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Tax Alert

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Dividend Integrity proposals - another wolf in sheep's clothing?

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Dividend Integrity proposals - another wolf in sheep's clothing?

By Ian Fay and Jamie Dawson

The Government has proposed a new "dividend integrity" rule that appears to resemble a capital gains tax wolf in dividend integrity clothing. Last year's extension of the bright line test targeted the sale of Mum and Dads' rental properties, the latest proposal is after the capital gain (or in some cases the full sale proceeds) on the sale of their business.

A discussion document just released, [Dividend integrity and personal services income attribution](), proposes to tax majority (more than 50%) shareholders on the sale of shares in a company to the extent that there are historical profits retained and/or reinvested in the company. A more detailed summary of the proposed rule is in the table below.

The proposed dividend integrity rule:	
When will the rule apply?	• The sale of shares in a company by the controlling shareholder (a more than 50% shareholder, including shares held by associates). • No impact share on sales by minority shareholders (unless associated with the controlling shareholder). • A 'look back' rule will include any shares sold in the previous two years when testing for a majority. • If an entity is carved out of a corporate group, the rules will also apply.

What will be taxed?	• The controlling shareholder will derive a 'deemed dividend' equal to their proportionate interest in the higher of:
	  ◦ The company's retained earnings for financial reporting purposes, grossed up for tax by adding the Imputation Credit Account (ICA) balance; and
	  ◦ The ICA balance divided by the company tax rate.
	• If a corporate group is sold, it will be necessary to aggregate the retained earnings and ICAs of group members, potentially including foreign companies.

The proposed dividend integrity rule:

Who will the rule apply to?	• Shareholders that are New Zealand resident natural persons, trusts, and companies. • Excludes widely held entities e.g. PIEs, and superannuation schemes. • Partnerships (including limited partnerships) will be looked through.
Tax rate and relief?	• The dividend will be taxable to the shareholder at their marginal tax rate. • The dividend will be imputed to the extent of available imputation credits. • 11% top up tax cost for a natural person shareholder in a 39% tax bracket (potentially higher if the deemed dividend is not able to be fully imputed).
Any benefit for the purchaser?	• The company's available subscribed capital (ASC) balance should increase (potentially providing a future benefit for the purchaser on a return of capital or liquidation but no additional value if acquired 100% by another company).
Proposed application date?	• The 2023/24 income year (1 April 2023 for most taxpayers). • Submissions close 29 April 2022, with a bill expected before Parliament in the second half of 2022.

The Government's concern is that shareholders are avoiding tax by retaining profits in a company rather than paying dividends, and then selling the shares in the company for an increased price that reflects the value of the undistributed profits. The increased sale proceeds are not subject to tax for the shareholder, whereas a dividend paid prior to sale would have been taxable at their marginal tax rate.

To put some numbers against this scenario, the company's profits will have been subject to tax at 28% but as they are not paid up as a dividend there is no further tax at the shareholder level (potentially up to 11% additional tax for a taxpayer at the 39% top tax rate). The increase to the top personal tax rate and the greater differential between this and the corporate tax rate means that, in the Government's opinion, the risk of tax avoidance is greater than in the past.

Our perspective

We sympathise with the concern in the context of transactions between associates. It can be possible to restructure companies between associates to achieve this result (known as "dividend stripping"). However, there is already a targeted anti-avoidance rule which prohibits this. The Government's view is this rule is "complex to administer and costly to litigate" so instead they have proposed a law change that will capture a broad, but arbitrary, range of commercial transactions rather than target the fraction of a percent that are the issue.

In the context of third-party transactions, we don't believe a problem exists. Sales of companies to third-parties are almost always priced on a 'debt-free, cash-free' basis, with typically minimal cash transferring as part of working capital; in the real world, no one pays cash for cash. What the rule will tax then in third party transactions, is not profits retained in cash, but profits reinvested in the assets of a business. The same reinvestment that is required for growth and a productive New Zealand economy. In 2011 the corporate income tax rate was reduced from 30% to 28%. The reasons cited by the Government at the time were to "encourage productive investment in New Zealand, thereby increasing productivity, raising wages and creating jobs".

In effect, what the rule would achieve is a "catch up" tax on sale, to tax historical corporate profits at the shareholder's marginal tax rate. The problem is that it all happens in one fell swoop, in the year of sale. This doesn't reflect the economic reality that the profits were earned over time, nor that the 39% tax rate has only recently been introduced. For some family businesses this could be profits accumulated and reinvested in the business for multiple generations.

We believe that Government resources would be better applied to codifying a more targeted dividend stripping rule to deal with the perceived abuse in the context of associated party transactions. Instead, a blunt instrument has been proposed that creates many arbitrary outcomes and will materially distort ordinary commercial transactions that are not being structured to avoid the new 39% top marginal tax rate.

What does this mean for M&A?

There are likely to be unintended consequences and distortions for Merger and Acquisition (M&A) activity if the proposed rule is implemented, and we can see the rule influencing and distorting behaviours.

- The rule will be problematic for 'locked box' deals. Profits earned between the locked box date and the completion date economically belong to the purchaser, but will be taxable for the seller, not reflecting the economics on a locked box deal. This may need to be reflected in price depending on the negotiating positions of the seller and purchaser.
- Privately owned businesses with a majority seller will be at a competitive disadvantage to a business with marginally more diverse ownership. This may disincentivise majority ownership and we might see more effective joint ventures with a third minority interest, e.g., two 49% shareholders with a third 2% investor (or employee shareholder).
- The rule may add an interesting dynamic between majority and minority shareholders due to the inconsistency of the rule's application. In the case of a business owned 51:49 by two shareholders, only the 51% shareholder would be subject to tax under this rule. It could be possible for the minority shareholder to receive greater after-tax proceeds than the majority shareholder.
- The 'look back' rule could have a lock in effect. If a founder of a business raises capital and has a partial exit (say a private equity fund acquires 60% of the company), they will be incentivised to defer an exit event for 2 years, so the remaining 40% of the shares are not subject to the rule.

This rule will likely apply to all sales of profitable companies by private shareholders and will add complexity and compliance costs every time. This is a continued trajectory of compliance heavy policies (like the purchase price allocation rules which took effect from 1 July last year) which are making it harder and more expensive to do M&A.

What does this mean for employee share schemes?

Given the wide variety of structures used to transfer economic ownership to employees, we are concerned that the proposed rule could have unintended consequences for employee share schemes and the (non-tax) benefits they provide. Consideration should be given to excluding transfers of shares to employees from the rule to avoid creating a barrier to their introduction (through tax cost or complexity).

On the other hand, the rule may make traditional employee share schemes preferable to phantom share schemes if issuing shares to employees can dilute ownership below 50%. There has been a trend in recent years towards phantom share schemes in smaller businesses to avoid the company law complications of having minority shareholders. The proposals could unwind this shift, another example of tax influencing and distorting business decisions.

What does this mean for general corporate restructuring?

The rule will apply to internal restructures / sales of shares but with added complexity. A confusing example in the Discussion Document suggests the purchasing company will be the entity deemed to pay the dividend, rather than the acquired entity with a second potential dividend being deemed paid by the acquired company. There will be a host of compliance issues to work through, even for the most basic restructures and, this again will mean additional compliance costs.

What does this mean for succession planning?

The Discussion Document unhelpfully doesn't include any guidance on how the rule should apply to the transfer of shares on death, when gifted or on the settlement of a trust and it's not yet clear whether these would trigger a tax cost. There is a comment that the shareholder's income should be limited to the sale proceeds (which should be nil in these situations) but this doesn't necessarily sit well with other tax rules that generally treat these sorts of transaction as occurring for market value.

Other proposals in the Discussion Document and is there more to come?

Available Subscribed Capital / capital gains reporting proposal

The Discussion Document is seeking feedback on two options regarding the documentation and/or reporting of ASC and capital gain amounts. These amounts are necessary to calculate on the liquidation of a company or the cancellation of shares (as certain amounts can be paid to shareholders tax free). Inland Revenue considers they can be difficult to determine and has suggested:

- Option One: Require the amount of ASC and the capital gain amount to be determined annually and reported to Inland Revenue.
- Option Two: Require taxpayers to record the information to evidence that they have calculated the tax-free amounts correctly (with Inland Revenue determining the amounts in the absence of reliable evidence), with no annual reporting requirement.

We recognise that these amounts can be difficult to determine, particularly for companies that have existed for a long time, but in our view an annual reporting requirement (Option One) is too far when there is no requirement for Inland Revenue to accept the disclosed amounts and when they are utilised in the future. This would be another example of a measure that would increase the compliance burden and costs on all companies for limited fiscal benefit or certainty.

Personal services attribution proposal

The scope of the personal services attribution rule is proposed to be materially widened. This rule can apply to attribute income to an individual where personal services are provided through a contracting vehicle (commonly a company owned by a trust), effectively capping the tax at the company or trust tax rates. We have provided detail on this proposal in a separate article.

What's next?

The Government has signalled this Discussion Document is just the first of three tranches of integrity proposals. The second tranche will consider trust integrity and company income retention issues and the third will cover integrity issues with the taxation of portfolio investment income. In addition, they've mentioned that the use of shareholder loans is on the list for review, but this has been deferred due to limited resources.

Final thoughts

We'd like to see the Government and Inland Revenue go back to the drawing board on this one. Further definition of the problem is required and a more targeted approach needed to resolve it.

Given the wide-reaching nature of the proposals and the potential commercial issues and distortions we would have expected a more comprehensive consultation process to fully evaluate the problem and the solution. The proposed timing of legislation being introduced later this year once again means we are likely to have rushed tax policy with significant overreach and unintended consequences.

Is it a wolf in sheep's clothing? It is certainly another example of untargeted tax policy that will penalise the majority for a problem that doesn't exist and it seems to fly directly in the face of the Government's undertaking not to introduce new taxes or to tax capital gains.

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Are small business owners paying their fair share of tax?

By Robyn Walker and Veronica Harley

Small business owners are the target of a recent Government proposal to extend tax avoidance laws to a wider range of small business owners to make sure they are paying their fair share.

New Zealand has had personal services income attribution (PSIA) rules since the 39% top personal tax rate was introduced in 2000. Now that the 39% tax rate has been reinstated, the Government is proposing to widen their ambit considerably. Proposals are contained in the Government Discussion Document "[Dividend Integrity and Personal Services Income Attribution]".

What are the current personal services income attribution rules?

Included in the Income Tax Act 2007 is an anti-avoidance rule (that has applied from 1 April 2000) broadly aimed at individuals who seek to circumvent the top personal tax rate by interposing a company, trust or partnership between themselves and the party engaging their services in order to have their income taxed at a lower rate. Many people may have heard of situations where a person has resigned from their job but subsequently returns to do a similar role in a contracting capacity; its these sorts of arrangements which were at least partly in mind when the PSIA rules were designed, however they have always captured more than this.

Its relevance has increased with the (re)introduction of a top tax rate of 39 percent on income over $180,000 per annum from 1 April 2021, as this may provide an incentive to structure personal services contracting arrangements to reduce the tax liability.

Broadly, individuals may see an incentive to form and interpose a company between themselves and the party contracting their services which is taxed at a lower tax rate and then only draws enough salary from the company not to trigger the top tax rate. The buyer of the services deals with the associated entity, which derives the income arising, but it is the working person who actually provides the services.

Where certain criteria are met, the interposed associated entity must attribute an amount to the working person. Attribution to the working person may be required when the services are acquired and provided by different persons as noted above, and the following criteria are satisfied:

1. 80% or more of the associated entity's total assessable income from personal services during the income year is derived from the supply of services to the buyer of the services or an associate of the buyer (this is known as the **"80% one buyer rule"**); and
2. 80% or more of the associated entity's total assessable income from personal services is derived through services personally performed by the working person or a relative (this is known as the **"80% one natural person supplier rule"**); and
3. The working person's net income for the income year exceeds $70,000, including any amounts available for attribution; and
4. Substantial business assets (broadly defined as total depreciable assets with a cost of more than $75,000 or 25% to the entity's total income from services) are not a necessary part of the business structure used to derive the associated entity's assessable income.

What is proposed?

There is concern that the current rules apply too narrowly and shouldn't just apply to "employment like" situations. It's felt the existing criteria are not effectively supporting the integrity of the 39% tax rate. The Discussion Document also references the "Penny & Hooper" case (which did not involve the PSIA rules) where two surgeons changed from being sole traders to incorporated companies and formed trusts and ultimately were found to have committed tax avoidance by paying themselves artificially low salaries. The Discussion Document notes it is resource-intensive for Inland Revenue to apply the general tax avoidance law and specific "black letter" rules are preferable.

Consequently, it is proposed to:

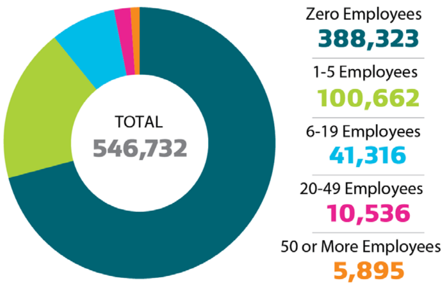
- Remove the 80% one buyer rule;
- Lower the threshold for the 80% one natural person supplier rule to 50% (i.e. the rule moves from largely being limited to sole traders to including businesses that have an employee); and
- Increase the substantial business asset threshold to either $150,000 or $200,000 (or 25% of income from personal services, if lower). Any passenger or luxury vehicles will not count toward the asset threshold.

The net income of $70,000 test is not proposed to change as the Government is still concerned that some individuals may be seeking to avoid the 33% personal tax rate which applies at $70,000.

What does this mean?

New Zealand is a country of small businesses. Of the over 500,000 businesses in New Zealand, 71 percent have zero employees, and an additional 18% have 1-5 employees. It's assumed that many of these businesses will be operating as companies due to the non-tax benefits associated with limited liability. The expansion of the PSIA criteria is likely to capture a large number of these businesses within its ambit. What does this mean? These businesses will need to attribute business earnings out to owners, meaning that there will be a higher tax cost on the profits that are retained as working capital to grow the business, which will in turn reduce the funds available for reinvestment. Businesses could be incentivised to amalgamate; for example, rather than 3 plumbers running separate businesses which are subject to the PSIA rule, the 3 plumbers form a single company so the "[50%] one natural person supplier rule" can't apply.

Chart 1: Number of Businesses by Employee Size Group



Source: Business Demography Statistics, February 2019

The rules assume that a business and its owner should essentially be viewed as a single entity, with all profits subject to tax at personal marginal tax rates. This may be appropriate in circumstances where the PSIA rules currently already apply, particularly if there are additional steps that would essentially put all business income in the hands of its owner (for example if the business is providing loans to its shareholders of its retained earnings). However, for many businesses profits are left in the company to fund its growth and future plans. Taking the example of Bill and A Plus Accounting Ltd (below), there may be plans to invest in a new larger printer (so he can print all of Inland Revenue's latest guidance), hire an employee, enter a lease for new premises, to send staff on training courses to maintain skills, to undertake an extensive marketing plan etc. Subjecting such retained profits to the 39% tax rate rather than the 28% company rate is simply not appropriate.

Deloitte does not support these changes for several reasons. There is no compelling evidence that change is required and Inland Revenue already has other mechanisms at its disposal to void any egregious arrangements where individuals are accessing cash from a business and not paying the appropriate individual tax on the cash received. In addition, these proposals will introduce inappropriate distortions between services and other types of small businesses where some will be subject to tax at individual tax rates and others will be able to continue to benefit from the lower company tax rate.

Submissions on the Discussion Document close on 29 April 2022.

Example (adapted from the Discussion Document):

Bill is an accountant who is the sole employee and shareholder of his company, A Plus Accounting Ltd. The company pays the 28% corporate tax rate on the income from accounting services provided to clients and pays a salary to Bill of $70,000. Under the existing rules, any residual profits are either retained in the company or made available to Bill as loans. The PSIA rules do not apply as Bill has many clients.

Under the proposed rules, Bill will be subject to the PSIA rules as he is personally performing services, Bill's net income is more than $70,000 and substantial business assets are not required for the business as Bill only has basic office furniture and equipment costing $20,000.

For more information contact your usual Deloitte advisor.

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Trust disclosure rules a step closer to reality

By Veronica Harley

As readers may be aware, in December 2020, the Government enacted new disclosure requirements for domestic trusts which apply for the 2021-22 and later income years. This is so the Government can gain insight on the effectiveness of the top personal tax rate of 39% as well as enable it to better understand and monitor the use of structures and entities by trustees. An "integrity risk" arises because current income retained in a trust is taxed at 33% with no further income tax imposed if this income is subsequently distributed to a beneficiary who might be on the highest marginal rate of 39%. Under these new disclosure rules, Inland Revenue will have complete visibility over how trusts are being used to fund annual capital distributions from income taxed at the lower trust tax rate. The government will use the information collected to decide on whether the trustee tax rate should also be increased to 39%. The cynics among us suspect this decision has already been made and that collecting this information is to justify this tax policy change heading into the next election.

For most trusts, there is now a legislative requirement to prepare financial statements for tax purposes to a minimum standard (which overlays the Trusts Act 2019 requirement to keep core accounting records). Plus it is necessary to disclose a lot of detailed information about settlements, settlors, and distributions to Inland Revenue as part of filing the annual trust tax return. Sounds simple in theory, but there is no doubt these measures will increase compliance costs for most trusts. We note in the regulatory impact statement, Officials admit they "have limited understanding of the compliance costs that trusts will face with the increased disclosure requirements and how large the costs will be".

Some legislative amendments and an Order in Council have been only just been finalised, following a period of public consultation which commenced in October last year. As a result of this consultation, there has been some improvement on the minimum financial statement proposals, but in our view, this does not meaningfully reduce the amount of information that all trusts need to disclose when filing the tax return. At the time of writing, we are still waiting for Inland Revenue to release its final operational guidance on how to apply the rules.

Is your trust excluded from the new rules?

First, it is important to note that not all trusts are caught by these rules. Trustees should first check if they qualify to be

excluded from these rules, as this will save considerably angst. The largest category that will be exempt are non-active trusts who have filed an IR 633 declaration. Typically trusts holding the family home, with no income and expenditure will be considered non-active. Reasonable trustee fees, administration fees and interest income earned of not more than $200 each are disregarded, as is expenditure incidental to the occupation of a dwelling owned by the trust and incurred by the beneficiaries. All trustees should immediately review whether their trust is non-active and file the IR 633 declaration if not already done. The other trusts that are carved out from these rules include foreign trusts, charitable trusts, trusts that choose to be a Maori Authority, trusts that are widely held superannuation funds and lines trusts.

Minimum standards are now required for financial statements

On 7 March 2021, an Order in Council (OIC) was made setting minimum standards for trust financial statements for income years ending on or after 31 March 2022. This is so the Government can collect consistent and better-quality information across all trusts for its monitoring purposes. Inland Revenue comments that not all of the estimated 180,000 complying trusts that have been reporting assessable income were necessarily preparing financial statements, noting that only 110,000 trusts are submitting an IR10 (the summary of financial statements).

As a core requirement, all trusts (including "simplified reporting trusts") must prepare financial statements consisting of a statement of financial position and a statement of profit and loss. These financial statements:

- must be prepared using double-entry accounting;
- must disclose which of the prescribed valuation methods (historical cost, tax value or market value) have been used in valuing assets and liabilities, but also disclose the specific valuation method used for shares, ownership interests, land, and buildings;
- show dividends and interest received either net or gross of resident withholding tax; and
- show dividends either grossed up or net of imputation credits.

Further, information from the financial statements will need to be copied to the relevant IR prescribed forms (e.g. IR 10 *the financial statements summary,* the IR 6 form *income tax return for estate or trust;* and IR 6B *Estate for trust beneficiary details)* as part of the tax return disclosure rules and conversely, there is a requirement that these amounts must also be "shown" in the financial statements.

Trusts with assessable income of less than $100,000, deductible expenditure of less than $100,000 and total assets at the accounting period of less than $5 million are considered to be "simplified reporting trusts" and at a minimum must comply with the core requirements noted above. Trusts that do not meet one or more of these thresholds have the following additional requirements. The financial statements for these types of trusts must also:

- follow principles of accrual accounting;
- show comparative figures;
- include a statement of accounting policies and assumptions and a description of any material changes therein;
- include a reconciliation between net profit and trustees taxable income;
- include an appropriately detailed, taxation-based schedule of fixed assets and depreciable property;
- include certain other prescribed information if the trust derives income from forestry or has specified livestock; and
- provide details of transactions entered into between the trustee and any associated person, excepting minor transactions that are incidental, those

at market value and those transactions which are already separately disclosed in the tax return disclosure.

Having legally been required to prepare financial statements to this standard, there is no requirement that these be provided to Inland Revenue, instead, they are held by the trustee as part of the accounting records. Although information from the financial statements will need to be copied (or automatically populated by software) to the prescribed disclosure forms (for example the IR 6, the IR 6B and IR 10).

Filing the trust tax return and making disclosures

The next task for trustees is to file various disclosures of all settlements, settlors, distributions and those with the power of appointment via the IR 6 and IR6B forms, which we understand have been redesigned to collect all the new information now required. Accountants will be asking for a lot more information from their trustee clients this year.

We had hoped to provide our readers with more details on this aspect as the original exposure draft issued for consultation was fundamentally flawed and impractical in several respects. But alas, the final version of this had not appeared in time for our publishing deadline.

We do know at least that as a result of submissions, a small legislative amendment has been passed to introduce a minor and incidental test regarding the type of distributions that will need to be disclosed (similar to the rule for settlements). For example, take the case of a holiday home owned by a trust which beneficiaries can use freely without paying rent. This is technically a non-cash distribution, but because it is not a taxable distribution, until now no information about this needed to be provided to Inland Revenue. But under the new rules, trustees would need to collect and disclose information concerning these types of distributions. Imagine the paperwork where multiple generations of a family trust use a holiday home! Theoretically, the legislative change should mean that "minor and incidental use" of a holiday home need not be disclosed. We remain hopeful that the operating statement will elaborate and provide clear guidance on what is "minor and incidental" in various contexts as it could mean different things for different scenarios.

We will update this article once the operating statement is released, so please check back to our web page. Otherwise please contact your usual tax advisor for more information on these rules and trustee obligations for the 2021/2022 tax return.

Under these new disclosure rules, Inland Revenue will have complete visibility over how trusts are being used to fund annual capital distributions from income taxed at the lower trust tax rate.

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New tax act – summary of changes

By Amy Sexton and Robyn Walker

Back in October 2021, Deloitte looked at the proposed Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill and Supplementary Order Paper 64. The Bill introduced several changes and amendments, including; the modernisation of GST, the introduction of the interest limitation rules and changes to the property bright-line test. With the Bill just squeaking in before the 31 March 2022 deadline by receiving its final reading in Parliament on 29 March 2022 and Royal Assent on 30 March 2022, we summarise some of the changes and their application dates for the new Act.

For more information on the GST, FBT and residential property tax changes in the Bill please refer to our separate articles.

Below is a list of some of the changes made in the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Act 2022 which may have widest application to taxpayers, it is not an exhaustive list.

Bill Clause	Act Sections*	Application Date
COVID-19 Related		
COVID-19 Information sharing – Removal of time limit		
173(1)	Schedule 7 – TAA	Royal Assent*
Removal of the sunset clause in the COVID-19 information sharing provision.		
Small Business Cashflow Scheme and COVID-19 Support Payments Scheme – recovery of funds from ineligible applicants		
135B	7AA – TAA	Royal Assent
Amendment allows the Commissioner of Inland Revenue to recover funds in situations where an ineligible applicant receives a loan amount and/or grant amount, but the funds are received by or otherwise passed on to, an associated person.		
Extending use of money interest relief during COVID-19		
169	183ABAB(4) – TAA	25 March 2022
Extension of relief to the 2021-22 tax year for taxpayers that are significantly adversely affected in their ability to forecast their residual income tax.		

Bill Clause	Act Sections*	Application Date
Income Tax Remedials		
Hybrid and branch mismatches – Imported Mismatch Rule		
81, 82 and 127(10)	FH 11, FH 15, YA 1 - ITA	Retrospective from 1 July 2018 (FH 11 has specific application date rules)
Technical adjustments to the application of the hybrid mismatch rules.		
Early-payment discount rate changes		
111	RC 38 - ITA	1 April 2022
Alters the rate of the early-payment discount to match the UOMI credit rate plus 200 basis points.		
Restricted transfer pricing remedial		
86	GC 18 – ITA	1 July 2018
Remedial amendments to the restricted transfer pricing rules.		
Foreign currency loans that finance residential rental property in a foreign jurisdiction		
70	EL 3 – ITA	1 April 2022
Amends the definition of "residential income" to include income that a person derives from a foreign currency loan to the extent the loan finances their residential portfolio.		
Fair dividend rate (FDR) foreign currency (FX) hedges		
71 – 78	EM 1, EM 3, EM 4, EM 5, EM 5B, EM 6, EM 7, EM 8 – ITA	Royal Assent
Technical adjustments to the application of FDR FX hedges to improve their functionality from a practical perspective and reduce compliance costs for investors with a large number of hedges.		
FBT – Unclassified benefits paid by associates		
71 – 78	EM 1, EM 3, EM 4, EM 5, EM 5B, EM 6, EM 7, EM 8 – ITA	Royal Assent
Technical adjustments to the application of FDR FX hedges to improve their functionality from a practical perspective and reduce compliance costs for investors with a large number of hedges.		
FBT – Unclassified benefits paid by associates		
114	RD 5 – ITA	1 April 2022
Excludes unclassified benefits paid by an employer's associate to that associate's employee from the calculation of the de minimis concession when the employer and its associate are not part of the same commonly owned group.		
FBT – Pooled alternative rate option		
114B- 114E	RD 50, RD 60, RD 61, RD 63 – ITA	1 April 2021
A new pooled alternative rate option of 69.93% or an option of a 49.25% safe harbour rule for employees with a gross salary and wages of $160,000 or less but with a maximum allowable amount of attributed benefits of $13,400 per employee; this option is also available for employees with all-inclusive pay of $129,681 or less.		
Tax pooling and early-payment discount settings		
125	RP 17B – ITA	Royal Assent
To enable taxpayers to use tax pooling to satisfy a liability arising from a voluntary disclosure where there is no existing assessment.		
Use of tax pooling to satisfy a backdated tax liability		
125	RP 17B – ITA	Royal Assent
Enable taxpayers to use tax pooling to satisfy a liability arising from a voluntary disclosure where there is no existing assessment.		

Bill Clause	Act Sections*	Application Date
Corporate spin-outs and shareholder continuity		
129	YC 13 ITA	8 September 2021
Prevent a spun-out company from breaching shareholder continuity requirements due to a corporate spin-out when there has been no change in ultimate ownership.		
Share-for-share exchanges and Available Capital Distribution Amount (ACDA)		
53(1)	CD 44 – ITA	Royal Assent
Amends the calculation of ACDA arising when a company disposes of shares in another company, acquired in a share-for-share exchange to a non-associated party.		
Employer Superannuation Contribution Tax (ESCT) on contributions for past employees		
115	RD 67 – ITA	1 April 2021
Reduce the flat rate of ESCT for contributions made for past employees to 33%		
Decommissioning for petroleum mining regime		
127(4)	YA 1 – ITA	Royal Assent
Modify the definition of "decommissioning" in the petroleum mining tax rules		
Business continuity test remedials		
89B – 89K	IA 5, IB 3, IB 5, ID 5 – ITA	1 April 2020
Remedial amendments to ensure the rules work as originally intended		
Amending memorandum accounts when making transfer from previous years		
90, 98-107, 110 and 123	LB 1B, OB 4, OB 32, Table O1, Table O2, OK 2, OK 3, OK 11, OK 12, O17, O18, RC 35B, RM 27 ITA	Royal Assent
Permits imputation credit account entries that result from a transfer of tax from a previous period to be made on the date that the taxpayer requests the transfer, rather than the effective date chosen by the taxpayer.		

Bill Clause	Act Sections*	Application Date
Local Authority Taxation – Dividends and Deductions		
54, 55, 58-60, 62, 63, 83, 91, 108, 109 and 116	CW 10, CW 39, DB 8, DB 41, FM 8, OP 12, OP 30, RE 2 – ITA	1 April 2022 (Clauses 54, 55, 63, 83, 108, 109, 116) 27 March 2021 (Clause 58) Royal Assent (All other clauses)
Amendments to improve the integrity of local government taxation.		
Other Remedials		
Ability to refund ancillary taxes		
121 - 122	RM 2, RM 4 – ITA	Royal Assent
Deems the filing of an ancillary tax return to be an assessment for the purposes of RM 2 and RM 4 of the ITA, ensuring overpaid ancillary tax (such as RWT) can be refunded.		
Non-active estates return filing		
143	43B – TAA	1 April 2022
Extends the non-filing provision to include non-active estates.		
	*ITA – Income Tax Act 2007	*Royal Assent was 30 March 2022
	TAA – Tax Administration Act 1994	

For more advice about these changes please contact your usual Deloitte advisor.

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Residential land – where are we now?

By Robyn Walker

Residential land – where are we now?

The taxation bill containing changes to the taxation of residential property has now been enacted and all that is left to do is for taxpayers to understand and implement the rules. While opposition parties have stated that these rules will be repealed if there is a change of Government at the 2023 election, at a minimum these rules will have effect for at least 2 tax years and they can't be ignored.

There are two main sets of rules that taxpayers need to be aware of:

1. Interest deductibility for residential rental properties
2. The bright-line test

Before explaining the rules, it's worth noting that Inland Revenue collects extensive amounts of information about residential property (including details of rental property expenditure and property sale information), so property owners should take compliance with these rules seriously. It is not a question of if, but when, Inland Revenue will be coming knocking to check on compliance with these rules.

The following is a high-level summary of the rules; however readers should note there are some detailed in's and out's for certain circumstances which are not covered in this article. Given the quantum of tax that can be at stake when dealing with residential property and the complexity which now exists in these rules, it is worth seeking professional advice to confirm how any tax rules applies.

Interest deductibility

The interest deductibility rules have a number of layers to understand, which we can break down into some key questions:

- What property do the rules apply to?
- Who do the rules apply to?
- What interest do the rules apply to?
- When do the rules apply?
- What property do the rules apply to?

The interest deductibility rules apply to residential property which satisfies the definition of 'disallowed residential property' (DRP). The following lists help to explain what is DRP.

What is DRP	What is not DRP
• Land in New Zealand to the extent it: • has a place which is configured as a residence or abode • has an arrangement to construct a residence or abode • it is bare land that is zoned residential	• Land outside New Zealand • Businesses premises (unless it is a business supplying accommodation • Farmland • Hospitals, convalescent homes, nursing homes, hospices, rest homes, retirement villages • Boarding establishments (with 10 or more rooms) • Hotels, motels, inn, hostels, and camping grounds • A property where the owner lives (for example a flatting situation or a bed & breakfast) • Student accommodation • Employee accommodation • Māori excepted land

Overlaying the definition of DRP are some further exemptions:

1. 'New build' properties are exempt from these years for 20 years after a property has received its Code Compliance Certificate (CCC). A new build is a property that has received a CCC on or after 27 March 2020, however, there are some other property types that can also satisfy this definition.
2. Land which is acquired for a business relating to land (under section CB 7 of the Income Tax Act 2007) is exempt from the rules. That is, land developers will always continue to be able to claim interest deductions.
3. Land which is being used as part of an undertaking or scheme to develop residential land is excluded from the rules while land development is being undertaken. Once the building is completed the new build exemption applies.
4. Residential properties which are used for social housing by registered community housing providers or council-controlled organisations. This exclusion also applies to landlords who rent their properties to these organisations.

Who do the rules apply to?

These rules apply to anyone owning residential property; however, a company will only be subject to the rules if:

- It is a close company (generally a company with five or fewer natural persons or trustees who have more than 50% of the voting interests);
- It is not a close company but 50% or more of the total assets are DRP (this is measured on a group basis);
- It is not an exempt Maori company.

As borrowing money to acquire shares is tax deductible, to prevent the obvious work-around of someone borrowing money and investing this into a company that then buys residential property without any debt, the rules will also apply to:

- Someone who has borrowed money to acquire shares in a close company that has more than 10% of its total assets as DRP (this threshold is measured quarterly);
- Someone who has borrowed money to acquire shares in a company that is not a close company, and the company has more than 50% of its assets as DRP (this applies when the threshold is exceeded at any point during the income year).

These are known as 'interposed residential property holders'. These taxpayers will need to perform quarterly calculations.

When do the rules apply?

Factoring in the exemptions above, for DRP which was acquired on or after 27 March 2021, interest stopped being tax deductible in full on 1 October 2021.

For most DRPs acquired prior to 27 March 2021, interest deductions became partially non-deductible from 1 October 2021, and interest deductions will be phased out in totality by 1 April 2025.

Landlords who are subject to these rules will need to determine what borrowing they held in relation to DRP as at 26 March 2021. Any 'new borrowing' after that date is also fully non-deductible from 1 October 2021.

What interest do the rules apply to?

It will be necessary for landlords to determine what borrowings relate to DRP. This will be straightforward for many landlords who may have a special purpose loan related to a rental property. However, to the extent there is borrowing which is for mixed purposes, or which is 'revolving credit' this will be less straightforward.

For a mixed purpose loan, reasonable attempts must be made to allocate portions of the loan to DRP and other property. If this is not possible, the approach is to subtract the value of other property (as at 26 March 2021) off the loan balance, with the residual balance being attributed to DRP.

For revolving credit loans, the loan balance as at 26 March 2021 represents the upper limit of deductible interest. To the extent the loan increases above that balance, any interest on that component is non-deductible from 1 October 2021. Any fluctuations up and down below the upper limit are not treated as 'new borrowings' and continue to be subject to the phase-out rule.

Whilst new borrowing is fully non-deductible, refinancing an existing loan (including changing banks) or transferring borrowing to another person where rollover relief is available will not constitute new borrowing. Foreign currency loans are also fully non-deductible from 1 October 2021, however, these can be refinanced into a New Zealand dollar-denominated loan.

What else?

If a property is sold and ends up being subject to tax (for example it is sold within the bright-line period), previously denied interest deductions may become deductible when determining the taxable profit on the property.

The residential ring-fencing rules continue to apply. These rules defer tax deductions if residential property expenses exceed residential property income.

Bright-line test

The bright-line test was amended in 2021 to change the bright-line period to 10-years for any property acquired on or after 27 March 2021. The changes in 2021 also included a modification to the main home exemption. The main home exemption no longer applies on an all or nothing basis; instead, the main home will be subject to tax if sold within the bright-line period to the extent that the owner has been out of the property for a continuous period of 365 days or longer. It's important to note this change to the main home exemption also only applies to property acquired on or after 27 March 2021.

The most recent changes have made some positive modifications to the bright-line test to take some of the harsh edges off the rules:

- The bright-line test will only be 5-years for 'new build' property. The definition of a new build is consistent with the interest deductibility rule, however, only those taxpayers who have acquired a new build within 12-months of the property receiving a CCC are eligible for this concession, it does not pass on to subsequent owners.
- The 365-day rule for the main home exemption provides a concession for taxpayers who purchase bare land and need to construct a dwelling. It has been acknowledged that it can take well in excess of 12-months for a property to be designed, consented and built, and therefore any reasonable period will count toward the main home exemption.
- The rules recognise that transactions that change the 'legal owner' of a property without changing the 'economic owner' should not trigger a sale under the bright-line test. Anyone wanting to rely on one of the following exemptions should ensure that they will comply with the black letter of the law before entering a transaction, as the exemptions are fact-specific and some only apply to transactions occurring on or after 1 April 2022:
  - The trustees of a trust have changed;
  - The land has been subdivided, with the original owner now holding more property titles for the same area of land; or conversely an amalgamation of separate titles into a merged title;
  - A change from joint tenancy to tenancy in common, or vice versa;
  - Land transfers for certain family trusts – including in and out from trustees and original settlors;
  - Land transfers to Māori authorities and associates or transfers associated with a settlement of a claim under the Treaty of Waitangi;
  - Transfers to themselves in a different capacity, for example between a look through company and its owner or a partnership and a partner;
  - Transfers between members of a tax consolidated group.

Unfortunately there have been no substantial changes to assist parents who help their children purchase property, as discussed in our previous article.

For more advice on these rules please contact your usual Deloitte advisor.

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New FBT option to save some compliance costs

By Robyn Walker and Sam Hornbrook

When the top personal tax rate was increased to 39% from 1 April 2021, this had the corresponding impact of changing FBT rates – being to change the top FBT rate from 49.25% to 63.93% and to increase the tax pooling rate from 42.86% to 49.25%. Essentially that change has ensured that almost all employers are going to have an increase in FBT costs regardless of whether there are any employees earning over $180,000. We have explained these rate changes in a previous article. For employers who had been satisfied with paying FBT on all fringe benefits at 49.25% because it was simple and approximated the marginal tax rate (33%) of most employees, the 63.93% change was unwelcome as it represented either a significant increase in FBT or a significant increase in compliance costs to attribute benefits to employees.

The Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill included a change to allow taxpayers to pay FBT at a flat rate of 49.25% for employees with an all-inclusive pay of less than $129,681 (equivalent to $180,000 after tax). As we explained in our previous article, that was a step in the right direction but ultimately didn't provide many compliance costs savings for employers as it was necessary to attribute benefits to employees in order to prove the rate could be used.

Thanks to a submission to the Finance and Expenditure Committee by Deloitte, there is now another option. Employers now can pay FBT at a flat rate of 49.25% for any employees earning gross "cash pay" of $160,000 or less provided that total attributable fringe benefits are $13,400 or less. It would be very rare for an employee to receive benefits near this $13,400 threshold so it allows employers to make a reasonable assumption about benefit levels in order to access the 49.25% rate for all employees earning $160,000 or less.

For many employers this will mean only benefits provided to a few employees need to be determined with accuracy, with FBT paid at 63.93% only in relation to those benefits. There remains the option to pay FBT at 49.25% for employees earning between $160,000 and $180,000 if all-inclusive pay remains below $129,681.

With all its available options, it can be easy to get confused about the best approach to calculating FBT. In the table below we set out the options and some pro's and con's of each. We recommend that now is a good time for employers to consider having an external review of FBT, we have a range of cost-effective review options which we would be happy to talk through. Having an external review of taxes, like FBT, is positively viewed by Inland Revenue as it demonstrates tax governance is being taken seriously.

Employers now can pay FBT at a flat rate of 49.25% for any employees earning gross "cash pay" of $160,000 or less provided that total attributable fringe benefits are $13,400 or less.

Option	Pro's	Con's
Pay at single rate	It's simple, nothing has changed except the rate	It's expensive, the single rate is 63.93%
Short-form attribution	Non-attributed benefits will be taxed at 49.25% (rather than 63.93%)	• Benefits need to be allocated between attributed or non-attributed • All attributed benefits will be taxed at 63.93% (even for staff earning less than $160,000)
Concessionary short-form rate: • 63.93% for employees earning over $160,000 • 49.25% for employees earning $160,000 or less with benefits under $13,400	• Non-attributed benefits taxed at 49.25% • Attributed benefits also taxed at 49.25% if no one earns above $160,000	• Benefits need to be allocated between attributed or non-attributed • You will need to collect information about benefits provided to employees earning more than $160,000 * ** if the benefits provided to someone earning above $160,000 are insufficient for total remuneration to exceed $180,000 there is still an opportunity to pay FBT at 49.25%*
Full attribution	• You will save FBT (attributed benefits are taxed at the marginal tax rate) • Software can help you	• Benefits need to be allocated between attributed or non-attributed • It's more complicated and relies on you having adequate information to attribute benefits to employees

For more information, contact your usual Deloitte advisor.

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GST Act gets some amendments

By Allan Bullot and Dave Morris

The Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill was enacted on 30 March 2022 with a raft of Goods and Services Tax (GST) changes designed to improve, modernise, simplify, and fix current legislation. In this edition of Tax Alert, we are just touching on a few of the changes, and subsequent Tax Alert articles will go into more technical details. We are also expecting more published guidance from Inland Revenue on a number of the changes contained in the new rules.

As always, we recommend getting in touch if you have any concerns as some of these changes can be complex.

No GST to pay on cryptocurrencies

One of the major changes is the clarification that cryptocurrency is to be excluded from the GST net, and this change has retroactive effect to 1 January 2009. This is a welcome change and removes several practical issues for many businesses operating in this field, however, the legislative changes are likely not going to be the end of legislative reform that is needed in this rapidly evolving area. Prior to these changes coming into force, there was a technical risk that many of the sales of cryptocurrencies to New Zealanders (particularly end consumers) should have been subject to GST at 15%. While this risk is now gone for cryptocurrencies, the risk remains for Non-Fungible Tokens (NFTs).

Given the seemingly infinite flavours of crypto, during the Bill phase the new legislation received several submissions all with various crypto-based scenarios (usually ending with "obviously you don't understand crypto"). The submissions caused some debate on the term "fungible" as the term was included in the first draft of the Bill under the definition of a "cryptoasset" with one submission asking the question everyone wanted to know on how the legislation would treat "semi-fungible" cryptoassets. The debate on fungibility (welcome to 2022) was resolved by the Finance and Expenditure Committee specifically excluding non-fungible tokens or NFT's from the definition of cryptoassets, as well as completely removing the term "fungible" from the definition of "cryptoassets". There were also concerns expressed that some cryptoassets have both fungible and non-fungible characteristics, potentially allowing for supplies where no GST would be due on the sale of crypto that provides non-fungible benefits to the holder. However, this was considered by Officials in their report on submissions to be an "edge case" and it was noted that potential issues would be monitored in the future.

An issue was also raised in submissions about whether cryptocurrency brokerage services would be exempt as "financial services" similar to non-crypto based financial services. This issue was due to the fact that included in the definition of the exempt supply of "financial services" is the term currency; however, currency does not include a cryptoasset. To address the ambiguity, a separate amendment has been included that specifies crypto broking, commission and other related services are financial services and have a default position of being excluded from GST.

"Tax Invoices" it's all changing, but not until 1 April 2023

Taking up the lion's share of submissions to the Bill was commentary on the modernising of the GST invoicing rules. While it was intended these changes were to move GST invoicing requirements into the digital era, and that they would not have any impact on current business invoicing processes after being introduced, the high level of concern on practical issues raised in submissions are likely to have contributed to a decision to push back the enactment of the rules to 1 April 2023.

Under the new rules (to be covered in more detail in a later Tax Alert article) there is a much greater degree of freedom in the way in which the GST relevant information can be shared and recorded by the parties. There has been an overriding focus in the legislative changes, that a business that is issuing a valid GST tax invoice now would not have to make any changes to comply with new rules.

This does not however mean that a business can simply ignore the changes. For instance, even if you make no changes in your billing processes after 1 April 2023, you are likely to need to review your accounts payable GST processes. After 1 April 2023, the fact that a supplier's invoice does not have the words "tax invoice" on it does not mean that it is not a valid document that can form part of the evidence to support your GST claim.

This delay to 1 April 2023 however will not apply to rules relating to compliance cost reduction measures in the invoicing area, such as the proposed changes to buyer-created invoices, GST groups, shared invoices and corrections to supply information which are still going ahead from taxable periods beginning after royal assent (for many this means 1 April 2022).

The proposal to allow a registered person to issue a "buyer-created tax invoice" provided there is an agreement between the parties, rather than writing to the Commissioner for approval, is a great change and is long overdue. However, it will still be important to be able to show that there has been agreement between the parties to use the process. We're aware some taxpayers are scratching their heads over what to call the documents as they no longer have the catchy legislative name of "Buyer Created Tax Invoice – IRD approved", while this name still works for previous agreements, the words "IRD approved" may be problematic for new agreements and require IT systems changes to remove those two words.

Second-hand goods credits and associated persons

Many businesses have been caught out previously by a particularly nasty provision that existed in the GST Act, where the purchaser of a property can miss out on a GST input if they initially purchase the property under their own name and then on-sell the property to their GST registered development company. This has frequently resulted in no GST claim at all being allowed to the GST registered developer entity because of the association between the vendor and purchaser. The GST rules have now been changed such that a second-hand goods credit will be available to the GST registered developer, based on the amount paid to the first non-associated person who sold the property in the various associated persons/entities.

This is a very good change, as the old rules did not have a good policy reason to exist, and frequently just caused unnecessary and unfair costs to some land development projects.

Fractions of a cent – what to do

As a measure of some light relief, the final change we will consider, and one that may be of interest to accountants who are kept up at night from GST schedules not reconciling to fractions of cents. Officials have pragmatically lent their support for legislative changes so that the GST rounding of fractions of a cent can occur on either an aggregate or individual line-item basis, as long as either method is used consistently. This pragmatic legislative response is welcomed.

Overall, many of the changes introduced to improve GST in this year's Tax Bill should be welcomed. However, there has been some inconsistency in the delivery of the intended purposes through legislation. Given this, we recommend you tread carefully and seek advice before proceeding with any tax decisions that are impacted by the newly enacted changes.

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Consultation on GST apportionment rules and the gig economy

By Robyn Walker

Despite what the headline may suggest, there are no proposals to apply GST apportionment rules to the gig economy (or maybe there are), instead, there are two separate consultation items out in relation to GST:

1. Officials' issues paper: GST apportionment and adjustment rules
2. Government discussion document: The role of digital platforms in the taxation of the gig and sharing economy

When you combine this with the GST changes in the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Act 2022, it has been an exciting time for GST enthusiasts. In this article, we briefly explain what is proposed in these consultation documents.

GST apportionment and adjustment rules

Anyone who owns an asset that is used for a dual purpose (taxable, exempt or private use) should be aware that there are extensive and complicated rules dealing with how GST input tax credits should be claimed. These rules potentially require annual adjustments over the entire period the asset is owned. Examples of taxpayers who need to consider these rules include:

- A sole trader using a work car for personal use
- Apartments residentially rented above shops (where both are owned by the same person)
- Properties rented out for short term use via a digital platform that was historically used for long term residential purposes
- Properties rented out for short term use only for specific periods during the year and are lived in the rest of the year
- Properties that are residentially rented while being advertised for sale
- Financial service providers
- Properties purchased for development but used for residential rental prior to the development commencing

You can find a summary of the adjustment requirements here. The current apportionment rules have been in place since 2011 and it's fair to say there has been a mixed approach to compliance with the rules, with many taxpayers finding themselves with unexpected tax bills, particularly when a dwelling that has been used for short-term rental is sold (you can read more about this here).

The consultation document proposes to reform these rules to mitigate the issues that taxpayers have been experiencing and to simplify the rules. The proposals include options to substantially reduce the number of taxpayers who need to consider the rules by having more targeted rules. Options under consideration include:

- A principal purpose test for assets purchased for less than $5,000 (GST inclusive).
- A 20 percent de minimis rule – if a person's taxable use of an asset is less than 20 percent, no GST can be claimed and no GST will arise on disposal.

- An 80 percent round-up rule – assets with 80 percent or more taxable use will be entitled to claim full input tax credits without further adjustment.
- Apportionment adjustments would still be required for assets costing more than $5,000 with between 20-80 percent taxable use; however, adjustments would only be required when there has been a major change in the use of the asset (e.g. a variation of 20 percent or more).
- Amending the concepts of "dwelling" and "commercial dwelling" to help reduce overlap between the concepts and confusion about when GST applies.
- New rules for making house sales an exempt supply and clearer rules for property developers.

The proposals in the consultation document are a refreshing change from some of the other more [recent consultations] as the purpose of the reform is to make taxes easier and fairer for taxpayers. The consultation paper should be read by any taxpayers with dual-use assets. Submissions close on **27 April 2022.**

The role of digital platforms in the taxation of the gig and sharing economy

In recent years there has been an expansion of digital platforms in the economy and in our lives. These days more often than not a digital platform may play an integral part in how you travel from A to B, book holiday accommodation, get something to eat, or purchase goods and services. The rise in e-commerce over digital platforms has been a revolution for a lot of "small businesses" accessing customers. However, the emergence and success, of these platforms leads to questions as to whether our current tax rules remain fit for purpose.

The consultation document considers a range of issues, both GST related and not. Some key questions asked by the consultation document are:

- Should New Zealand adopt OECD proposals to require digital platforms to provide information to tax authorities which are then shared with revenue authorities globally (e.g. a platform based in New Zealand would provide Inland Revenue with data about sales by all vendors operating through the platform, Inland Revenue would then share that information with the revenue authority where the vendor is based).
- Should GST be applied to all sales through digital platforms, and if so, what is the best way to do this? For example, should individual sellers all be registered for GST (for example all ride-sharing drivers or holiday accommodation providers), or should the platform charge and account for GST on their behalf?

Submissions on the consultation document close on **21 April 2022.**

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Research and Development Tax Incentive – Guidance on claiming software development R&D and upcoming due dates

By Simon Taylor and Brendan Ng

Research and Development Tax Incentive – Guidance on claiming software development R&D and upcoming due dates

There has been some confusion over the ability of software to quality for the Research and Development Tax Incentive (RDTI) ever since the new regime was first proposed. It is therefore pleasing to see the release of Digital Technology Sector Guidance (Digital Sector Guidance) for the RDTI, highlighting Inland Revenue's views of the types of software development R&D that can qualify for the RDTI. The Digital Sector Guidance provides insights into the type of technical information that is expected to be included, as well as practical examples of completed General Approval applications.

This article covers the new Digital Sector Guidance, as well as a reminder about upcoming deadlines with recently announced extensions. R&D performers will be aware that there are two main outputs they need to prepare if they are using the General Approval method, being the General Approval application and Supplementary Return. Both of these have upcoming deadlines and, if they haven't already, it is important for claimants to complete the process in time so that they don't miss out on any potential benefit.

This is especially true for businesses that were previously receiving Growth Grants, as for many this will be the first year they are able to claim the RDTI. Previous Growth Grant recipients may also be eligible for the Transition Support Payment, which allows a top-up to bring the total amount of R&D financial support to a similar level as received under their former Growth Grant. Eligibility for the top-up payment depends on a number of things, including being able to show that a "good faith" attempt is made to participate in the RDTI.

2021-2022 General Approval application due dates

The first lodgement to consider is the General Approval application, containing the written description of a business' R&D activity and why it meets the RDTI eligibility criteria. For a standard March balance date, the 2021/2022 application will be due on 7 May 2022, and careful consideration of the content maximises the chances of a smooth claim process.

A list of due dates for common year ends is set out below, noting that Inland Revenue has recently released a short [COVID-19 extension] for balance dates between 31 December 2021 and 31 March 2022 that have been affected by the impacts of the current COVID-19 outbreak.

For other balance dates, the Minister of Business Innovation and Employment (MBIE) has released a [claims date finder]. Note that the COVID-19 extension will only apply due to material delays or disruptions because of circumstances arising either from COVID-19 or COVID-19 response measures. This could include the impact of a key staff member or advisor having reduced availability, or the financial impact of COVID-19 causing significant disruption to the normal business operations of the taxpayer.

Balance date	General Approval due date	Due date with COVID extension
31 December 2021	7 February 2022	7 April 2022
31 March 2022	7 May 2022	31 May 2022
30 June 2022	7 August 2022	No current COVID extension

2020-2021 Supplementary Return due dates

The second lodgement required is the Supplementary Return, which captures a business' eligible R&D expenditure, for which a 15% tax credit can be claimed. For taxpayers that submitted a 2020-2021 General Approval application, the due date for the 2020-2021 Supplementary Return is fast approaching – the ordinary due date is 30 April 2022 for taxpayers with an extension of time, extended to 2 May 2022 because 30 April falls on a weekend. However, there is also a short COVID-19 extension available for all balance dates provided the requirements are met. Below is a table illustrating the 2020-2021 Supplementary Return due date.

Balance date	Supplementary Return due date	Due date with COVID extension
31 December 2020	2 May 2022	31 May 2022
31 March 2021	2 May 2022	31 May 2022
30 June 2021	2 May 2022	31 May 2022

The requirements to be met to apply the COVID-19 extension are the same as for the General Approval applications. If your business has any queries about what qualifies as a COVID-19 related delay or disruption, and what is required to document this, please reach out to your usual Deloitte advisor.

Please also note that there is also a COVID-19 extension for applying for criteria and methodology approval.

For claimants who have not received confirmation of General Approval at the time of lodging the supplementary return, a special PDF form is available to lodge the supplementary return, as opposed to the usual method of lodging it online.

Digital Technology Sector Guidance

Following calls for clarity on the eligibility of software development, Inland Revenue has released [Digital Technology Sector Guidance] to assist those performing R&D in the digital technology field. This and other eligibility documents can be found on the [Inland Revenue RDTI eligibility page]. While the underlying legislation remains the same, the digital sector guidance is a welcome move and contains some practical examples of what is required to assist with considering eligibility and preparing General Approval applications.

The guidance clarifies that there are many layers of information to consider when assessing eligibility and making a General Approval application, and illustrates the essential parts that are required in the form of a dartboard graphic (replicated in this article). This shows that a General Approval application should include (but is not limited to) the following:

- A clear scientific or technological problem/knowledge gap (keeping in mind the knowledge horizon and technology limits in the specific scientific or technological field);
- Methods and experiments to be used/ undertaken;
- An R&D plan and milestones;
- A description of metrics and success parameters (that meet product requirements and specifications).

The digital sector guidance also describes examples of types of the underlying technology that may underpin R&D, including cognitive / analytics, security, future networking, digital reality, cloud, robotics and quantum technologies. This is not an exhaustive list, however, and other areas such as system uncertainty (which is included in other general Inland Revenue Guidance) may also qualify. The guidance highlights that the technology used in the R&D should be the focus, rather than the commercial product being developed.

The guidance also describes types of core, supporting and excluded activities, and indications of when qualifying R&D activities start and finish.

Examples are also included of successful and unsuccessful applications, showing the types of activities and information included in each outcome. The examples are:

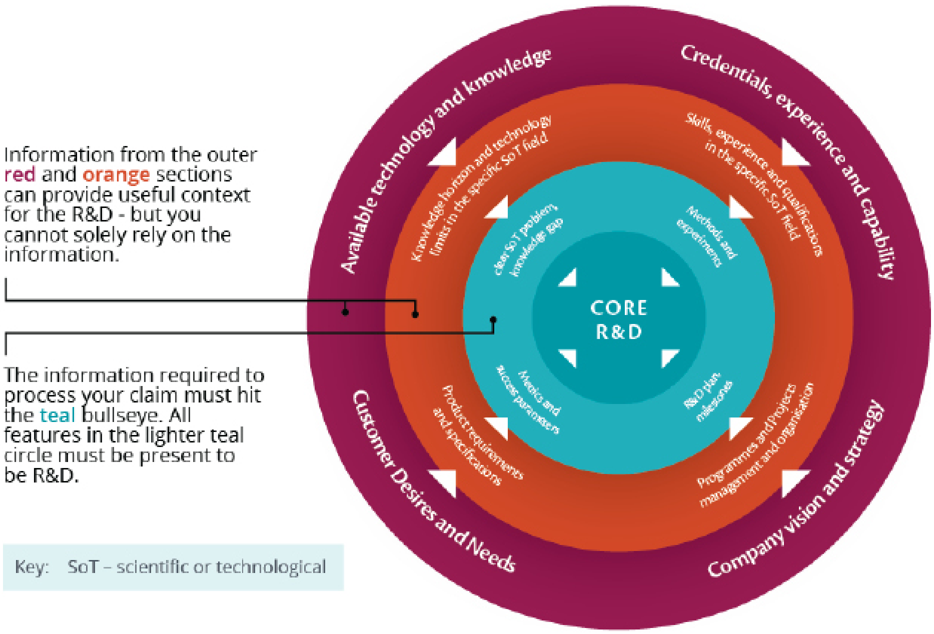
- An approved application for a smart facial recognition security system on a building site, showing the technical problem of how to develop a security solution that uses AI facial recognition, a cloud-based server and cameras to identify personnel. This was eligible for the RDTI.
- This security system is also accompanied by an ineligible example of how a business may seek to develop a similar commercial product (i.e. the smart facial recognition security system), but how this may be undertaken in a different way such that it is not eligible R&D and the General Approval application is declined.
- There is also the development of a legal search platform for the building code, which is a further example of an eligible and approved General Approval application.

Impact on General Approval applications

The guidance should be referred to closely in preparing General Approval applications – we have already seen many instances of reviewers referring to its content when assessing applications. Ongoing feedback is also being sought by Inland Revenue on the content of the guidance.

It is positive to have this guidance available to assist taxpayers, advisors, and possibly more importantly reviewers, understand when software can be eligible for the RDTI. After some resistance to acceptance of software claims when the RDTI regime first began, we have now supported a number of taxpayers to make successful software-related claims across a range of different areas.

For more information, contact our specialist R&D team or your usual Deloitte advisor.



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Appreciating depreciating buildings

By Robyn Walker and Jodee Webb

Claiming depreciation on buildings is something that was taken for granted by taxpayers, that is until the shock Budget Day announcement on [20 May 2010] that buildings will no longer be depreciable from the 2011/12 income year. That change began many years of consternation for building owners over a range of topics including how do you depreciate fitout, how do you depreciate something which is part-coolstore and part building, is a hydro powerhouse a building, and not least, what do you do for deferred tax purposes?

Fast-forward almost a decade and there was a much more welcome announcement on [17 March 2020] that building depreciation would be reinstated for non-residential buildings from the 2020/21 income year. Over the two years since that announcement, most taxpayers have happily started depreciating their buildings again. But for some taxpayers, there were some complications to resolve, including determining what was a non-residential building (helpfully defined as "non-residential building means a building that is not a residential building").

To help taxpayers, Inland Revenue has recently released a draft interpretation statement "[Claiming depreciation on buildings]", this statement provides a very useful summary of virtually all issues arising around the depreciation of buildings – however, do refer to our insert entitled "Deferred tax confusion reigns".

Useful points of clarification provided in the draft interpretation statement include:

- A building will be a residential building if it is a "place used predominantly as a place of residence or abode". The focus here is the **use** of the building. This will be important in situations where there is a mixed-use property as the entire building will either be depreciable or not depreciable depending on how it is used. For example, a three-story building with a shop on the ground floor and two floors of apartments will be predominantly used as a place of residence and therefore the entire building remains non-depreciable. While this approach is reasonably simple to understand, it does lead to policy questions as to whether this is the right answer, take for example two identical tower blocks, one is used for offices and the other has apartments; all aspects of the building construction are identical, but one is depreciable and one is not.
- Residential buildings used for commercial accommodation will still be depreciable if there are more than 4 units on the same piece of land, likewise, hotels, motels, etc are all depreciable.

- When identifying what makes up a building it is important to be aware that any plant or fit-out that forms part of the structure of the building is part of the building and is not separately depreciable.
- Depreciation rates that apply from 2020/21 are lower than what was available prior to 2011/12. The new rates are 2% diminishing value or 1.5% straight line for buildings with an estimated useful life of 50 years.
- The draft interpretation statement provides a reminder that if depreciation is not claimed (and an election to not depreciate the asset has not been filed with Inland Revenue), then depreciation is still deemed to have been claimed when determining whether there is depreciation recovery income when a building is sold.

Deferred tax confusion reigns

The impact of the changes in early 2020 on the deferred tax position is proving not to be an exercise that had to be undertaken solely in year one. Complexity still exists as taxpayers work through the impact on deferred tax of impairments, revaluations, additions, and part disposals of buildings where the outcome is not as straightforward as it might initially seem. We are also seeing prior period adjustments being required as tax depreciation is flowed through the tax fixed asset register, requiring an adjustment in the tax base for deferred tax.

Overall the draft interpretation statement provides a useful summary of how to depreciate buildings, submissions are open until 2 May 2022. If you want to know more, please contact your usual Deloitte advisor.

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Trends in shortfall penalties

By Virag Singh

As required under the Tax Administration Act 1994 (TAA), Inland Revenue recently issued its annual report on the application of shortfall penalties *"Application of shortfall penalties under the Tax Administration Act 1994 for the year ended 30 June 2021"* (2021 SFP Report).

The shortfall penalty regime is one of the most powerful tools Inland Revenue has at its disposal to encourage and enforce compliance with tax laws.

Every year Inland Revenue impose thousands of shortfall penalties amounting to millions of dollars to taxpayers who take incorrect tax positions. To put some figures around it, in the eleven years from 1 July 2010 to 30 June 2021 67,380 shortfall penalties were imposed amounting to a total dollar value of $430,083,681 (after the application of voluntary disclosure and previous good behaviour adjustments).

This article will first provide a brief overview of the shortfall penalties regime before looking at the trends in shortfall penalties between 1 July 2010 and 30 June 2021. The 2021 SFP Report itself only compares data between the years ended 30 June 2020 and 30 June 2021.

Note: The data referred to/graphed in this article is sourced from Inland Revenue's reports on the application of shortfall penalties pursuant to section 141L of the TAA, for the years ended 30 June 2011 – 2021.

The shortfall penalty regime

Where a taxpayer takes an incorrect tax position, that taxpayer may be liable to pay a tax shortfall penalty. Or to put it another way, if a taxpayer pays an amount of tax that is lower than what Inland Revenue determines the taxpayer owes, that taxpayer may be charged a penalty.

The purposes of the penalties regime (including the civil shortfall penalties regime) as set out in Part 9 of the TAA is to encourage voluntary compliance with tax obligations, ensure impartial and consistent application of penalties and impose penalties at a level proportionate to the seriousness of the non-compliance with tax obligations.

Shortfall penalties are imposed as a percentage of the taxpayer's tax shortfall. The percentages are determined by reference to a framework that aims to assess the taxpayer's level of culpability for the shortfall. The table below summarises the range of penalties:

A purpose of the penalties regime to ensure the level of the penalty is proportionate to the seriousness of the breach is met, and as such the amount of a shortfall penalty may be reduced,

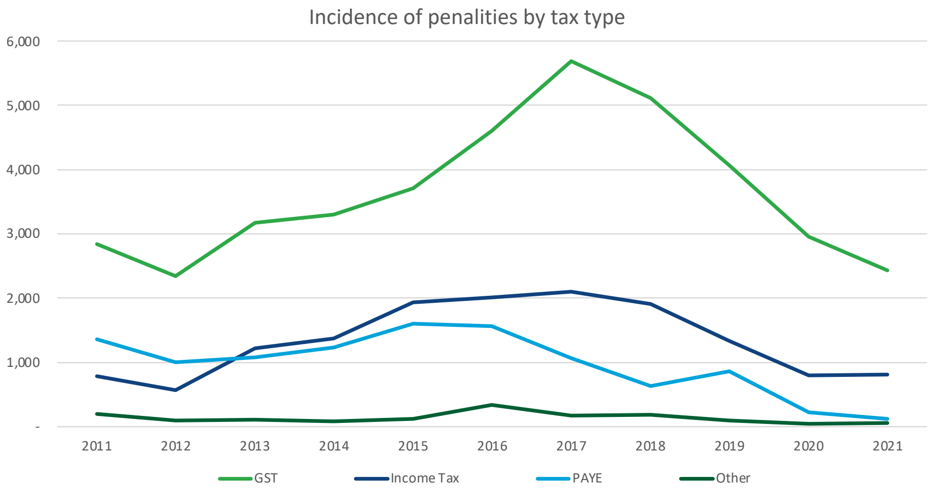
Penalty Type	Percentage of tax shortfall	Applies when:
Not taking reasonable care	20%	Taxpayer does not take reasonable care in taking a tax position.
Unacceptable tax position	20%	Viewed objectively, the tax position fails to meet the standard of being about as likely as not to be correct. Must exceed $50k or 1% of total tax for relevant return period.
Gross carelessness	40%	Doing or not doing something in a way that in all the circumstances suggests or implies complete or a high level of disregard for the consequences.
Abusive tax position	100%	Having met the unacceptable tax position threshold, a taxpayer enters into or acts in respect of arrangements or interprets or applies tax laws with a dominant purpose of taking, or of supporting the taking of, tax positions that reduce or remove tax liabilities or give tax benefits.
Evasion or similar act	150%	Evades the assessment or payment of tax by the taxpayer or another person under a tax law or a similar act.
Promoter penalty	The sum of the tax shortfalls awrising as if the promoter had been the party to the arrangement.	Applies to a 'promoter' who has sold, offered, issued or promoted an arrangement to 10 or more persons, where a shortfall penalty for an abusive tax position is imposed on a party to the arrangement as a result.

in some circumstances. A reduction of 100% (in cases where the shortfall penalty imposed is for not taking reasonable care or for taking an unacceptable tax position, or a 75% reduction for other penalties) is available where the taxpayer makes a full unprompted voluntary disclosure to Inland Revenue before the taxpayer is notified of an impending audit or investigation. A 40% reduction in shortfall penalties is available where voluntary disclosures are made post notification, but before, the start of an audit. In 2021 reductions in shortfall penalties payable due to voluntary disclosures totalled $43,352,347. Taxpayers can also benefit from a 50% reduction for "prior good behaviour" (essentially where the taxpayer has not had a penalty of that type in the preceding two years for PAYE, FBT, GST and RWT or four years for other tax types). In 2021 97.3% of shortfall penalties imposed were given a 50% reduction for "prior good behaviour".

Incidence trends in shortfall penalties

Over the last eleven years, the number of shortfall penalties has fluctuated. In the year ended 30 June 2011, there were 5,180 penalties issued. This figure rose to a peak of 9,029 in the year ended 30 June 2017 before dropping to 6,360 in the year ended 30 June 2019. The 2020 and 2021 years were again lower. Inland Revenue has noted in the 2021 SFP Report that the impact of COVID-19 saw more Inland Revenue staff time spent assisting customers than on audit activity. While there has been a general decline in the number of shortfall penalties across all tax types broadly since 2017, the decline in respect of GST has been particularly noticeable (5,688 in 2017 compared to 2,433 in 2021).

One might reach the conclusion that the lower number of penalties is correlated to the reduction in Inland Revenue staff and reallocation of resources at Inland Revenue



arising from the Business Transformation project. However there could be other explanations, such as an increased focus on taxpayer education and processes to help taxpayers take correct tax positions in the first instance (the "Right from the Start" approach).

The two most common types of penalties imposed throughout the period reviewed have been for evasion or similar act (150%) and gross carelessness (40%). The incidence of these two shortfall penalties types reduced significantly from 2017 on. The number of penalties imposed for promoter, unacceptable tax position and abusive tax position has remained consistently low over the period. What this may show is that taxpayers are generally very compliant, and enforcement time is being directed toward taxpayers who are wilfully evading tax obligations.

Total dollar value trends

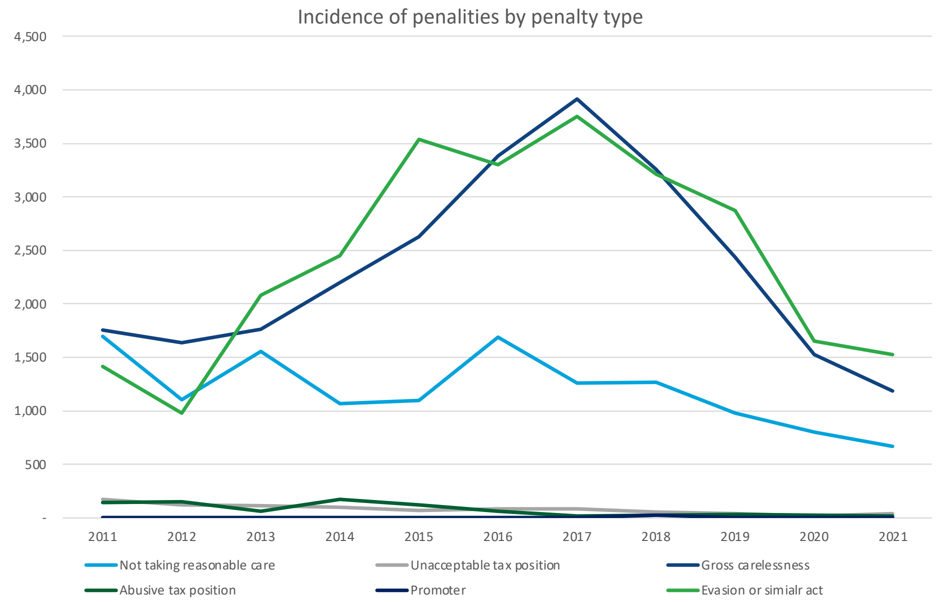
The dollar values of penalties imposed by tax types (excluding income tax) and by shortfall penalty types have remained steady over the last eleven years. The dollar value of penalties imposed for income tax has, however, fluctuated markedly over the review period. There is a distinct correlation between fluctuation in dollar value for shortfall penalties imposed for abusive tax positions and shortfall penalties imposed in respect of the income tax type. Other than the spikes in 2012, 2014 and 2019, there has been a general and more pronounced decline in the dollar values of penalties imposed for abusive tax positions for income tax. This may be indicative of a calmer period post-settlement of most of the tax avoidance cases associated with the Trinity scheme and the use of mandatory convertible notes and optional convertible notes. Taxpayers also have not had much success with challenging Inland Revenue on tax avoidance matters as part of the disputes process. Taxpayer fatigue and costs burden associated with the tax disputes process often results in taxpayers opting to settle the dispute with Inland Revenue with the reduction in shortfall penalties one of the levers used to negotiate a settlement.

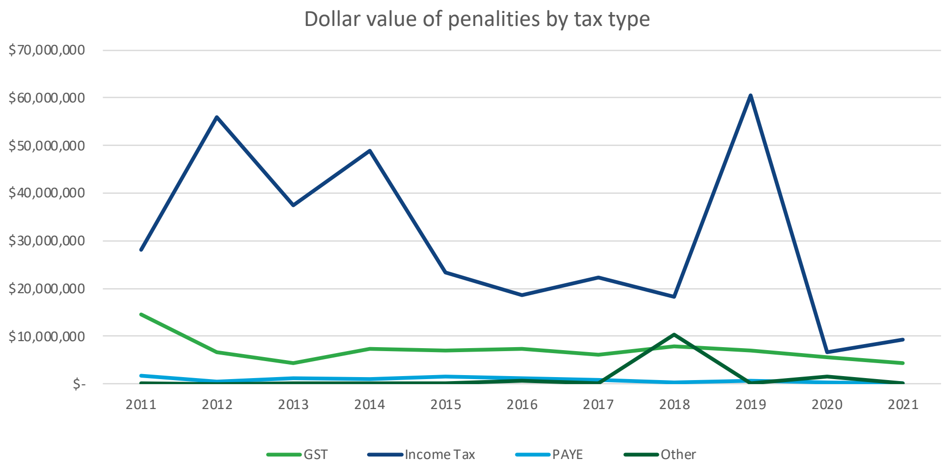
Conclusion

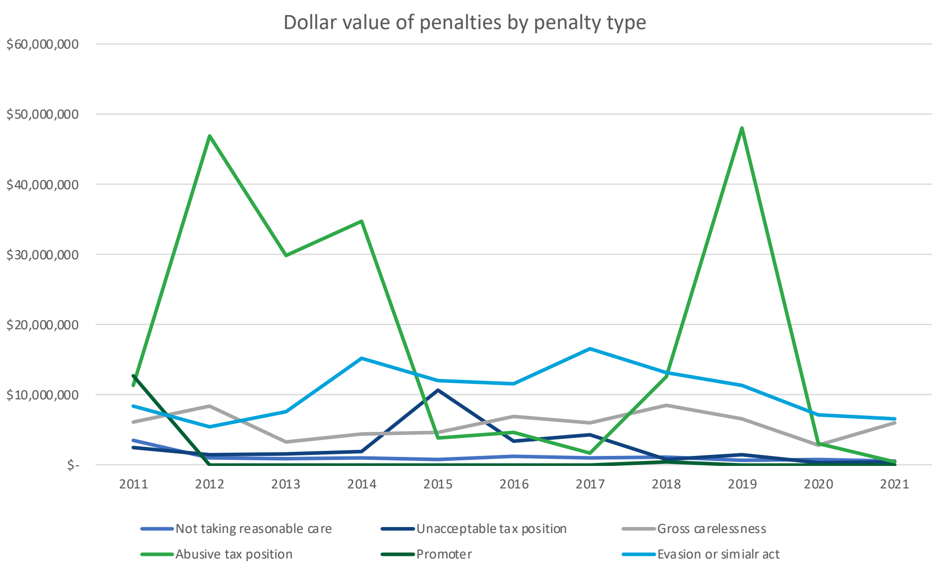
There are some clear trends in the graphics over the past eleven years. The imposition of shortfall penalties has seen a steady decline. The reduction in staff and reallocation of duties with Inland Revenue because of the Business Transformation project could be a factor. In the last two years, COVID-19 could also be a factor with resources diverted to other priorities and taxpayers being given some breathing space from audit action.

There is possibly some credence in the argument that Business Transformation has resulted in enhanced collection and matching of data which allows earlier identification of errors or discrepancies which can be fixed without active reviews, investigations or audits.

A number of significant and complex tax regimes have been enacted in recent times, including the BEPS regime (which incorporates anti-hybrid rules, restricted transfer pricing rules and tougher thin capitalisation rules). Time bar for transfer pricing related matters has also been extended and tax rules in relation to land transactions have also become more complicated. At some stage as pressures grow to increase government revenue, Inland Revenue are likely to need to increase audit activity to ascertain







compliance with these tax regimes. This could result in additional tax and shortfall penalties to pay.

This is also a timely reminder that taxpayers can use the voluntary disclosure regime to reduce their exposure to penalties and undertake regular reviews of their tax functions and processes to ensure compliance.

For advice on mitigating Inland Revenue penalties, what to do when faced with the imposition of shortfall penalties, or any general tax dispute queries, please contact your usual Deloitte tax advisor.

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COVID-19 updates

By John Alcantara

Introduction

The recent Omicron outbreak has affected businesses and individuals in New Zealand. In response, the Government and the Inland Revenue have enacted several extensions and measures to support those who are struggling to meet deadlines due to COVID-19's impacts. In this article, we summarise what is available through the tax system.

Extensions passed by the Government

Relief for donated trading stock

In 2021 legislative relief was provided for taxpayers who had been making donations of trading stock. Without that relief, tax avoidance laws treat all donations of trading stock as being made for market value, meaning that a good deed would come with a tax bill. The 2021 relief was due to expire on 16 March 2022, however on 10 March 2022, it was extended until 31 March 2023.

Remission of interest for taxpayers affected by COVID-19

In March 2020 the Commissioner of Inland Revenue was given the ability to remit use of money interest for taxpayers affected by COVID-19 and who asked for relief and made payment as soon as practicable. This concession (section 183ABAB of the Tax Administration Act 1994) was due to expire on 24 March 2022 but has now been extended to 8 April 2024.

Extensions and concessions introduced by the Inland Revenue

The Commissioner of Inland Revenue can extend these deadlines under the power given to her in sections 6H and 6I of the Tax Administration Act 1994. Note that in most cases, these extensions apply if there are difficulties because of circumstances arising either from the imposition of COVID-19 response measures or because of COVID-19. Hence, it is advisable to check the conditions to determine if the extensions apply to your case.

COV 22/01 Application to spread out income from timber

On 2 March 2022, the deadline for making an application to the Commissioner to spread out income from timber to previous income years was extended. This variation extends the deadline from one year from the end of a person's income year to 31 July 2022. This could apply to taxpayers with an income year ending on or between 28 February 2022 and 30 June 2022.

COV 22/02 Application for a Look-Through Company (LTC) election

On 3 March 2022, the deadline by which the election of becoming an LTC must be received by the Commissioner was extended. For the 2021 income year, where a company makes an election to be a look-through company and section HB 13(3)(b) of the Income Tax Act 2007 applies, the deadline is extended to include an election received by the Commissioner on or before 30 June 2022.

COV 22/03 Writing off Bad Debts

On 3 March 2022, the timeframe by which a debt must be written off as bad for a deduction to be available in that income year was extended to 30 June 2022. This applies to the 2022 income year and taxpayers with 31 March balance dates. In deciding a debt is bad, the taxpayer must consider only information that was relevant as at the end of their 2022 income year.

COV 22/04 Election to form an imputation group

On 4 March 2022, a notice of election to form an imputation group under section FN 7 of the Income Tax Act 2007 has effect from the start of the tax year ending 31 March 2022. This is applicable when the Commissioner receives the notice after 31 March 2022 but before 1 June 2022. This applies from 4 March 2022 to 31 May 2022.

COV 22/05 Determination and payment of beneficiary income

On 7 March 2022, the date to determine and pay amounts of 2021 beneficiary income was extended to 15 July 2022. This variation applies to trustees who have not already determined and paid beneficiary income in respect of a trust's 2021 income year, and who must do so by 31 March 2022.

COV 22/06 Residency of Natural Persons

On 7 March 2022, the Inland Revenue published a variation on rules concerning the residency of natural persons. The variation's effect is to allow a person, for the purpose of determining whether they are NZ resident under either section YD 1(3) (the 183-day test) or section YD 1(5) (the 325-day test) of the Income Tax Act 2007, to exclude those days where they were personally present in NZ but practically restricted from leaving between the period 17 March 2020 and 30 June 2022.

Day Test Variations

On 7 March 2022, the Inland Revenue published three variations for day tests concerning visitors, non-resident crew members, and non-resident contractors.

- **COV 22/07** - Variation to day test for visitors to New Zealand in section CW 19 of the Income Tax Act 2007: This variation's effect is to allow a person, for the purpose of determining if income from performing personal or professional services in NZ during a visit is exempt income, to exclude days where they were personally present in NZ but practically restricted from leaving NZ between 17 March 2020 and 30 June 2022.
- **COV 22/08** - Variation to day test for non-resident crew members in section CW 21 of the Income Tax Act 2007: This variation's effect is to allow a person, for the purpose of determining whether they are a "non-resident crew member" of a pleasure craft, to exclude days where they were personally present in NZ but practically restricted from leaving NZ between 17 March 2020 and 30 June 2022.
- **COV 22/09** - Variation to day test for non-resident contractors in section RD 8(1)(b)(v) of the Income Tax Act 2007: This variation's effect is to allow a non-resident contractor to exclude days where they were personally present in NZ but practically restricted from leaving NZ between 17 March 2020 and 30 June 2022 when determining if a payment for services is excluded from being a schedular payment under section RD 8(1)(b)(v).

COV 22/10 Applications to change GST taxable period

From 1 April 2022 to 30 September 2022, a change in the taxable period takes effect at the commencement of the [6-month] taxable period in which the person applies to change the basis on which the person's taxable period is set. This applies to a registered person who wishes to change from a 6-month to a 1- month taxable period, and for a 6-month taxable period commencing between 1 April 2022 and 30 September 2022.

COV 22/11 R&D Supplementary returns and applications

On 9 March 2022, the deadlines for filing supplementary returns (2020-21 tax year), general approval applications (2021-22 tax year), and criteria and methodologies notices (2021-22 and 2022-23 tax years) were extended. The new deadlines and conditions for extensions are varied.

COV 22/12 "325 Day Absence Rule"

On 9 March 2022, the days that the person was personally absent because they were unable to, or reasonably prevented from, returning to NZ, due to circumstances arising either from the imposition of COVID-19 response measures or because of COVID-19, may be ignored for determining the 325 Day Absence Rule. The person must also return to NZ as soon as reasonable to do, notify the Commissioner in writing and provide any information the Commissioner requests.

COV 22/13 WFF Instalments

On 9 March 2022, the timeframe within which an IRD number must be provided to allow instalment payments of family tax credits to continue was extended for a period not exceeding a further 56 days as determined by the Commissioner. This variation will apply to children born between 12 January 2022 and 30 June 2022.

COV 22/14 GST ratio elections

On 10 March 2022, the deadline by which a person with provisional tax obligations must have informed the Commissioner of their election to use a GST ratio to calculate their provisional tax liability was extended. The extension is to 30 April 2022 for a person with a February balance date and to 31 May 2022 for a person with a March or an April balance date.

COV 22/15 Tax pooling transfers

On 18 March 2022, the time within which a transfer request to use funds in a tax pooling account must be made, was extended to 183 days after the terminal tax date. This variation applies to a person who wishes to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for the 2021 tax year.

COVID-19 Business Support

COVID-19 Support Payment

Applications are now open for three COVID-19 Support Payment (CSP). The CSP is explained in our March 2022 Tax Alert article. Inland Revenue has now released the relevant dates for each fortnightly payment:

- Applications for the first payment are open for the period beginning 16 February 2022 and ending 4 April 2022.
- Applications for the second payment are open for the period beginning 7 March 2022 and ending 4 April 2022.
- Applications for the third payment are open for the period beginning 21 March 2022 and ending 4 April 2022.

Applications for all 3 CSPs will close on 5 May 2022.

Small Business Cashflow Loan Scheme Extended

The Small Business Cashflow Scheme (SBCS) is available through Inland Revenue to help small and medium-sized businesses by providing no or low-interest loans. Applications are open until 31 December 2023.

From 21 March 2022, the SBCS was amended to increase the base loan to $20,000 (from $10,000). This means that for new loans the amount that can be borrowed will be $20,000, plus $1,800 per full-time equivalent employee (up to 50 employees). The loan repayment period remains 5 years (60 months). The interest terms of the loan were changed to provide that the loan is interest-free for the first two years, with interest at the rate of 3% only applying from the first day of the third year of the loan period.

Snapshot of recent developments

Tax Legislation and Policy Announcements

Russia Sanctions Act 2022 now law

On 18 March 2022, the Russia Sanctions Act 2022 came into force. This law allows for sanctions to be imposed and enforced on individuals or entities that are responsible for, associated with, or involved in actions that undermine the sovereignty or territorial integrity of Ukraine or are economically or strategically relevant to Russia. The Russia Sanctions Act 2022 includes an amendment to the Tax Administration Act 1994 to allow the Commissioner of Inland Revenue to share information.

Regulations issued for ACC levies

Regulations have been issued for ACC levies for 2022/23, 2023/24, and 2024/25 tax years. Key aspects include:

- Average Work Account levies paid by employers and self-employed people will decrease from 67 cents to 63 cents per $100 of liable earnings in April 2022 and remain at this rate until 2025.
- Earners' levies paid through PAYE (or invoiced directly through ACC for self-employed people) will increase from $1.39 per $100 of earnings (GST inclusive) (a maximum of $1,819.66) to $1.46 (a maximum of $1,993.54) from 1 April 2022, $1.53 (a maximum of $2,132.57) from 1 April 2023, and $1.60 (a maximum of $2,276.52) from 1 April 2024.

The Accident Compensation Regulations notified under the Legislation Act 2019 are as follows:

- Accident Compensation (Earners' Levy) Regulations 2022 (SL 2022/30)
- Accident Compensation (Work Account Levies) Regulations 2022 (SL 2022/31)
- Accident Compensation (Experience Rating) Regulations 2022 (SL 2022/32), and
- Accident Compensation (Experience Rating) Amendment Regulations 2022 (SL 2022/33).

Inland Revenue statements and guidance

National Standard costs for specified livestock determination

On 28 February 2022, the Inland Revenue published the National standard cost for specified livestock 2022. This shall apply to any specified livestock on hand at the end of the 2021-2022 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

Cash Basis Persons under the Financial Arrangement (FA) Rules

On 3 March 2022, Inland Revenue released Cash basis persons under the financial arrangements rules for public consultation. This draft interpretation statement revisits the meaning of the cash basis person and covers the required calculations with examples.

Under the FA rules, a cash basis person accounts for income when it is received and for expenditure when it is paid during the life of the arrangement, with a wash-up calculation (base price adjustment – BPA) at the end. To be a cash basis person, a person must hold financial arrangements that have a value under certain legislative thresholds:

- the income and expenditure threshold (section EW 57(1)); or
- the financial arrangement threshold (section EW 57(2)); and
- the deferral threshold (section EW 57(3))

If both the income and expenditure threshold and financial arrangement thresholds are exceeded, a person cannot be a cash basis person. If neither threshold or only one is exceeded, whether a person can be a cash basis person depends on whether the deferral threshold is exceeded. Determining if a threshold is exceeded by adding the absolute values of income and expenditure and the value of the FA. A person must meet the thresholds each year to remain a cash basis person. A cash basis adjustment (CBA) is required when a person elects to use a spreading method, becomes a cash basis person, or ceases to be a cash basis person. Submissions close on **14 April 2022**.

Available subscribed capital recordkeeping requirements

On 11 March 2022, the Inland Revenue published OS 22/11 - *Available Subscribed*

Capital (ASC) recordkeeping requirements. The Commissioner of Inland Revenue may, in cases where the taxpayer has been unable to provide sufficient evidence to support their ASC calculation, dispute the taxpayer's tax position on the basis that the distribution is a dividend under section CD 4 of the Income Tax Act 2007. This is consistent with the onus of proof in s 149A(2)(b) of the Tax Administration Act 1994 resting with the taxpayer. The statement applies from 11 March 2022.

GST – Importers and input tax deductions

On 29 March 2022, Inland Revenue published PUB00438 – *Goods and Services Tax – Importers and input tax deductions for public consultation*. This explains when an importer who accounts for GST on an invoice basis can claim an input tax deduction on GST collected by the New Zealand Customs Service and what documentation importers can use as an invoice to support input tax deductions. The following documents are invoices when issued by Customs to support a GST input tax deduction:

- an electronic import entry once the entry has been passed; or
- a Deferred Payment Statements issued to an importer;
- cash statement; or
- a manual invoice/statement.

A registered person who accounts for GST on an invoice basis can claim an input tax deduction when an invoice is issued to them on when payment is made to Customs, whichever is earlier. One of the above types of invoices must be kept as part of record-keeping obligations, including evidence of the imported goods if this is not detailed on the invoice. The deadline for comment is on **10 May 2022**.

Customs brokers and GST levied by customs

On 29 March 2022, Inland Revenue published PUB00439 - *GST – Customs brokers and GST levied by Customs* for public consultation. The Inland Revenue explained that the GST a customs broker pays to Customs on behalf of an importer client relates to the importer's taxable activity, not the customs broker's taxable activity. Hence, the customs broker cannot claim an input tax deduction for such GST paid on behalf of the client. The customs broker also cannot issue any documentation (for example a tax invoice) claiming to charge GST when they ask the importer to reimburse them for the GST they have paid to Customs, this request for reimbursement is not a request for payment for a taxable supply the customs broker has made. The deadline for comment is on **10 May 2022**.

Importers and Recalculated GST

On 29 March 2022, Inland Revenue published PUB00440 – Importers and recalculated GST. This document clarifies when importers can claim input tax deductions where they have overpaid GST to the New Zealand Customs Service (Customs). Customs is not allowed to refund overpaid GST where the importer is a registered person who can claim an input tax deduction. Therefore, for an importer that is a registered person to get a refund of overpaid GST, the proper mechanism to use is to claim an input tax deduction for the whole of the GST they paid to Customs. The deadline for comment is on **10 May 2022.**

OECD updates

OECD releases detailed technical guidance - Pillar Two model rules

On 14 March 2022, the OECD/G20 Inclusive Framework on BEPS released further technical guidance on the 15% global minimum tax agreed in October 2021 as part of the two-pillar solution to address the tax challenges arising from the digitisation of the economy. The Commentary elaborates on the application and operation of the Global Anti-Base Erosions (GloBE) Rules agreed and released in December 2021. Multinational enterprises (MNE) and tax administrations now have detailed and comprehensive technical guidance on the operation and intended outcomes under the rules and clarification of the meaning of certain terms. It also illustrates the application of the rules to various fact patterns. The Commentary is intended to promote a consistent and common interpretation of the GloBE Rules that will facilitate coordinated outcomes for both tax administrations and MNE Groups.

OECD releases Taxation of Part-Time Work in the OECD working paper

The share of part-time employment in total employment has risen in most OECD countries over the past decades. While this is often associated with increased female labour force participation and the desire of many workers to achieve an improved work-life balance, there has been a significant decline in the average earnings of part-time workers relative to full-time workers, as well as an increase in involuntary part-time employment in several countries. This paper presents a summary of the taxation of part-time work in OECD countries.

OECD releases VAT Digital Toolkit for Asia-Pacific

The VAT Digital Toolkit for Asia-Pacific (APAC) aims to assist tax authorities in the APAC region with the design and implementation of reform to ensure the effective collection of value-added taxes (VAT) on e-commerce activities.

APAC is the largest e-commerce region in the world. VAT is a crucial source of tax revenue for the region. The challenges to collect VAT on the continuously growing e-commerce sales create increasingly important pressures for VAT regimes worldwide. These challenges relate to VAT collection on the booming sales of online services and digital products to private consumers ("apps", streaming, gaming, ride-hailing, etc.) and online sales of low-value imported goods, often by foreign merchants. VAT is often not levied effectively on these sales under existing rules.

Deloitte Global News and Resources

Status of the Multilateral Convention

In February 2022, Deloitte published the latest version of the OECD Multilateral Instrument status tracker. This tracker consolidates general information on the application of the MLI. As of 9 February 2022, 99 jurisdictions have committed to participate in the MLI. The list of signatories can be found on the OECD website. Out of the 99 jurisdictions, 68 have ratified the MLI and deposited their instruments of ratification with the OECD. The MLI articles are generally effective for withholding taxes in 2022 for the 64 jurisdictions found in the chart here. Note however, that for some countries, the MLI is enforceable

once internal procedures are completed and various MLI articles (withholding taxes, other taxes, dispute resolution) will have different effective dates.

Technology in Focus

On 30 March 2022, Deloitte released [Technology in Focus](), the third report in our Tax Transformation series. The report taps into insights of 300+ tax and finance leaders globally and examines how technology has ushered in an entirely new age of transparency for the tax function.

The key findings are:

- 70% of the surveyed tax and finance leaders predict revenue authorities will have more direct access to their systems within three years. Businesses will increasingly feel like they are operating in glass houses.
- 86% are implementing a next-generation cloud-based ERP system such as S/4 Hana or Oracle Cloud.
- Tax leaders rank strengthening operational transfer pricing (48%), improving tax data management and governance (46%), and preparing for future digital tax administration requirements for direct tax (45%) as three of the biggest drivers of tax technology investment over the medium term.
- 80% say their function is evolving toward blended operating models which combine outsourcing, in-sourcing, and co-sourcing tax operations, with the precise contours determined by the specific process and geographic location.

Australian Federal Budget 2022-2023 – Deloitte Analysis

On 29 March 2022, Treasurer Josh Frydenberg handed down a "good news" Federal Budget within an environment of global and domestic economic uncertainty; a war in Europe, a global surge in inflation and a new omicron variant spreading around the country. A full analysis of the Federal Budget by Deloitte Australia is available here.

A strategy of stimulus has been pursued alongside major spending in infrastructure, health, and defence. Differing levels of structural reform are progressing across education, digital transformation, climate and immigration. Borders are open, and Australia is getting back to business.

The key announcements were:

- A $78 billion underlying cash deficit forecast for 2022-23, $20.9 billion better than forecast in the December 2021 Mid-Year Economic Fiscal Outlook
- A package to address cost of living pressures includes a temporary fuel excise cut, one off payments of $250 to eligible recipients and an increase of $420 to the Low-to-Middle-Income Tax Offset
- 120% tax deduction for small businesses to upskill employees and encourage digital adoption
- Expansion of the Patent box regime to the low emissions technology and agricultural sectors
- Extra funding announced for COVID-19 ($6 billion), mental health (further $547 million over 5 years), aged care (further $468.3 million over 5 years) and $39.6 billion to continue the NDIS program
- Responses to climate and natural disaster impacts, alongside continued focus on low emissions technology and energy security
- Significant funding allocated to build resilience into Australia's infrastructure networks
- Significant investment in readiness of the workforce for the digital economy
- Parents in charge; more flexibility in Paid Parental Leave.

US Budget Plan for Fiscal Year 2023 focus on corporate, high wealth taxes

On 28 March 2022, the White House released a fiscal year 2023 budget blueprint which echoes President Joe Biden's longstanding calls for significant tax increases targeting large corporations and high-income individuals but also amplifies them. Notable changes in the proposal include:

- increasing the top income tax rate to 28 percent for corporations;
- repealing the current-law base erosion and anti-abuse tax (BEAT) and replacing it with an undertaxed profits rule consistent with one described in the OECD's Pillar Two Model Rules;
- renewing its call for a top rate of 39.6 percent for individual taxpayers but also adding a so-called "minimum tax on billionaires" of 20 percent on total income for all taxpayers with wealth of an amount greater than $100 million; and
- tightening certain current-law tax rules related to estates, gifts, and trusts.

This special edition of [Tax News & Views]() looks at the projected debt and deficit picture under the president's proposed budget and the assumptions underlying the plan, highlights the key details of Biden's tax proposals (with an emphasis on those provisions that are new for this year), and discusses some of the political obstacles he may need to overcome to get his plan enacted into law.

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

International Tax Review Leaders 2022

In March the International Tax Review published its 2022 ITR Leaders Guide, an annual guide to worldwide specialist tax advice. This year the guide features five Deloitte New Zealand tax experts in the areas of Indirect Tax, Tax Controversy and Women in Tax.

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With over 20 years of experience in economics and transfer pricing, both in public and private sector roles, Melanie leads Deloitte New Zealand's transfer pricing offerings. Melanie's goal is to provide and implement pragmatic solutions to address opportunities and risk in cross-border activities. With the current heightened global awareness surrounding international profit shifting, Melanie is passionate about using transfer pricing as a mechanism to assist businesses, particularly SMEs, to reach and expand their cross-border potential.

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Campbell has over 25 years of experience in transaction services, the financial services industry and tax disputes/rulings at Deloitte and large law firms in New Zealand and overseas. He works alongside clients to execute transactions smoothly, achieve valuable certainty through binding rulings and resolve tax disputes using his technical and strategic expertise. This involves helping clients manage risk, so he draws from his significant legal experience and broad industry exposure to achieve this by providing pragmatic, commercial and outcome-orientated advice. Campbell enjoys delivering lasting solutions for his clients' tax issues, so they can focus on what they are passionate about – running a successful business.

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Patrick has over 29 years of New Zealand tax experience, including leading the tax function for two of New Zealand's largest banks. This mix of corporate and professional services experience allows Patrick to bring a pragmatic, balanced perspective to the management of tax. Patrick has extensive experience in acquisitions and divestments, including the associated due diligence and enjoys working with clients in the interaction of tax in transaction design and implementation. Patrick's practice focuses on corporate tax, mergers and acquisitions and tax policy work. His corporate tax practice includes clients in FSI, Infrastructure and Energy. Work in this area covers a broad spectrum from tax advisory and dispute work, to tax governance and compliance. Patrick is also heavily involved in tax policy matters and regularly engages with the Inland Revenue and Treasury officials for these matters.

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Allan heads Deloitte's New Zealand GST practice, which is the largest GST practice in New Zealand. He has over 20 years of experience in advising all aspects of GST, both in New Zealand and Canada. Allan advises on all aspects of GST in New Zealand for a broad range of clients, solving GST issues and problems practically and pragmatically. Allan is a frequent presenter on GST issues at conferences in New Zealand and internationally. In addition, he is a joint presenter of the GST course at the University of Auckland Master of Taxation program.

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Jeanne is an indirect tax specialist with a passion for helping clients manage their GST, VAT and customs obligations so that they can stay focused on their business. With over 20 years of indirect tax experience in both local and multinational companies and New Zealand and across the world, Jeanne has advised several multinational companies and been involved in tax and customs consultancy and planning services. Jeanne enjoys every aspect of his role, whether it be a big due diligence job, a complex restructure or playing the role of adviser and advocate for a client and leads several national indirect tax initiatives and co-leads the national indirect tax team.

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