 'free' benefit to those who want it.

When it comes to applying the bike exemption, for employees who can't afford an immediate cash-flow hit of a salary sacrifice options, could exist for employers to purchase the bike upfront and loan these to employees rather immediately transferring ownership, or to purchase the bike and have the cost repaid over time by the employee. Each of these options may come with other complications such as insurance issues or the potential application of FBT to an employment-related loan.

We note that the exemption does not extend to any accessories, such as helmets, locks, lights etc, so if employers are also planning to provide these, then FBT could apply (subject to the application of the FBT de minimis rule).

Eligibility criteria

The key criterion for all three new exemptions is that the benefit needs to be mainly for travel between home and work. The key element is mainly, meaning that a reasonable amount of private use is permitted. For example, a commuting bike could be used for leisure at the weekend or taken to the shops without invalidating the exemption. A high-spec mountain bike that is not suited to commuting would be unlikely to qualify (unless the employees' workplace was up a mountain). Our expectation is that the application of the FBT exemption will apply at the time the benefit is provided, so if a bike or scooter is provided based on the intention of the employee to use it mainly for commuting and the employee subsequently decides that they don't prefer that mode of transport the exemption would not be unwound. There should not be an obligation on employers to monitor how the bike/scooter is actually used (however, there is no official guidance on this at present).

In relation to the bike exemption, the new legislation includes a regulation-making power to put a maximum allowable cost on the relevant bike/scooter. This is designed to prevent abuse, and in the words of the Minister of Revenue: *"we're not going to be allowing this to be rorted through gold-plated bikes"*. To date, no regulations have been issued.

Refer to our **box** for further details for each exemption.

Form matters

One of the key matters for employers to be aware of is there is only an exemption from FBT, and there is no equivalent exemption from PAYE. Critically, what this means is that employers need to stop and consider how they are providing any new benefits before assuming there is no tax cost.

The golden rule when it comes to determining that tax applies is to consider who has the legal liability for the cost. If an employer incurs a cost (i.e. the employer purchases a bike, or the employer contracts with a transport business to provide public transport passes), then FBT applies. If an employee incurs a cost and the employer reimburses the cost (or pays an allowance) then PAYE applies and there is no exemption (e.g. an employee goes to their retailer of choice and purchases a bike and claims reimbursement from their employer).

When it comes to providing a benefit like public transport or use of a vehicle-share app, it is administratively intensive to provide this in a way that falls within FBT. We have consistently raised the absurdity of this outcome, and the Minister of Revenue has indicated, at least in relation to the public transport exemption, that he's prepared to look at this issue when he was questioned about it during the legislative process:

"... These rules do need to be practical. They are designed with a view to minimising avoidance, but you can go too far in your precautions. If I understand the member's point correctly, he could be referring to the situation where an employer, rather than giving someone $10 a week to cover their bus fares, is required to purchase the bus fares on behalf of the employee directly from Auckland Transport, for example. That's an issue that has been raised by others in addition to the member. We are concerned to look at that and make sure that we're not creating another problem by being too loose there, but we will have a look at that issue again, and if it's not working in as practical a way as was hoped, we will address that in a future tax bill—perhaps in the May remedial tax bill."

So, watch this space, but in the meantime, make sure consideration is given to how any of these new benefits will be offered in order to avoid an unexpected tax cost.

Definitions:

Public Transport Exemption:

A fare that an employer subsidises mainly for the purposes of an employee travelling between their home and place of work is not a fringe benefit if the fare is for 1 or more of the following: bus service, rail vehicle, ferry, cable car.

Bike exemption:

A vehicle that an employer provides to an employee for the main purpose of the employee travelling between their home and place of work is not a fringe benefit if the vehicle is: a bicycle; an electric bicycle; a scooter; an electric scooter; or any other vehicle declared under section 168A of the Land Transport Act 1998 to be a mobility device or not a motor vehicle.

Vehicle-share exemption:

A benefit that an employer provides to an employee in the form of assistance with the payment of the employee's costs of using a vehicle-share service (meaning a transport service that allows users to hire a vehicle for a point-to-point trip through a mobile telecommunication device) for the main purpose of an employee travelling between their home and place of work is not a fringe benefit if the vehicle-share service provides use of 1 or more of the following vehicles to the employee: a bicycle; an electric bicycle; a scooter; an electric scooter; and any other vehicle declared under section 168A of the Land Transport Act 1998 to be a mobility device or not a motor vehicle.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Interest rules for big build to rent developments small on detail

By Robyn Walker and Susan Wynne

The residential property tax rules have had their latest remodel with the amendments in the Taxation (Annual Rates for 2022—23, Platform Economy, and Remedial Matters) Bill (No 2) receiving Royal Assent on 31 March 2023.

These recent amendments were largely taxpayer-friendly improvements to the residential property rules (as discussed in our September Tax Alert Article here), including:

- Bright-line rollover relief improvements
- Broader rollover relief for the interest limitation rules
- Clarification of the rules when there is co-ownership of land
- Build-to-rent exclusion from the interest limitation rules

The build-to-rent interest limitation exclusion is a new feature in the Income Tax Act 2007 and attracted a lot of attention in the submission process with general support being provided for the new rules. However, the devil is in the detail, or lack of detail, with these rules. What is known is:

- Residential property developments that qualify as a build-to-rent development will be completely excluded from the interest limitation rules (compared with the 20-year exemption for new build properties). This will apply from 1 October 2021 when the interest limitation rules took effect.
- The rules are intended to apply to new and existing developments that meet the requirements for the exclusion.
- There must be a minimum of 20 build-to-rent dwellings in a single development, although these can be across multiple titles. Commercial or non-build-to-rent dwellings may also be included in the same development.
- Submissions to reduce the number of dwellings required were declined on the basis that the benefit was intended to encourage the development of new housing supply at scale and that smaller investors could still benefit from the 20-year new build exemption.
- The definition of build-to-rent land has been updated so that land does not have to be contiguous land that is directly touching. This is to allow for developments that may span several blocks or where there is a road between dwellings. The definition now refers to a single project of 20 or more dwellings.
- The feedback on the submissions has clarified that the requirement for build-to-rent land to be owned by the same person will still allow limited partnerships and joint ventures to use these rules.
- Each of the minimum of 20 build-to-rent dwellings must be used, available for use, or being prepared for a residential tenancy, where the landlord or manager

offers tenants a fixed-term tenancy of at least 10-years, tenants may terminate the tenancy with 56 days' notice and the tenancy agreement refers to the ability of the tenant to personalise the dwelling with the consent of the landlord.

- Submissions opposing the 10-year tenancy requirements were declined by Officials and the Finance and Expenditure Committee on the basis that this is a requirement of the Government in return for the exclusion from the interest limitation rules.
- The personalisation policy intends to make lifestyle issues like pets and home-making more transparent to tenants. The definition of build-to-rent land has been clarified to reflect this requirement and this is expected to be further clarified in guidance to be issued on these rules.
- Agreements with tenants must still be in accordance with the Residential Tenancies Act 1986.
- A development must continuously meet the requirements of the definition of "build-to-rent land" summarised above to qualify for the exemption. Existing developments have until 1 July 2023 to meet the definition requirements which would apply retrospectively, allowing any interest deductions denied from 1 October 2021 to be claimed.
- Those wanting to qualify for the exemption would need sign-off from the Chief Executive of Te Tāūpapa Kura Kāinga – Ministry of Housing and Urban Development. The legislation has been clarified to refer to the Chief Executive of the department responsible for the administration of the Residential Tenancies Act 1986 to provide for any changes in the department name or form.
- This certification process is still being developed and further guidance is to be provided. Other than clarifying how taxpayers should apply, it is hoped that this guidance will also address the following issues raised by submitters:
  - that there be an annual certification process to provide certainty for potential purchasers or financiers that land continues to meet the definition,
  - that there is an ability to rectify an inadvertent breach of the build-to-rent requirements within a certain timeframe,
  - that the certification applies to the property rather than the taxpayer so it passes to a new owner, provided the build-to-rent terms are still satisfied.

The legislation for the build-to-rent exclusion is limited and taxpayers will be relying on the guidance to be issued to clarify the process to be certified and how the rules will apply in practice. While the exclusion sounds good in principle, it is another layer of tax rules in the residential property space and it is questionable if the policy intent to increase the housing supply is being helped by the increased complexity in the tax system.

If you have any questions around residential property and how the tax rules may apply to you, please contact your usual Deloitte advisor.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Susan Wynne
Partner
Tel: +64 7 838 7923
Email: swynne@deloitte.co.nz

Treatment of land holding costs explained by Inland Revenue

By Robyn Walker

The introduction of, and extension of, the bright-line test has led to more taxpayers having to consider whether they are entitled to deductions in relation to land. To assist taxpayers, Inland Revenue has issued some draft guidance for consultation: Deductibility of holding costs land (52 pages) and a Fact Sheet (11 pages).

Before getting excited that the answers to all your tax questions concerning land will be answered within these 52 pages, the paper actually has a very limited scope despite its extreme length. The paper focuses on whether interest, rates and insurance (collectively referred to as 'holding costs') incurred whilst land is owned is deductible, and then considers whether it makes any difference if the property is taxable (e.g. under the bright-line test) if it is sold. The analysis does not apply to companies. The guidance does not explain how the land sale rules (including the bright-line test) work; nor does it explain how to determine the cost of land if it is sold or how taxpayers deal with a lump sum of income. For all that it doesn't cover, it remains a mystery to the author how this topic filled 52 pages.

Despite its controversial length, the conclusions reached in the draft guidance are not themselves particularly controversial and Inland Revenue doesn't think it represents a new or different approach to what Inland Revenue has historically taken.

So, to summarise the main conclusions in less than 52 pages:

- If you hold land on capital account and only use it privately, if you end up taxed under the bright-line test you are not able to claim a deduction for any holding costs.
- If you hold land on capital account and use it for deriving income (i.e. you rent the property), your holding costs will be deductible as they are incurred, subject to the application of the interest limitation and ring-fencing rules. Deductions will also need to be apportioned in a reasonable manner if the land has a mixture of business/private use. If you end up taxed under the bright-line test, you may be able to deduct holding costs that had previously been blocked through the interest limitation or ring-fencing rules.

What is becoming increasingly clear is that all the tax rules related to land are becoming increasingly complex and the guidance increasingly long.

- If you hold land on revenue account (i.e. you acquired it with the intention of resale), holding costs will be deductible as they are incurred (subject again to the interest limitation rules). If the taxpayer has notified the Commissioner that the property is held on revenue account, ring-fencing rules do not apply. The extent of deductibility of holding costs will depend on whether the property is also used privately. If there is private use of the land, then the mixed-use asset rules may apply, or otherwise, a reasonable apportionment is required. Inland Revenue indicates that where property is held on revenue account and there is a dual use of the land (i.e. it is held for resale whilst simultaneously it is used privately) then a starting position should be that 50% of holding costs are deductible.
- Holding costs do not form part of the cost price of land. Any capital improvements may form part of the cost (this is not elaborated on in the statement).

What is becoming increasingly clear is that all the tax rules related to land are becoming increasingly complex and the guidance increasingly long. It is necessary for land-owners to consider a wide range of tax regimes and rules including:

- Bright-line tests, land sale rules, and associated roll-over rules
- Residential ring-fencing rules
- Mixed-use asset rules
- Interest limitation rules
- Deductibility of healthy homes expenditure
- GST zero-rating rules, apportionment rules and marketplace rules which apply from 2024.

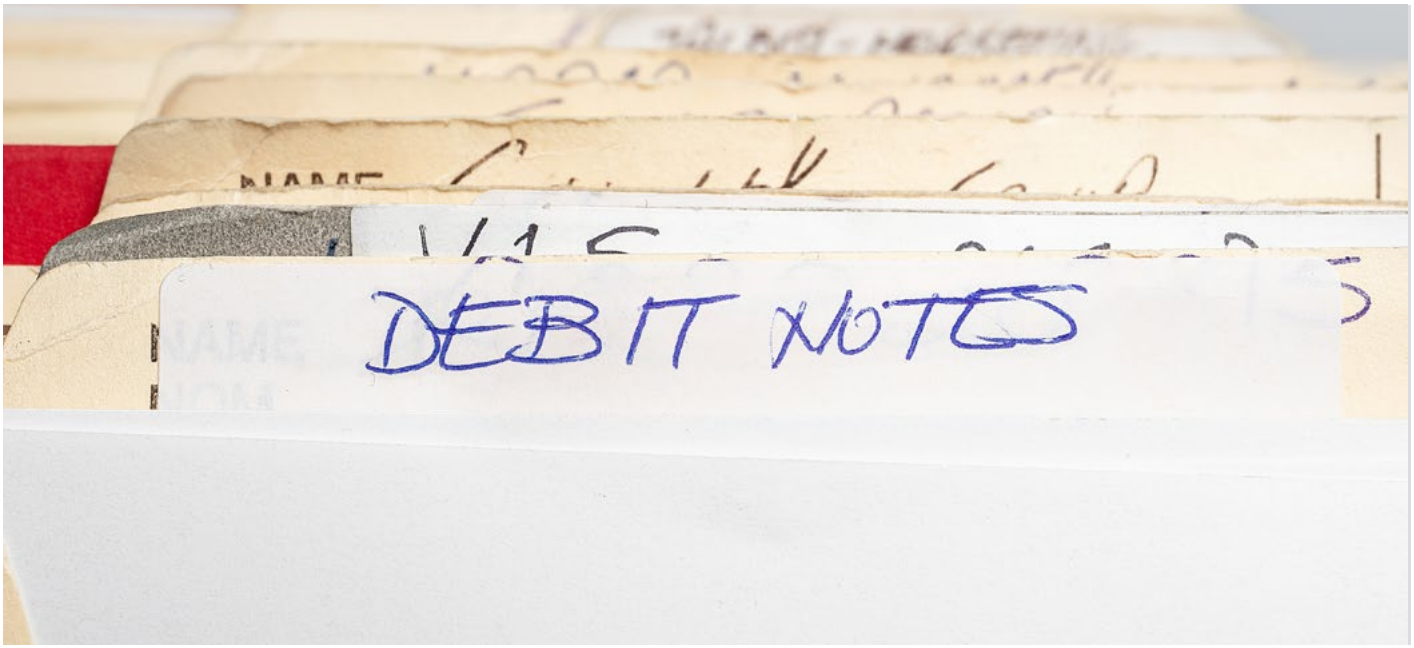
Given the amounts involved when dealing with land can be significant, we recommend seeking professional guidance. Please reach out to your usual Deloitte advisor for more information.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Leveraging the new taxable supply information requirements

By Jeanne du Buisson and Haidee Watkin



Leveraging the new taxable supply information requirements

For years Inland Revenue policed tax invoice requirements that had been established as far back as 1985, but now, the tax invoice requirements have undergone significant modernisation. The rigid requirements to be a "tax invoice" are being replaced by the more flexible "taxable supply information". This change presents both challenges and opportunities for organisations, as they adjust their systems and processes to the new GST landscape. While the initial transition may pose some challenges, it also provides a chance to streamline interactions with suppliers and customers and optimise accounts payable and accounts receivable processes.

Key changes at a Glance:

- The words "tax invoice" are no longer required
- Data does not need to be set out in a single document, it can be held in systems or multiple documents
- The threshold for reduced information requirements has increased from $50 to $200

The new taxable supply information requirements should reduce the cost of GST compliance. The increase in the low-value threshold from $50 to $200 will reduce the amount of detailed compliance testing. Gone are the days of chasing valid tax invoices for transactions that are slightly over $50, particularly for credit card reconciliations and employee reimbursements. Only basic information (name of supplier, date of invoice, consideration and description of goods/services supplied), which often can be found in existing documentation, such as credit card statements and expense reconciliation systems is required.

The shift to 'Taxable Supply Information' enables finance staff to shift their focus from invoice testing to ensuring the relevant information is collected and maintained during customer and supplier setups, reducing the number of compliance tests required on invoices at processing time. For example, if the supplier name and GST number is collected during a supplier setup when invoices are later processed, only the date, a description of goods and tax particulars will need to be checked by the accounts payable team.

In most circumstances, taxable supply information is only required to be issued for taxable supplies in excess of $200 and the recipient of the supply has requested the taxable supply information. There are some exceptions to this including listed services and what were formally known as 'buyer created tax invoices' (discussed in the questions below).

The new taxable supply information requirements provide more flexibility and allow organisations to streamline GST compliance.

Commonly asked questions on the changes

What is taxable supply information?

Taxable supply information (tax invoices) is the minimum set of information the suppliers and customers are required to keep as evidence of a transaction to support a GST return. Unlike its predecessor, the tax invoice, the requirement to hold all information in one document has been removed and organisations can hold this information in a variety of sources. For more information on taxable supply information, see our previous Tax Alert article.

	Old Tax Invoice			Supply Information	Taxable Supply Information	
Requirement	**< $ 50**	**< $ 1,000**	**> $ 1,000**	**< $ 200**	**$ 200 - $ 1,000**	**> $ 1,000**
Words 'tax invoice' in a prominent place		✓	✓	✗	✗	✗
Name of Supplier	✓	✓	✓	✓	✓	✓
Registration number of supplier		✓	✓	✗	✓	✓
Recipient Details: Recipient name; and one or more of the following: physical or billing location, phone number, email, trading name, NZBN, website			✓	✗	✗	✓
Recipient Address			✓	✗	✗	✗
Date of the invoice, or where no invoice issued, time of supply				✓	✓	✓
Date the invoice is issued	✓	✓	✓	✗	✗	✗
Description of goods and/or services supplied	✓	✓	✓	✓	✓	✓
Quantity or volume of good and service supplied			✓	✗	✗	✗
Amount of consideration for the supply	✓	✓	✓	✓	✓	✓
If GST inclusive (consideration amount & statement GST inclusive); or if GST exclusive (consideration amount, tax amount & GST inclusive amount)				✗	✓	✓
Statement that consideration includes GST or amount of GST charged		✓	✓	✗	✗	✗

Do I have to issue taxable supply information?
For supplies over $200, organisations are generally required to issue taxable supply information within 28 days of a request or at a time agreed upon by both parties, unless the service provided is a listed services (such as Uber) then taxable supply information is required to be issued at the time of supply.

Do I have to issue buyer-created taxable supply information?
Yes, you are required to provide buyer-created taxable supply information, irrespective of whether it was requested. In addition to this, both supplier and customer are required to maintain copies of the buyer-created taxable supply information.

Do I still have to display the wording 'tax invoice' on documents?
No, the requirement to state tax invoice in a prominent place on invoicing documentation has been removed. Likewise, you don't need to say 'credit note' or 'debit note' if you are adjusting a previous invoice. However, in practice, we recommend in this transitional phase that maintaining the traditional wording on documents will assist in expediting invoices while the new approach is embedded by accounts payable teams. In particular, continuing to include the words 'tax invoice' will ensure that your invoice is not rejected by a system which has not caught up with the new rules.

What is "supply correction information"?
"Supply correction information" replaces both debit notes and credit notes. Supply correction information corrects previously issued taxable supply information. Information requirements are below:

Requirement	Supply Correction Information
Name of Supplier and Registration Number of Supplier	✓
Information identifying the taxable supply information	✓
Date of the supply correction information	✓
The correction to the taxable supply information, including, if relevant, a correction to the amount of tax charged for the supply.	✓

Do I have to issue supply correction information?
If the organisation has previously issued taxable supply information in which particulars or the tax amount is incorrect, the organisation is required to issue supply correction information.

What happens if I maintain the status quo?
If your organisation is currently compliant with the old tax invoicing requirements, then you will generally be compliant with the new taxable supply information requirements. However, your suppliers may

start to issue taxable supply information which you will need to ensure your system/ accounts payable staff can deal with.

Do I need an invoice for supplies under $200?

Strictly speaking, no invoice is required for supplies of under $200. For such supplies, a credit card statement and a description in the expense claim system could suffice all the requirements. At a minimum you should hold details of the supplier name, the date, a description of the goods and services and the amount. However, we recommend caution, as an input tax deduction should only be claimed to the extent the supply has been provided by a GST-registered person and the underlying supply is a taxable supply. If there is a reasonable level of doubt, then seeking further information would be prudent. For example, gift cards and Uber should be assessed on a case-by-case basis.

Are there any changes to the reverse charge requirement?

The invoicing requirements for reverse charges have been updated to align with the new taxable supply information requirements. However, there are some additional disclosure requirements for salary and wage components. We would recommend discussing these additional requirements with your advisor.

Are there any changes to second-hand goods credits?

Information requirements for second-hand goods credits differ from that of taxable supply information. An organisation is required to hold the following information for a supply greater than $200 and that they wish to claim an input tax deduction in relation to:

- Name and address of the supplier; and
- The date on which the second-hand goods were supplied; and
- A description of the second-hand goods; and
- The quantity or volume of the second-hand goods; and
- The consideration for the supply.

This is only a snapshot of the taxable supply information changes and some common questions that we have been asked. Navigating these new requirements can often be difficult and complex. Now is a good time to get in touch with Deloitte about our interactive workshops to assist with dealing with these changes. For more information contact your usual Deloitte advisor.

Contact

Jeanne du Buisson
Director
Tel: +64 9 303 0805
Email: jedubuisson@deloitte.co.nz

Haidee Watkin
Senior Consultant
Tel: +64 9 303 0707
Email: hwatkin@deloitte.co.nz

Complicated, confusing and misunderstood…GST apportionment rules are changing

By Allan Bullot, Sam Hornbrook, Hana Straight and Rachel Hale

The most complicated, confusing and misunderstood sections of the GST Act, the apportionment rules, are changing. For the most part, the changes to the GST apportionment rules are focused on increased flexibility, reduced complexity and reduced compliance costs for taxpayers.

Apportionment rules apply to taxpayers who have both taxable and non-taxable/ private use of asset(s), or taxpayers whose use of an asset has changed from taxable to exempt/personal, or vice versa.

The apportionment rules normally are considered at acquisition, sale and the end of an adjustment period (usually the GST period ending 31 March). For March GST returns this year, the new rules won't have an impact, so make your normal adjustments in the normal way (if you're unsure about this, please talk to your usual advisor).

From 1 April 2023, there are a number of changes that have come into force. We'll discuss various parts of the new rules throughout the year in future editions of Tax Alert, however, there are a couple of changes that are worth being aware of sooner rather than later.

Do these rules apply to me?

If you are a GST-registered business that is currently required to carry out GST apportionment adjustments, or if your business activities involve both taxable and exempt supplies, you need to understand how these rules will apply.

Examples of taxpayers who need to consider these rules include:

- Anyone purchasing land that is intended to be used to make a mix of taxable and non-taxable supplies;
- Property owners using properties for a dual purpose (e.g. a property purchased for development and sale but, due to a change in circumstances, used for residential rental prior to a future sale);
- Financial service providers;
- Aged care sector (e.g. mixed-use retirement villages);
- A sole trader using assets for personal use (e.g. a work car for personal use).

It will be important to ensure there is a clear understanding of how the updated GST apportionment regime will apply to your business and how your GST obligations may change as a result of these changes.

The clock is ticking – consider electing your assets out of the GST net now

A new change will allow certain capital assets to, in effect, be taken out of the GST net for capital expenditure purposes, even if they are still being used to generate GST taxable supplies and to incur GST claimable costs, from an operating expenditure perspective.

Where GST has previously been claimed on a portion of the purchase of certain capital assets, now the default position upon sale is that a GST liability will be triggered for the Vendor, resulting in the Vendor having to pay 15% (if the zero-rating rules do not apply) on the full sale price. This is even if GST was only claimed in respect of part of the asset. Previously this only applied to dwellings, but has now been expanded to all assets where GST has been claimed on at least part of the purchase price. The GST liability will not only be unexpected for many Vendors but may also have a significant impact on the economics underpinning the sale of the asset. The GST wash-up rules do also have to be considered at the time of sale of the capital asset, and this can lead to a deemed deduction for a portion of the GST (there are special rules for property developers).

It is important to note the nature of the expense where GST has previously been claimed. As stated above, these rules apply where GST has been claimed on capital expenditure, and the rules would not capture GST that has been claimed on operating costs (such as rate, insurance, utilities). Whilst this capital/revenue distinction is a familiar income tax concept, these rule changes mean that in this area the nature of the expense now also needs to be considered and understood from a GST perspective.

There is a limited window of opportunity to elect assets out of the GST net where those assets were not acquired for the principal purpose of making taxable supplies (i.e., a family home where just the home office was utilised in the business).

To ensure that such assets are out of the GST net, an election must be made before 1 April 2025. From 1 April 2025, this opportunity to elect assets out of the net will be gone and any subsequent sale will be treated as subject to GST. As part of making this election, however, any GST that has previously been claimed will need to be repaid to Inland Revenue (subject to certain conditions).

Some examples of assets that should be considered in light of these changes are as follows:

- A home office within a larger private family residence;
- A holiday home that may have had some use as rented out short stay accommodation but is primarily a family bach; and
- Buildings used by businesses making a combination of taxable and exempt supplies.

We note that the above list is not exhaustive. If you have any assets where a portion of GST has been claimed historically but are primarily used for non-taxable/non-business use then you need to be thinking about these rules and whether an election should be made within the next two years.

We strongly recommend reaching out to the Deloitte GST specialist team who can assist you with deciding whether you need to make such an election as well as help with making the election itself.

Principal purpose test – out with the old and in with the… older

As outlined in our previous Tax Alert article, one of the key changes is the reintroduction of a 'principal purpose' test for low-value assets costing $10,000 or less (GST exclusive). If assets are used for the principal purpose of making taxable supplies, 100% input tax can be claimed, and conversely, if they're used for the principal purpose of making exempt supplies, no input tax can be claimed.

This will mean that taxpayers should be able to adopt an approved apportionment method without having to engage with Inland Revenue – providing businesses with greater flexibility, consistency with others in the industry, and also reducing compliance costs.

This rule is optional and allows businesses to decide whether to keep the current apportionment methods or apply the principal purpose test.

Once the decision is made to utilise the principal purpose test for low-value assets, the business will be required to apply the same approach for all of its assets costing $10,000 or less and will be required to continue to do so for at least 24 months, i.e. all low-value assets will either be subject to apportionment, or they won't.

As a result, while this is a great change, care should be taken before deciding to use this methodology to ensure that it is the best approach given the time period in which the business will be committed to using this methodology going forward.

More flexibility in GST apportionment methodologies and industry methods

Inland Revenue will have more flexibility to approve a greater range of GST apportionment methodologies.

Along with this, comes the ability for the publication of apportionment methodologies considered appropriate for specific industries, e.g. property developers. This will mean that taxpayers should be able to adopt an approved apportionment method without having to engage with Inland Revenue – providing businesses with greater flexibility, consistency with others in the industry, and also reducing compliance costs.

If you are already relying on an agreed apportionment methodology, you will still need to consider the interplay and impact of the new rules.

Other important things to be aware of when it comes to apportionment

In addition to the changes discussed above, there are many more changes and tweaks to the apportionment rules, including the repeal of the mixed-use asset rules.

Given the complexity and changing rules, it is important to consider the GST treatment of assets when they are acquired, or the use changes, rather than waiting until the end of an adjustment period (or worse, an Inland Revenue audit).

The overarching principles of apportionment remain unchanged:

- Whatever approach to apportionment is used, it must be fair and reasonable
- 'Direct attribution' to wholly taxable or wholly exempt use is required before apportionment

Inland Revenue will be releasing guidance to help understand these "new" rules, but if you have any questions, please get in touch with your usual Deloitte advisor and they can connect you with one of our indirect tax specialists.

Contact

Allan Bullot
Partner
Tel: +64 9 303 0732
Email: abullot@deloitte.co.nz

Sam Hornbrook
Associate Director
Tel: +64 9 303 0974
Email: sahornbrook@deloitte.co.nz

Hana Straight
Associate Director
Tel: +64 4 832 2886
Email: hastraight@deloitte.co.nz

Rachel Hale
Manager
Tel: +64 9 306 4375
Email: rhale@deloitte.co.nz

Holiday accommodation – what do you need to think about now?

By Sarah Kennedy

The new GST platform rules are scheduled to take effect from 1 April 2024 and will mean GST will be payable by platforms on ride-sharing, food delivery and short-term accommodation services (referred to as "listed services" in the legislation).

What is happening from 1 April 2024

The new rules extend and expand existing GST marketplace rules to cover listed services will result in a lot more businesses effectively coming within the GST system. Currently, given the GST registration threshold is $60,000 many such businesses are not registered for GST; many of which can probably be described as a "side hustle" rather than a full-time occupation.

Suppliers through these marketplaces will not need to register for GST, instead, the platforms they operate through will need to charge, collect and remit GST in relation to these services. In recognition that GST should in effect only apply to the "value added" by the seller, there will be a notional "input tax credit" allowed for 8.5% of the value of the supply, meaning in effect that GST applies to 6.5% of the value of the services provided. The marketplace will be required to pass the credit onto the underlying supplier. If a supplier is already registered for GST they will not get the additional credit but instead will continue to claim GST input tax credits in relation to the costs of making taxable supplies.

The manner in which the GST obligations have been placed on the marketplace means that many ride-sharing or accommodation suppliers won't need to give GST any additional consideration if they remain below the GST registration threshold.

In this article, we focus on accommodation, but some of the matters discussed could also be relevant for businesses making supplies through ride-sharing and food delivery apps.

It is not just platforms that need to start this work now, hotels, managers of short-term accommodation and owners of holiday homes also need to get underway in planning for these rules.

Issues to consider include:

- How the changes will impact your pricing if you're currently not GST registered,

can it increase by the amount of the additional GST cost?

- Whether having lower compliance costs and remaining non-registered is the best option?
- If already GST registered, what processes will need to change?

Larger operators - hotels and holders of management rights

Considering the implications of the rules is particularly important for larger short-term accommodation providers. Hotels, motels and serviced apartment owners may sell accommodation both directly, and through various online platforms. In all instances, we would expect these providers to already be GST registered. The imposition of GST on the platform, therefore, creates a need to potentially change existing processes.

How the rules will apply will depend on the size of the accommodation provider. In a hotel context, if supplies made by the hotel group exceed $500,000 annually, there is an ability to opt out of these rules and continue paying out GST and claiming input credits in the same way they currently do by notifying the platform. The original Tax Bill required the consent of the platform before an operator could opt out, but this is no longer required. There is also the ability, by agreement with the platform, to opt out of these rules if over 2,000 nights annually are listed on the platform. However, as the nights test requires a platform's agreement, we expect that most taxpayers would use the $500,000 test where possible.

Taxpayers who are not able to opt out of these rules will need to consider how the finer details of the rules apply to them, make decisions about the approach that will be taken and plan any system changes that may be required. Depending on the extent of system changes needed, this could potentially be timetabled for the period after the election result is known.

The rules are more complex for short-term accommodation that is rented by a manager for an owner. As a starting point, you need to have a clear understanding of the legal arrangements in place under your management agreement and whether the "underlying supplier" in the listed service's rules will be the unit owner or the manager. Given the level of complexity in both the new platform rules and the application of GST agency rules, we suggest you contact your usual Deloitte adviser to discuss how the rules will apply to you.

Taxpayers who are not able to opt out of these rules will need to consider how the finer details of the rules apply to them, make decisions about the approach that will be taken and plan any system changes that may be required.

Holiday-home owners

There are also a number of implications for those who operate short-term accommodation on a smaller scale. We have summarised these below:

For accommodation providers who are not currently GST registered:

- The platform will be required to charge 15% GST on the nightly rental (and any other related fees charged) on each booking made through their platform on or after 1 April 2024 (even if the accommodation provider earns well under the $60,000 per year GST threshold from the accommodation).
- The 15% GST charged by the platform will be split with 6.5% of the GST being paid to Inland Revenue and the remaining 8.5% of the GST charged being paid to the accommodation provider by the platform as a "flat-rate credit". This is in effect a deemed input credit claim (calculated by Inland Revenue on the average input credits claimed by listed service providers currently). Receiving the flat-rate credit means that GST cannot be claimed based on actual expenses incurred.
- While the supply of the accommodation will be subject to GST, the changes do not bring the underlying property itself into the GST net. This means that if the property is sold in the future it will not be subject to GST if you are not otherwise required to be GST registered.
- If substantive capital expenditure is expected, such as a renovation or extension, there may be a benefit in registering for GST. The key downside is that the property will be bought into the GST net, and it will be subject to GST if it is sold or there is a change in use.
- If supplies through the platform exceed $60,000, either through increased rental or acquiring another property there will still be a requirement for the accommodation provider to register for GST and the consequences below apply.

For accommodation providers who are already GST-registered:

- The platform will be required to charge GST on the nightly rental (and any other fees charged) on each booking made through their platform on or after 1 April 2024.
- It is only large operators and groups of operators that can opt out of the

platform rules and continue to return GST themselves (sales that exceed $500,000 or 2,000 nights are listed on the platform), as discussed further above.

- The GST payable on the guest stay will be paid to Inland Revenue directly by the platform. The accommodation provider will need to include this income as a zero-rated supply in GST returns.
- The accommodation provider will need to tell the platform about its GST registered status so that the platform does not claim and pass on the 8.5% flat-rate credit. If this is received in error, it must be repaid to Inland Revenue.
- Any future sale of the property is treated as it is currently, i.e. it will either be a zero-rated sale if it is to a GST-registered person who will use it for a taxable activity, or subject to GST at 15% if sold to a non-registered person. However, if your principal purpose was not taxable use, you can use the new (and separate) transitional repayment rules (discussed below).

New transitional repayment rule

If a property was acquired prior to 1 April 2023 and acquired predominately for private use, there is a two-year window until 1 April 2025 to remove the property from the GST net. This will likely be attractive for those whose main purpose was personal use and who have only been renting their properties out for a few months each year. However, there is a financial cost as any GST inputs claimed in relation to the property need to be repaid together with the nominal amount of GST that would have been charged if the sale to you was zero-rated.

Conclusion

You may have heard this referred to as "the app tax" by the National Party. The National Party have vowed to repeal this tax if they form a Government after the October election. However, given the uncertainty of what will happen in the political landscape and the complexity of the needed IT system builds for impacted platforms and suppliers, it's important for impacted taxpayers to start planning on the assumption that the rules will remain in place come 1 April 2024.

These changes will not just impact accommodation providers that are currently unregistered and need to decide whether to register or use the new flat-rate credit system. The implications should also be considered for larger providers who may be able to use the 2,000 nights/$500,000 sales per 12 months opt-out rule and by those who have more complex ownership and agency structures.

If you require further information on how these rules will apply to your specific situation, please contact your usual Deloitte adviser.

Contact

Sarah Kennedy
Director
Tel: +64 3 363 3760
Email: sakennedy@deloitte.co.nz

A little bit SaaSy

By Alex Kingston and Troy Andrews

With nine days to spare before 2022 income tax returns were due, Inland Revenue released it's draft Interpretation Guideline, PUB00464: Deductibility of software as a service (SaaS) configuration and customisation costs (the Draft Guidance) on 22 March 2023. This gave taxpayers a fairly short window to consider Inland Revenue's (draft) position before potentially submitting their tax returns, but helpfully there weren't too many surprises. In short, a deduction should be allowed for costs incurred in configuring or customising a software as a service (SaaS) application; but there is some complexity involved in determining over what timeframe costs are deductible. Like any good tax question, the answer will ultimately depend on the actual arrangements entered into.

What does the Draft Guidance cover?

The Draft Guidance covers the deductibility of expenditure a taxpayer incurs in configuring or customising a SaaS application. This may sound like a very specific category of expenditure to get its own 50+ pages of Inland Revenue guidance on but, as any organisation that has implemented a new ERP system recently knows, these costs can be quite material.

The requests for clarity over Inland Revenue's view on these costs were borne out of two recent International Financial Reporting Interpretation Committee (IFRIC) Agenda Decisions (discussed further here). These decisions resulted in many reporting entities having to consider (or re-consider) how they treat/treated expenditure related to SaaS projects for accounting purposes. In many cases, this resulted in SaaS-related expenditure having to be expensed, where previously it may have been recognised as an intangible asset.

The second IFRIC Agenda Decision defines Configuration & Customisation (C&C) as:

i) Configuration involves the setting of various 'flags' or 'switches' within the application software, or defining values or parameters, to set up the software's existing code to function in a specified way.

ii) Customisation involves modifying the software code in the application or writing additional code. Customisation generally changes or creates additional, functionalities within the software.

While the Draft Guidance only applies to SaaS C&C expenditure (aligning with the scope of the second IFRIC decision), there is often other (significant) expenditure incurred as part of a SaaS project that falls outside the scope of this Draft Guidance, e.g. feasibility/product selection, data migration, and training, the treatment of which taxpayers may need to also come to a landing on.

So, are C&C costs deductible?

General deductibility & capital limitation

Inland Revenue accepts it is highly likely SaaS C&C costs will have the necessary

While Inland Revenue references certain case law tests, it seems reluctant to mention a SaaS contract length that may indicate C&C costs being revenue (as opposed to capital) in nature.

nexus with income to be deductible, but that in many cases and expenditure will be capital in nature. It reaches this conclusion with reference to case law on the capital/revenue divide, and points to the main factors being because taxpayers primarily incur SaaS C&C costs to "transform or enhance the taxpayer's business structure" and, by incurring SaaS C&C costs, the taxpayer obtains an "enduring benefit" through gaining access to a customised, technologically advanced, SaaS application. As capital expenditure, Inland Revenue then discusses the two broad ways a deduction could still be allowed: as research & development (R&D) expenditure, or under the depreciation rules.

Our comment: While Inland Revenue references certain case law tests, it seems reluctant to mention a SaaS contract length that may indicate C&C costs being revenue (as opposed to capital) in nature. For example, in the BP Australia case (referenced in the Draft Guidance) it was suggested that a contract length of 1-2 years may point to it being revenue in nature (and the actual length of 5 years was considered neutral from a capital/revenue standpoint). There are also some areas left open to interpretation, for example, whether the enduring benefit test should be applied from a "legal" or "functional" point of view. For example, whether a two-year contract should be viewed as giving rise to a two-year benefit (for the purposes of applying the test), compared to the taxpayer's purpose which might be to try and regularly roll it over for a longer period.

Deductible R&D (DB 34 deduction)

Despite being capital in nature, an immediate deduction is allowed for expenditure incurred on R&D that is expensed for accounting purposes, when applying particular parts of NZ IAS 38 (a "DB 34 deduction"). Inland Revenue's view in the Draft Guidance is that s DB 34 may apply, but to internally generated SaaS C&C costs only. That is, costs incurred "in-house" or incurred on third-party contractors engaged directly by the taxpayer to undertake C&C. Costs incurred on the C&C work undertaken by the SaaS provider, or the SaaS provider's subcontractor wouldn't qualify.

To qualify as a DB 34 deduction, expenditure must also meet the definition of R&D. Inland Revenue's view is that:

- It is unlikely C&C would meet the definition of **research**.
- It is possible configuration activities could be considered **development** depending on the specific nature of activities undertaken, and this would more likely be the case when configuration requires the application of techniques that are complex and new.
- Customisation has greater scope to be development when it is not routine or business-as-usual, but instead involves modifications, improvements or enhancements of a SaaS application.

Our comment: It is helpful that Inland Revenue has reached the view that the specific parts of IAS 38 referenced in s DB 34 can potentially apply.

Practically, it may be difficult for taxpayers to trace expenditure back to specific activities, in order to consider if the definition of development has been met. Robust processes and tracking of costs would be needed. In our view, any application of s DB 34 should be undertaken carefully against the IAS 38 definitions and well documented. In addition, taxpayers will need to consider whether such expenditure may need to be disclosed as 'research and development' given the IAS 38 disclosure requirements. Inland Revenue is silent on these disclosure requirements in the Draft Guidance which is something taxpayers and their auditors will need to consider carefully.

Depreciable intangible property

In the absence of s DB 34 applying, Inland Revenue's view is that SaaS C&C costs should form part of the cost base of depreciable intangible property (DIP), being the "right to use" software (which is a right usually granted to the SaaS user, and is specifically depreciable for tax purposes). The cost base includes all amounts of expenditure the taxpayer incurs for that item until it is in usable condition, including C&C costs and subscription payments incurred prior to the DIP being available for use. Regular subscription payments after a SaaS application is available for use should be deductible as they're incurred.

Generally, right-to-use software will be depreciated at standard software depreciation rates (of 40% straight line or 50% diminishing value). However, in some situations, where a SaaS arrangement has a fixed term, the right to use the software may be fixed life intangible property (FLIP). FLIP is DIP with a "legal life" that is the same length as the property's estimated useful life. For FLIP, costs are depreciated over the legal life of the SaaS arrangement. Inland Revenue's view appears to be that FLIP could arise where SaaS contracts are less than 4 years' duration, and where a SaaS arrangement is greater than 4 years (or has an indefinite life) then the standard software depreciation rates above would apply.

Our comment: It would be helpful for Inland Revenue to be more explicit about the treatment of contracts less than a 4-year duration, and whether these could be FLIP. There is effectively a 4-year "bright line" contract length that taxpayers may

need to monitor, particularly where there is a bundle of contractual terms to negotiate. However, the overall outcome does provide a degree of comfort for taxpayers that SaaS C&C costs should be depreciable over a maximum of four years.

Finance lease rules

Inland Revenue's view is that the finance lease rules should not apply, due to these types of arrangements falling outside of what Parliament would have contemplated when introducing such rules.

Final observations

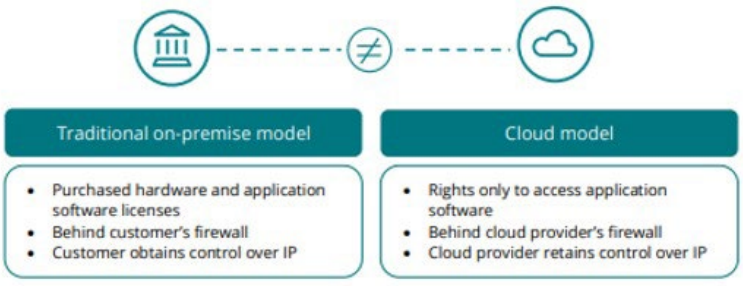
The movement by organisations to cloud-based solutions like SaaS has grown significantly in recent times and is a key part of many organisations' digital strategies. So it is helpful that Inland Revenue has provided guidance in this area. Overall, the position is reasonably positive for taxpayers, with the main question being a question of timing.

As noted above, the guidance is limited to SaaS C&C costs only, and there is a raft of other expenditure types that may be incurred as part of a SaaS implementation or wider digital transformation. There are some unhelpful comments in the Draft Guidance around how to view these wider costs, particularly how to assess whether they are incurred as part of a single capital project such that they take their character from that project or whether they can be separated out. We expect there may be submissions on this point.

There could be a deferred tax impact where the tax treatment differs from the accounting treatment of SaaS C&C costs. This is less likely when applying s DB 34, as the accounting treatment of internal and direct subcontractor costs may be able to be followed. In addition, we understand for accounting purposes it is more likely for costs incurred directly with the SaaS provider to be spread (as a prepayment over the life of the SaaS contract) if they are not considered distinct from the SaaS application. For this expenditure, s DB 34 wouldn't be applicable so spreading would also likely be required for tax purposes.

Finally, we note that the Draft Guidelines essentially adds to a suite of guidance that Inland Revenue has released over the years in respect of software tax issues (some of which is arguably out of date in the modern world), and also doesn't cover certain issues like withholding taxes. It may be useful for existing Inland Revenue guidance to be consolidated and updated to provide taxpayers with greater certainty about the treatment of this complex area.

Submissions on the Draft Guidelines close on **3 May 2023**. Please contact your usual Deloitte advisor if you would like to discuss this further.



Contact

Alex Kingston
Director
Tel: +64 9 306 4349
Email: akingston@deloitte.co.nz

Troy Andrews
Partner
Tel: +64 9 303 0729
Email: tandrews@deloitte.co.nz

Snapshot of recent developments

Tax Legislation and Policy Announcements

Increase in Prescribed Interest Rate for employment-related loans

On 1 April 2023, the prescribed interest rate used to calculate fringe benefit tax on low-interest loans provided to employees increased from 6.71% to **7.89%.**

Use of Money Interest (UOMI) rates set to increase from 9 May 2023

On 9 May 2023, the taxpayer's interest rate on underpaid tax will increase from 9.21% to **10.39%** per annum and the Commissioner's paying rate on overpaid tax will increase from 2.31% to **3.53%** per annum.

Inland Revenue statements and guidance

Updated guidance on tax relief for adverse or emergency events

Inland Revenue has updated its website to show the range of relief and support available for customers affected by adverse or emergency events.

Did the cyclones impact your 2022 tax return?

On 3 March 2023, Inland Revenue announced they will delay asking for outstanding 2022 income tax returns until 31 May 2023 to account for the impacts of the cyclones and flooding. This applies nationwide and impacted businesses and tax agents do not need to inform Inland Revenue to take advantage of the extension. Returns should have been filed by 31 March if you were not impacted.

On 8 March 2023, Inland Revenue announced there will be no late filing penalties for those affected by the flood events if returns are filed by 31 May 2023. The time bar for late-filed income tax returns will be 31 March 2028 (not 31 March 2027).

Standard Practice Statement: Disputes Process

On 3 March 2023, Inland Revenue issued a new Standard Practice Statement: SPS 23/01 *Disputes Process.* This Statement sets out the taxpayer's and Commissioner's rights and responsibilities when either party commences a dispute in respect of an assessment, adjustment to an assessment, or other disputable decision. The Statement applies from 24 February 2023.

Determination: Amortisation Rates for Landfill Cell Construction Expenditure

On 7 March 2023, IR issued DET 23/01 *Amortisation Rates for Landfill Cell Construction Expenditure* which applies to taxpayers who have incurred landfill cell construction expenditure in an income year starting on or after 1 April 2022 and meet the criteria under s DB 46 of the Income Tax Act 2007. This replaces DET 05/02.

The taxpayer can elect either of the new rates used to amortise landfill cell construction:

a. 63.5% (straight-line equivalent); or

b. 63.5% (diminishing value depreciation rate).

Draft 'Questions We've Been Asked'

On 7 March 2023, Inland Revenue published the draft QWBA PUB00356 *GST – Registered members of unregistered unincorporated bodies*. The deadline for comment is 18 April 2023.

Public Rulings: Income Tax – Cryptoassets and employees

On 13 March 2023, Inland Revenue reissued four expired public rulings as draft rulings:

- **PUB00447 1** *Income tax salary and wages paid in cryptoassets*
  This ruling considers when employee remuneration paid in cryptoassets will be a "PAYE income payment". The

Commissioner's view is that for tax purposes the concepts of salary and wages are wide enough to encompass some regular payments in cryptoassets, therefore they are PAYE income under s RD 3 of the Income Tax Act 2007. This view is unchanged from the prior ruling.

- **PUB00447 2** *Income tax – bonuses paid in Cryptoassets*
  This ruling considers when a bonus or an incentive paid in cryptoassets will be a "PAYE income payment". The Commissioner's view is that an amount of cryptoasset paid to an employee in connection with their employment as an agreed deduction from an incentive or bonus payment will be a 'bonus'. This view is unchanged.
- **PUB00447 3** *Income tax – employer-issued cryptoassets provided to an employee*
  This ruling considers when cryptoassets issued by an employer are subject to conditions that the employee must satisfy to become entitled to the cryptoassets will be considered a fringe benefit. The Commissioner's view is that a fringe benefit is provided when an employee becomes entitled to cryptoassets if they fulfil a condition. This view is unchanged.
- **PUB00447 4** *Income tax – application of the employee share scheme rules to employer-issued cryptoassets provided to an employee*
  This ruling considers when the provision of cryptoassets to an employee will constitute an employee share scheme (ESS) in respect of which an employee derives a taxable benefit that is employee income. The Commissioner's view is that the ESS rules will apply in circumstances where an employer issues cryptoassets to employees in connection with their employment and the cryptoassets provide an interest in the capital of the company, the employer does not require the employees to pay market value and the provision of the cryptoassets is not an exempt ESS. This view is unchanged.

The new replacement rulings will apply indefinitely. The deadline for consultation is 20 April 2023.

Inland Revenue Toolbox Campaign

From 13 March to 30 June 2023, Inland Revenue is running its 'Tax Toolbox' advertising campaign. IR will target construction customers (and their agents) who have overdue returns and/or debt to raise awareness, educate, and encourage voluntary disclosures where appropriate.

Eligibility for Cost of Living payment

On 13 March 2023, Inland Revenue extended the final date to be considered for the Cost of Living payment from 31 March 2023 to 31 May 2023 to help those affected by the recent weather events.

Public Rulings: Investing into a US limited liability company – New Zealand consequences

On 15 March 2023, Inland Revenue reissued five public rulings for comment:

- **BR Pub 23/AA:** Income tax — Dividends derived by New Zealand resident investor in a United States limited liability company that is a foreign investment fund, where the total cost of all the investor's attributing interests is $50,000 or less
- **BR Pub 23/BB:** Income tax — Foreign investment fund income and dividends derived by a New Zealand resident investor in a United States limited liability company
- **BR Pub 23/CC:** Income tax — Attributed foreign investment fund income and dividends derived by a New Zealand resident investor in a United States limited liability company
- **BR Pub 23/DD:** Income tax — Attributed controlled foreign company income and dividends derived by a New Zealand resident investor in a United States limited liability company
- **BR Pub 23/EE:** Income tax — Dividends derived by a New Zealand resident investor in a United States limited liability company that is either a non-attributing active foreign investment fund or a non-attributing active controlled foreign company.

The rulings set out the income tax treatment and availability of foreign tax credits or other forms of double taxation relief for NZ investors in a US limited liability company (US LLC) that is taxed on a fiscally transparent basis as a partnership in the US, but as a foreign company in New Zealand. The Rulings demonstrate the respective tax treatments where the interest in the US LLC is classified as under the foreign investment fund (FIF) threshold, a FIF or a controlled foreign company (CFC); where different FIF methods are used and where there is a non-attributing active FIF or CFC.

The commentary has been expanded in places with new examples added. The Commissioner's conclusions remain unchanged from the 2020 rulings; however, the text has been modified slightly. The earlier rulings expire on 25 June 2023 and the new rulings will apply from 26 June 2023 to 25 June 2028.

The deadline for consultation is 26 April 2023.

Employee Share Scheme (ESS) Campaign 2023

From 16 March 2023, Inland Revenue will issue around 1,400 letters to employees who have received an ESS benefit from an employer and may now have a tax obligation. Employers are required to report ESS benefits to Inland Revenue with the option to not deduct PAYE tax. Employers have provided this information to Inland Revenue for the 2019-2022 income years.

Statement: Technical Issues Escalation Policy

On 20 March 2023, the Commissioner released a statement on Inland Revenue's Escalation Policy (CS 23/01). The policy intends to ensure Inland Revenue staff apply the Commissioner's view of the law consistently and outlines the process for a view to be reconsidered if a staff member thinks it is incorrect. CS 23/01 does not set out rights for customers to have issues reconsidered by Inland Revenue.

Determination: Tax treatment of reimbursing payments made to employees

On 27 March 2023, Inland Revenue released Determination EE004 *Tax treatment of reimbursing payments made to employees who work from home and/or payments made for an employee's use of personal telecommunications tools and/or usage plans in their employment.*

The Determination sets out the extent to which a payment, made by an employer to an employee, to reimburse the additional expenditure that employees may face when they work from home and/or use their personal tools and usage plans is able to be treated as exempt income to the employee.

This determination is not binding on employers or employees, but, in any case, the requirements for exempt income must met under section CW 17(2) of the Income Tax Act 2007.

The determination applies from 1 April 2023 and replaces Determination EE003.

Determination: Participating jurisdiction for the CRS applied standard

On 31 March 2023, New Zealand's Common Reporting Standards regulations were amended to add Jamaica, the Marshall Islands, and Niue as participating jurisdictions for reporting periods beginning on or after 1 April 2023. Inland Revenue has issued Determination AE 23/01 announcing these changes.

Tax Information Bulletin Vol 35 No 2 March 2023

Inland Revenue has published a Tax Information Bulletin for March 2023.

Global tax news

Australia: EBITDA legislation consultation

As part of the 2022-23 Budget, an integrity measure was announced to address risks to Australia's domestic tax base stemming from the use of excessive debt deductions. It proposes to change the existing asset-based thin capitalisation rules to 30% of EBITDA (earnings before interest, taxes, depreciation, and amortization) test based on the OECD recommended approach. The Australian Government has prepared exposure draft legislation. The consultation deadline is 13 April 2023. This article from Deloitte Australia provides further details about the exposure draft.

Five ways tax leaders can help achieve sustainability goals

Large companies feel the need to act when it comes to sustainability and climate change, according to the recent Deloitte CxO Sustainability Report. Deloitte identified five ways tax leaders can do this:

1. Identify the tax implications of your business ESG strategy
2. Understand the tax implications of your company's value chain
3. Prioritise tax transparency on ESG matters
4. Transform the tax operating model as it relates to ESG
5. Agree on ESG tax roles and responsibilities

Report: Tax Transformation Trends: Executive Summary

This executive summary highlights key findings from Deloitte's three-report series which surveyed 300+ tax and finance leaders to understand their company's strategies for tax transformation, including:

- The three facets tax leaders are rethinking: the operating model, the talent to execute it, and the technology needed to support the model and unleash new, value-added capabilities.
- Areas with expected increased demand for tax advisory support, including digital business models (65%), supply chain restructuring (49%), and sustainability (49%).
- Top skills tax leaders are focusing on in their teams, including data analytics (45%), technology transformation and process design (43%), and cross-business advisory skills (39%).

OECD Updates

Mexico takes steps to ratify BEPS Convention

On 15 March 2023, Mexico deposited its instrument of ratification for the multilateral BEPS Convention. The Convention will enter into force on 1 July 2023 for Mexico.

Vietnam joins Mutual Administrative Assistance Convention

On 22 March 2023, Vietnam signed the world's widest-reaching international treaty for multilateral tax cooperation, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Convention, which now has 147 signatories, strengthens tax cooperation, taxpayers' rights, and information exchange between countries.

OECD peer review demonstrates progress in preventing tax treaty shopping

The latest OECD peer review report demonstrates that members of the OECD/G20 Inclusive Framework on BEPS are making further progress in tackling international tax avoidance. The report shows members of the Framework are respecting their commitment to implement the minimum standard on treaty shopping.

Note: The items covered here include only those items not covered in other articles in this issue of Tax Alert.

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Queries or comments regarding Alert including joining our mailing list, can be directed to the editor, Amy Sexton, ph +64 (9) 953 6012, email address: asexton@deloitte.co.nz.

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The Editor, Private Bag 115033, Shortland Street, Auckland, 1140. Ph +64 (0) 9 303 0700.

New Zealand Directory

Auckland Private Bag 115033, Shortland Street, Ph +64 (0) 9 303 0700
Hamilton PO Box 17, Ph +64 (0) 7 838 4800
Rotorua PO Box 12003, Rotorua, 3045, Ph +64 (0) 7 343 1050
Wellington PO Box 1990, Ph +64 (0) 4 470 3500
Christchurch PO Box 248, Ph +64 (0) 3 363 3800
Dunedin PO Box 1245, Ph +64 (0) 3 474 8630
Queenstown PO Box 794 Ph +64 (0) 3 901 0570
Internet address http://www.deloitte.co.nz