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Tax Alert

December 2023

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Tax issues for the new Government

By Robyn Walker

The new Coalition Government has been formed and there are a number of tax matters included in both the coalition agreements and within the National Party election manifesto.

These tax matters will be considered over the next three years, with varying degrees of priority. The 100 day action plan includes the prioritisation of fuel tax changes, but doesn't include any of the other tax changes, including personal tax cuts.

NATIONAL POLICY

- Tax Threshold Indexation from 1 July 2024
- Interest Deductibility Changes
- Brightline Adjustment
- Commercial Building Depreciation
- Close Gambling Tax Loophole

NATIONAL-NZ FIRST AGREEMENT

- Tax relief will be progressed as set out in National's Tax Plan, but will not include a repeal of the foreign buyer's residential property ban, with income tax reductions coming into force from 1 July 2024.
- The Coalition Government will increase funding for Inland Revenue tax audits to urgently expand the Inland Revenue tax audit capacity, minimise taxation losses due to insufficient Inland Revenue oversight, and to ensure greater integrity and fairness in our tax system.

NATIONAL-ACT AGREEMENT

- Ensure the concepts of ACT's income tax policy are considered as a pathway to delivering National's promised tax relief, subject to no earner being worse off than they would be under National's plan.
- The speed at which mortgage interest deductibility will be restored for residential rental properties will be increased, with a 60% deduction in 2023/24, 80% in 2024/25, and 100% in 2025/26.
- Repeal the Clean Car Discount
- The Coalition Government will consider sharing a portion of GST collected on new residential builds with councils.
- The parties confirm no ongoing commitment to income tax changes, including threshold adjustments, beyond those to be delivered in 2024.
- The Coalition Government will not progress the National Party manifesto commitment to produce a "taxpayer's receipt".

Is that all?

Invariably there is always a lot of work to be done to "keep the car on the road", so to speak, and we'll continue to see other tax developments, as well as refinements and consultation on the items agreed to by the coalition. Below is a summary of some of the areas where the new Coalition Government will need to make decisions about previous reforms, as well as some issues to consider on coalition commitments.

TOPIC	OBSERVATIONS
LEGISLATION	
Taxation (Annual Rates for 2023/24, Multinational Tax, and Remedial Matters) Bill	• This Bill has lapsed and will need to be reinstated by the new Government if it is to progress. • The Bill has had its first reading, with both the National and ACT parties voting against the Bill. The Bill was referred to the Finance and Expenditure Committee (FEC) and written submissions have already been made, albeit before a supplementary order paper was issued. The FEC (once formed) will need to consider submissions. • The more controversial aspects of this Bill are: – 39% trustee tax rate change – Adoption of OECD Pillar 2 rules
Digital Services Tax Bill	• This Bill has lapsed prior to having its first reading. • The new Government will need to decide whether the Bill should be reinstated. • The Ministry of Foreign Affairs and Trade had recommended that the Bill should not have been introduced from an international relations perspective given the OECD is continuing to work on a solution.
Taxation Principles Reporting Act 2023	• This legislation was enacted in August 2023, with both National and ACT voting against it, with indications they thought it should be repealed. Hon David Seymour when so far as to say during the third reading of the Bill: *"Well, this bill will last about as long as a Bluff oyster in the sun. Because it's going to be passed tonight—rushed through under urgency by this Government that knows the writing's on the wall—and then it's going to be gone. Because the Government will change and this will be repealed to save the Inland Revenue Department money from not having to produce these reports that have no value."* • Inland Revenue is required to prepare a report before 31 December 2023 (section 10 of the Act).
National Party Tax Policy	
Tax threshold indexation	• Official comments indicate that personal tax rate threshold changes will come in force on 1 July 2024. • A 1 July 2024 start date will cause quite a few administrative and compliance cost issues which could be avoided with a 1 April implementation date (or reduced if there was a 1 October implementation date, being halfway through the tax year). • Regardless of start dates, its important that any legislative change is made soon as possible in order to allow lead time for software updates to be made. • Personal tax rate threshold changes will also flow through to other taxes related to individuals, including: – FBT attribution thresholds – ESCT thresholds – RWT thresholds – PIE thresholds

TOPIC	OBSERVATIONS
National Party Tax Policy	
Interest deductibility changes	• With all three parties having policies to remove these rules it was clear this was likely to change. • Legislation will need to be introduced as soon as possible, possibly as a supplementary order paper to the Taxation (Annual Rates for 2023/24, Multinational Tax and Remedial Matters) Bill, (assuming it is reinstated) in order to amend the existing interest deductibility percentages outlined to section DH 8 of the Income Tax Act 2007. • Assuming interest deductions will become available for all landlords, amendments will also be required to the rules for "grandparented residential properties" to expand interest deductions to borrowing taken out after the rules were announced on 26 March 2021.
Bright-line adjustment	• The National Party policy infers that all properties with a 5 or 10 year bright-line period currently will have this changed to 2 years from 1 July 2024.
Commercial building depreciation	• Nothing further has been said about the National Party proposal to fund personal tax changes through removing depreciation from buildings, but it can be inferred this change will proceed from the 2024/25 income year. Building owners will need certainty on this change and consideration needs to be given to ensuring there are transitional rules put in place, as was the case in 2010.
Other tax policy matters	
Drafting review	• While in opposition, the National and ACT parties expressed concern about the quality of the drafting of tax legislation, including the burden this placed on the FEC process. The new Government should consider whether there are further measures which should be implemented following the November 2021 independent review of the Inland Revenue's drafting of tax legislation.
Non-Resident Contractors Tax (NRCT) changes	• The Taxation (Annual Rates for 2022/23, Platform Economy and Remedial Matters) Bill contained a number of changes to improve NRCT, however in return they proposed significant information collection requirements which were impractical to comply with. • The FEC removed these changes from the Bill and Officials were directed to refine the proposals and undertake further consultation.

For more information on any of these items, please contact your usual Deloitte advisor.

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It's back, but in reality, it never left – return of the "app tax"

By Sam Hornbrook and Tafadzwa Marerwa

It's back, but in reality, it never left. The GST changes for short-term accommodation and ride-sharing that apply from 1 April 2024, so what do you need to do now?

Effective 1 April 2024, platforms operating in ride-sharing, food delivery, and short-term accommodation services (referred to as "listed services" in the legislation) will be required to charge GST on these listed services, even if the underlying owner/driver is not GST registered and makes under $60,000 per year.

It is important to note that these changes are specific to listed services only and do not extend to impact other sectors, even if they are sold through a platform. Commonly referred to as "the app tax", these adjustments reflect an effort to align taxation with the gig economy. The legislation is already in place, but many aspects only come into effect from 1 April 2024.

Recent Election Outcome

Both the National Party and ACT campaigned on a tax policy that included repealing the incoming GST rules for the platform economy. However, as a result of coalition negotiations, new Prime Minister Christopher Luxon has verbally confirmed that these would no longer be subject to repeal by the incoming coalition government. This surprise announcement means that the new rules will be going ahead as planned with a commencement date of 1 April 2024. This has significant implications for businesses operating in the platform economy, especially for those who may not have made system updates or changes under the assumption that the rules would be repealed, and implications for the underlying owners and drivers.

Overview of the GST Platform Rules

As outlined in our September 2022 article, the rules extend and expand existing GST marketplace rules to cover listed services, making more activities effectively subject to GST. Notably, suppliers operating through these platforms will not need to register for GST themselves if they continue to make under $60,000 per year; instead, the platforms will be responsible for charging, collecting, and remitting GST on the services provided.

A notional "input tax credit" of 8.5% of the value of the supply will be allowed, effectively applying GST to 6.5% of the service value. This credit is to be passed on to the underlying supplier by the platform (presumably as a deduction from commission charges). This 8.5% credit is intended to compensate the unregistered underlying owner/driver for the GST they have paid on their operating costs. For suppliers already registered for GST, no additional credit will be provided, and they will continue to claim GST input tax credits on their costs; however, if they don't elect out of the platform rules they will be treated as making a zero-rated supply to the operator of the electronic marketplace (and the supplier should not return GST on the payments by the end customer to the platform).

The comments below focus on short-term accommodation services but are equally applicable to ridesharing and food-delivery platforms.

Implications for Accommodation Providers

Larger Operators (Hotels and Holders of Management Rights)

Broadly speaking, hotels, motels, hostels etc. making annual GST taxable supplies of more than $500,000 have the option to opt out of the platform rules, without requiring the platform's consent. An alternative opt-out path is available for those with over 2,000 nights listed annually, though this requires agreement with the platform, and at a practical level, many of the operators with over 2,000 nights will also exceed $500,000 per annum. By opting out, the hotel would effectively continue as normal (i.e. the hotel would remain responsible for collecting and returning GST on the gross value of accommodation services provided).

Providers unable to opt out must carefully assess and plan for any necessary system changes. Additionally, for short-term accommodation managed by a third party, a clear understanding of legal arrangements is essential to determine the "underlying supplier" under the rules, whether it be the unit owner or the manager.

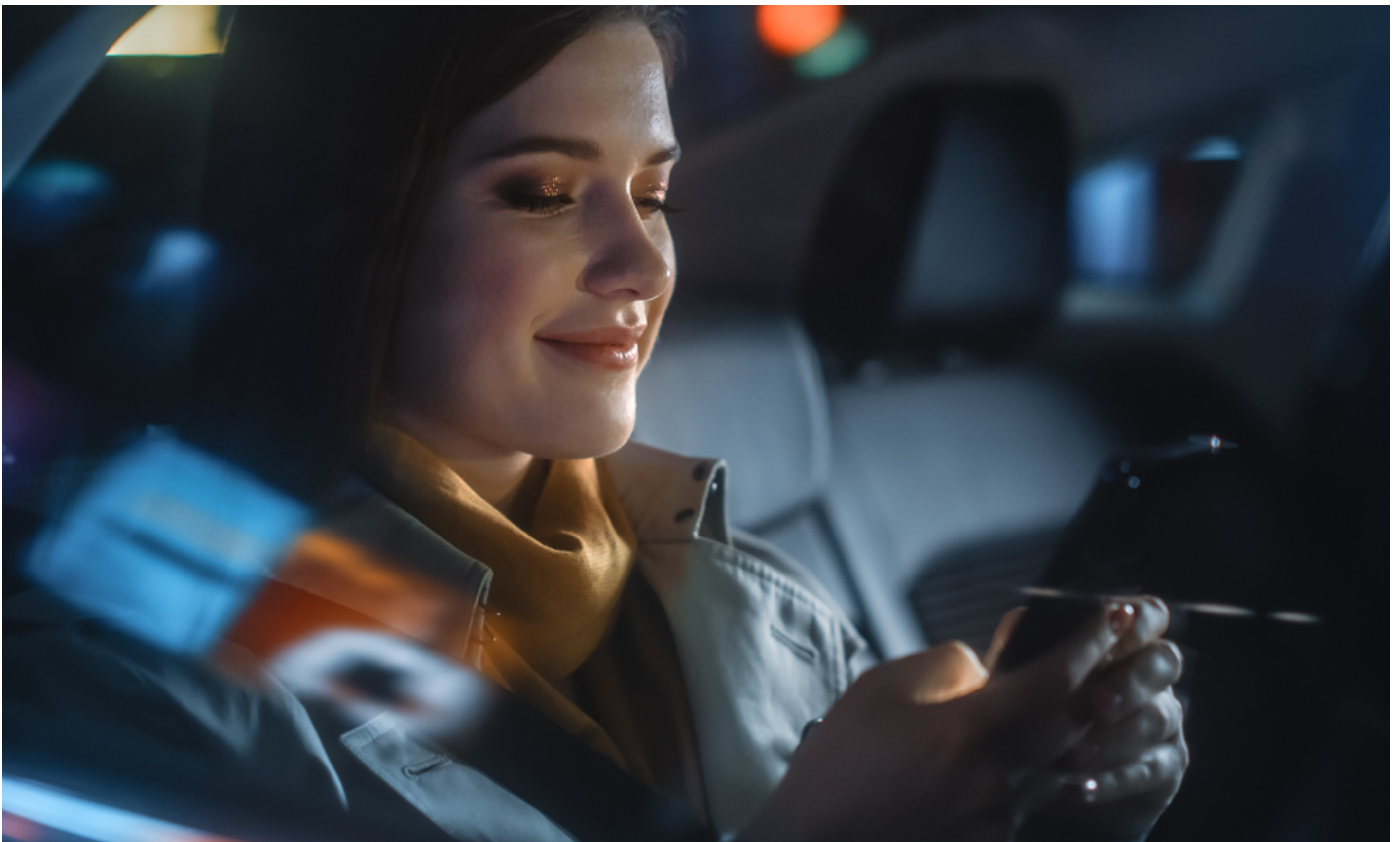
We do not yet have specific details on how each booking intermediary will facilitate the opt-out discussions, we suggest you reach out to your usual Deloitte Advisor to discuss your next steps.

Holiday-Home Owners

There will be different implications for GST-registered and non-registered accommodation providers.

Accommodation providers who are not currently GST-registered

- The platform will be required to charge 15% GST on the nightly rental (and any other related fees charged, e.g. cleaning fees) on each booking made through their platform on or after 1 April 2024 (even if the accommodation provider earns well under the $60,000 per year GST threshold from the accommodation). This means that there could be a mix of stays after 1 April 2024 that are not caught by the new rules (as the booking was made prior to 1 April 2024).
- The 15% GST charged by the platform will in effect be split, with 6.5% of the GST being paid to Inland Revenue and the remaining 8.5% of the GST charged being paid to the accommodation provider by the platform as a “flat-rate credit” (presumably as a deduction from commission charges). Receiving the flat-rate credit means that GST cannot be claimed by the actual unregistered owner based on actual expenses incurred.
- While the supply of the accommodation will be subject to GST, the changes do not bring the underlying property itself into the GST net. This means that if the property is sold in the future it will not be subject to GST if the owner of the property is not otherwise required to be GST registered.
- If substantive capital expenditure is expected, such as a renovation or extension, there may be a benefit in registering for GST. However, the key downside is that the property will be bought into the GST net, and it will be subject to GST if it is sold or there is a change in use. Further advice should be obtained.
- It is very important to remember if supplies through the platform ever exceed $60,000, either through increased rental or acquiring another property, there will still be a requirement for the accommodation provider to register for GST (see below).



Accommodation providers who are already GST-registered

- The default position is that the platform will be required to charge GST on the nightly rental (and any other fees charged) on each booking made through their platform on or after 1 April 2024. If this occurs the underlying GST registered accommodation provider must zero-rate their deemed supplies to the platform.
- Many operators who earn over $500,000 are expected to opt out of the platform rules and continue to account for and pay GST themselves (discussed above).
- Where the platform rules apply (and the operator has not opted out), the GST payable on the guest stay will be paid to Inland Revenue directly by the platform. The accommodation provider will need to include this income as a zero-rated supply in GST returns.
- The accommodation provider will need to tell the platform about its GST registered status so that the platform does not claim and pass on the 8.5% flat-rate credit. If this is received in error, it must be repaid to Inland Revenue. Further communications on this are expected in the coming weeks.
- Any future sale of the property is treated as it is currently, i.e., it will either be a zero-rated sale if it is to a GST-registered person who will use it for a taxable activity, or subject to GST at 15% if sold to a non-registered person. However, if the principal purpose for which the land was held was not taxable use, the new (and separate) transitional repayment rules (discussed below) may be used which can allow for capital assets to be taken out of the GST regime in certain situations, which can remove the liability to return GST on any future sale of the property.

For more details on the rules, please see the Inland Revenue Special report: Marketplace rules for listed services (June 2023)

New transitional repayment rule

If a property was acquired prior to 1 April 2023 and acquired predominantly for private use, there is a window until 1 April 2025 to remove the property from the GST regime (see our April 2023 article for more details). This will likely be attractive for those whose main purpose is personal use and who have only been renting their properties out for a few months each year. However, there is an initial financial cost as any GST inputs claimed in relation to capital expenditure on the property need to be repaid (together with any further nominal/ change of use GST adjustment if the property was zero-rated when acquired).

Likewise, for assets purchased after 1 April 2023, there is the potential to elect that any sale of the capital assets is not subject to GST, provided that no GST has been claimed on the asset, and the asset has not ever been used for the principal purpose of making taxable supplies.

Conclusion

The 1 April 2024 deadline is fast approaching, and we suggest that anyone who is involved in providing short-term accommodation carefully considers how they may be impacted by these new rules. This is particularly important as there will be many people who will have assumed with a change in Government that the new rules would have been repealed.

As these changes unfold, we anticipate more detailed communications from platform operators. For personalised guidance and next steps tailored to your situation, we encourage you to reach out to your usual Deloitte Advisor.

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"That's FBT, not entertainment, right?"

By Viola Trnski and Amy Sexton

It's beginning to look a lot like Christmas… which means there may be FBT to pay… or is it PAYE… or is it even expenses to claim…

Before you put your feet up at the annual work Christmas party, take a minute to review the tax treatment that will apply to your Christmas-related expenditure. There are many ways to reward staff or celebrate a successful year – and subsequently, there are different tax implications that can arise.

The key areas to be aware of are FBT, PAYE and entertainment expenditure rules. These are a common source of confusion, and their application will ultimately depend on each specific scenario. To get you started, we have set out some background about each regime and applied the rules to a few common examples below.

FBT vs PAYE vs entertainment expenditure

Generally, either the entertainment rules, PAYE or FBT will apply to Christmas parties, gifts, and staff bonuses.

The entertainment rules restrict deductibility to 50% of costs for certain types of expenditure. The policy reason behind this is that there is an element of private enjoyment to any recreational event, whether that be enjoying the hospitality in a corporate box, hosting a Christmas party, or celebrating with a long lunch. Regardless of where it is consumed, food and drink are often captured by the entertainment rules.

FBT applies when non-cash benefits are provided to employees in connection with their employment. While there is some overlap between the entertainment rules and FBT, the entertainment rules will generally override FBT, unless:

- the employee can choose when to enjoy the benefit or the benefit is enjoyed outside New Zealand; and
- the benefit is not received or used in the course of, or as a necessary consequence of, the employee's employment duties.

For example, if you take your staff out to a restaurant for a long lunch on the last day of work, the entertainment rules would apply and only 50% would be deductible – but if, instead, you gifted them with a voucher for a restaurant to enjoy when, and with whom, they choose to, the FBT rules would apply.

Finally, the PAYE rules apply to monetary compensation provided to employees, including if an employee incurs a cost and is reimbursed by the employer. The PAYE regime captures bonuses and gratuities, as well as when an employer directly pays for a personal debt of the employee.

Entertainment v FBT v PAYE

TAX REGIME	BENEFIT CHARACTERISTICS	TAX IMPLICATIONS
Entertainment	• Both a private and a business benefit • Includes recreational events away from business premises, corporate boxes, exclusive areas, pleasure craft and holiday accommodation • May include food and drink • Benefits not received in the course of, or as a necessary consequence of, employment duties	• Generally, deductions are restricted to 50% of the expenditure that provides both a private and business benefit • There are exceptions to the limitation rule, such as light refreshments served on business premises • A supply is deemed to take place for GST purposes on the non-deductible proportion
FBT	• Non-cash benefits provided to employees that can be enjoyed at the employee's discretion and are unrelated to their employment duties • Employer legally incurs the cost	• Expenditure is 100% deductible • FBT paid at the chosen rate and a GST adjustment made • A de minimis threshold may apply for "unclassified benefits" (see below)
PAYE	• Monetary benefits connected with employment • Costs incurred by employees that are reimbursed by their employers or funded by an allowance • Includes bonuses, extra pay, employment-related accommodation, and other monetary benefits derived in connection with employment	• Expenditure is 100% deductible to employer • PAYE may or may not apply

Common scenarios and examples

Costs associated with hosting a Christmas event off-premises

Expenditure on venue hire, food and drink will be subject to the entertainment rules when the event is primarily for entertainment, meaning a deduction of 50% is allowed. This also applies to incidental costs such as hiring glassware, waitstaff, and music.

Vouchers to employees

Food and drink provided on premises at a party, reception, or celebratory meal, as well as taking employees out for food and drink off premises at restaurants, would all be subject to the entertainment regime. However, if an employer were to give employees vouchers for a restaurant meal as a gift, and the employee can choose when to use the voucher, the cost of the voucher will be subject to FBT. If the employer were allow the employee to go out for a meal and reimburse this cost, it would be subject to PAYE.

Gifts to employees

Most gifts are subject to FBT in the first instance, as these benefits can be enjoyed at the employee's discretion. Similarly, gift baskets containing food and drink, which typically fall within the entertainment regime, would also be subject to FBT for the same reason.

Note that any benefit subject to FBT may qualify for an FBT exemption, such as the de minimis exemption. The de minimis exemption excludes all unclassified benefits from FBT provided that:

- The total value of all unclassified benefits provided to all employees is less than $22,500 in the previous 12 months (this amount includes all benefits provided to all employees of associated employers); and
- No employee has received more than $300 of benefits in an individual FBT quarter (or $1,200 for annual filers).

"Unclassified benefits" are any benefits provided that are not specifically excluded from or provided for in the FBT regime. Common examples of unclassified benefits include vouchers, Christmas gifts, flowers, free or discounted goods or services, non-work related travel, sports team fees, and use of an employer's assets for private purposes.

Staff cash bonuses

Cash bonuses paid by an employer to an employee are taxable under the PAYE regime because it is a payment made in connection with the employee's

employment and not a payment that is regularly included in the employee's salary and wages. A cash bonus should be taxed at the 'extra pay' rate.

Using a company vehicle for personal travel

If we're in luck with the weather, some employees may be using their company vehicles as their means of transport during the summer holidays. Employers need to remember that FBT will arise whenever a company vehicle is available for an employee to use privately. If an employee pays for their own petrol, provided evidence is provided to the employer, these costs may be deducted from the taxable value of the fringe benefit and reduce the amount of FBT payable.

Providing gifts to clients and customers

An odd quirk of the entertainment regime is that Inland Revenue considers that it applies to the provision of any food and drink, not just to food and drink consumed at a function. Inland Revenue made this position clear with an operational position specifying that if a business provided a customer with a gift basket containing wine, cheese, tea towels and soap the tax outcome would be that the tea towel and soap were fully deductible but the wine and cheese was only 50% deductible.

Merry Christmas and happy New Year from us!

Hopefully, this clarifies some of the common areas of misunderstanding or confusion between the different employment tax regimes. If you have any queries about the issues raised, as always, please contact your usual Deloitte advisor.

The Tax Alert team wishes everyone Merry Christmas and a Happy New Year, and hopes you all enjoy this well-deserved break.

We'll be back with our next issue of Tax Alert in early February 2024.

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Inland Revenue Annual Report 2022-23 – something to add to your summer reading list?

By Amy Sexton and Robyn Walker

Earlier this year the Inland Revenue published its 2022-23 Annual Report (the Annual Report). With new Commissioner Peter Mersi taking up the role in July 2022 this is his first full year Annual Report and the first full year since the Inland Revenue's "Business Transformation" programme (BT) was completed. In the report, the Commissioner states that 99% of tax returns are now filed electronically, with more than 7 million of these returns coming directly from taxpayers accounting systems that integrate with Inland Revenue's systems. This is a drastic change from the start of BT in 2017 when only 78.5% of returns were filed electronically.

The Annual Report's 203 pages is divided into five sections comprising the Inland Revenue's:

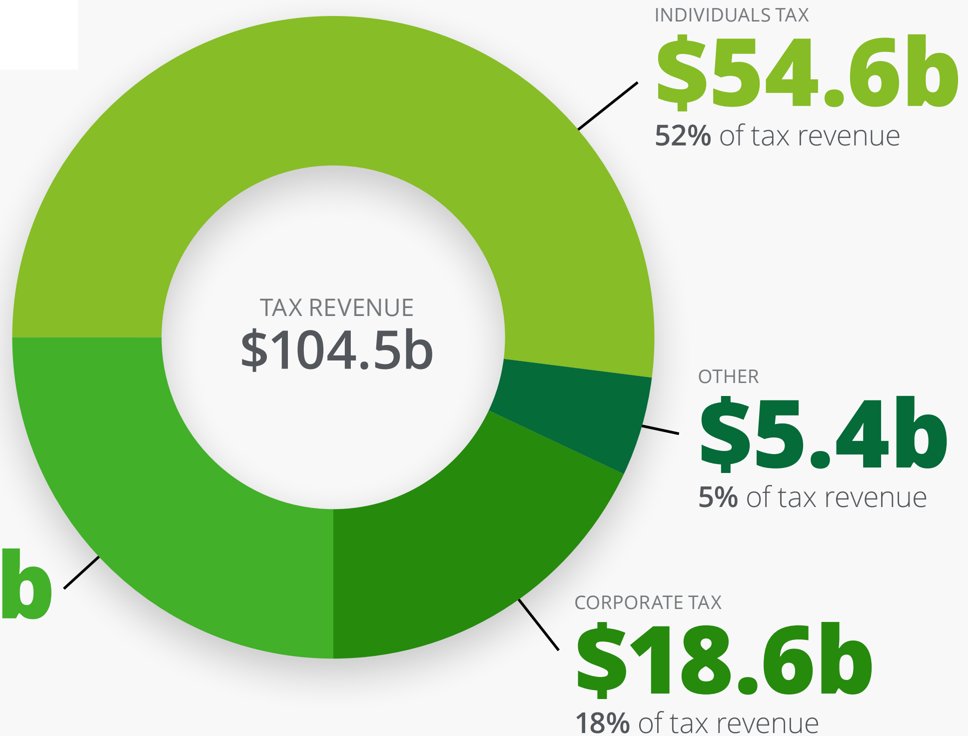
- Contribution to the wellbeing of New Zealanders
- Work collecting revenue, making social policy payments and the future of the tax and social policy system
- Organisation and capability
- Performance delivering outcomes and services
- Financial statements and schedules

To save you from reading the whole report these summer holidays, we have selected some of the key facts and highlights from the first four sections.

Graph source: Inland Revenue Annual Report 2022-23

Contribution to the wellbeing of New Zealanders

The total tax revenue for the 2023 year was $104.5 billion, with direct or income tax comprising 75% and GST accounting for 25%. This is up from $100.6 billion in 2022.



Individuals

There were 4.88 million individuals paying income tax, and of that number 3.3 million received an automatically issued individual income tax assessment for the 2022 income tax year*. 56% of taxpayers who received an automatic return received a refund or credit, 9% paid exactly the right amount of tax during the year, 25% had a small debt written off and 9% had tax to pay of an average of $511.

340,000 individual taxpayers also claimed $355 million in donation tax credits.

Businesses

There were 705,000 GST registered taxpayers filing 3.2 million GST returns during the 2023 year and 410,000 company income tax returns filed for the 2022 income tax year*.

243,000 employers filed more than 7.4 million employer information returns. 87% of this employer information was processed "straight through" with no need for involvement from Inland Revenue staff.

Overall, it cost the Inland Revenue 43 cents to collect $100 of tax revenue, a dramatic drop from 2015 when it cost 80 cents.

The reasons for this drop in costs have been attributed to the increased tax revenue take and the automation provided by the successful BT programme.

*2023 return figures are not available as the filing deadline for 2023 is March 2024.

Work collecting revenue, making social policy payments and the future of the tax and social policy system

Collecting Revenue

Inland Revenue has undertaken several hidden economy compliance projects during the year, including its property compliance programme which assessed additional revenue of $129 million and a real estate agent project to help educate agents about claiming expenses. After the real estate project, there was a 5% reduction in expenses claimed in the 2022 year when compared to the 2021 year.

Data analytics continues to be a key compliance tool for Inland Revenue, and it receives details of financial account information on New Zealand tax residents from nearly 100 other jurisdictions, as well as supply data to these jurisdictions. From this overseas information, checks to ensure taxpayers are paying the right tax have resulted in more than 600 voluntary disclosures over the last 3 years, resulting in $74 million in omitted overseas income being assessed.

While outside the annual report period, it notes that from November 2023 Inland Revenue will be receiving electronic sales data from payment service providers, helping to validate GST-reported sales, show the extent to which electronic and cash transactions may be under-reported and highlight businesses that may be operating outside the system.

During the 2023 year, 3,608 audits were completed by the Inland Revenue (3,080 in 2022), with a return of $8.92 on every dollar spent on compliance activities.

However, there has been an increase in the amount of taxpayer debt owed to Inland Revenue, with more taxpayers missing payments this year – 44,000 more taxpayers in debt than in the prior year. Inland Revenue states that this is consistent with current economic conditions. Inland Revenue contacted 2,580 taxpayers with significant debt who demonstrated insolvent behaviours with notices of legal proceedings, 35% of those contacted settled their tax debt in full or through instalment arrangements/part payments. 1,929 businesses entered formal insolvency in the 2023 year (1,347 in the prior year) and approximately 75% of these customers had a tax debt.

Inland Revenue continues to focus on providing certainty to significant enterprise taxpayers (more than 50 employees or turnover greater than $30 million), some key figures in the Annual Report for significant enterprise taxpayers include:

- Account management service provided for approximately 200 companies and crown entities
- 1,210 companies had annual compliance reviews
- 92 taxpayers had active advance pricing agreements as at 30 June 2023, representing tax assured of $440 million a year
- Inland Revenue issued rulings on arrangements worth $11.2 billion

The future of the tax system

Inland Revenue's policy work this year included the fringe benefit tax (FBT) stewardship review, which found that FBT continues to deliver its primary task of ensuring remuneration from employment is taxed, whether it is paid in cash or a non-cash benefit. However, the review found that FBT does not function well, with a high administrative and compliance cost relative to the tax revenue. Some stakeholders also believe that FBT is not complied with by all businesses or enforced by Inland Revenue.

A key tax legislative change is coming that will enable New Zealand to take part in the Pillar Two 15% global minimum tax on multinational groups. Inland Revenue states that the new rule will apply to around 24 New Zealand-headquartered groups.

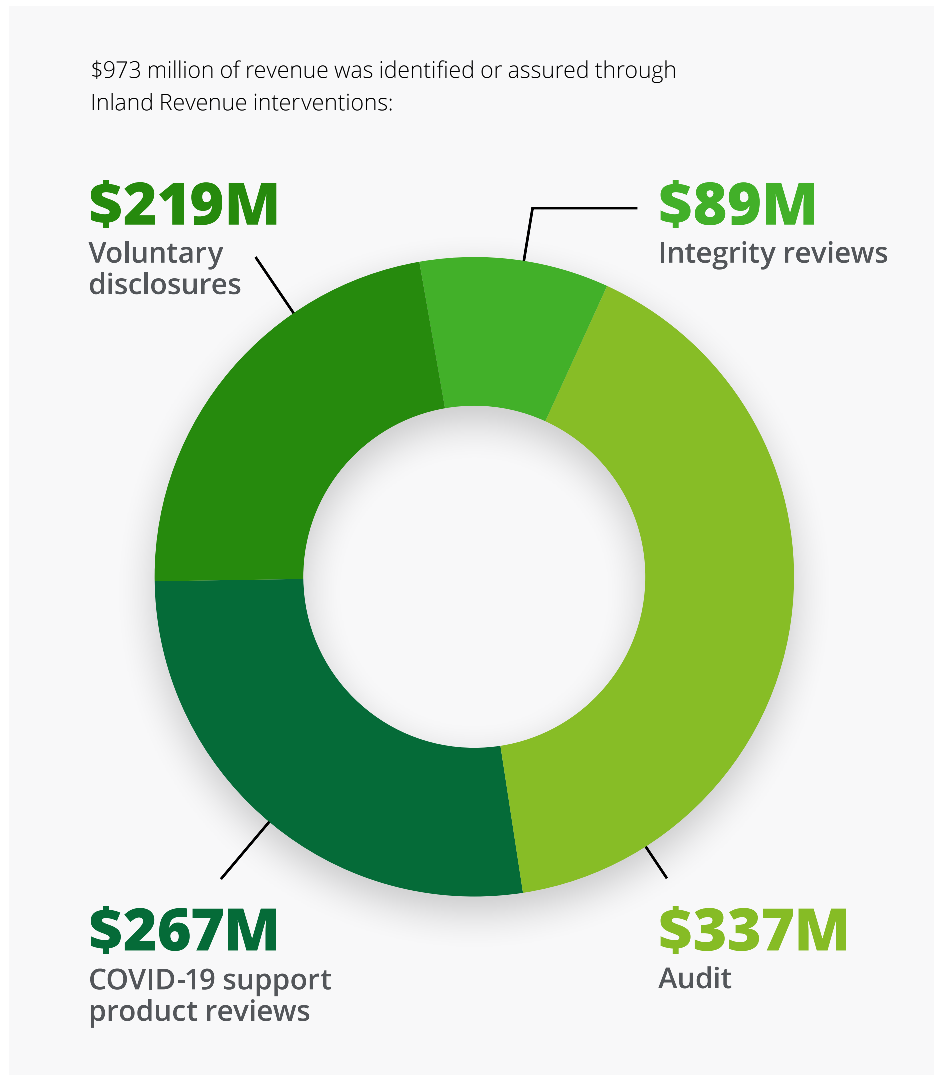
Organisation and capability

The Inland Revenue's total staff turnover fell from 18.7% in 2022 to 10.1% in the 2023 year, partly due to the fewer organisation changes required since completing BT. Unplanned turnover fell from 13.4% in the 2022 year to 9.6%. Overall, the Inland Revenue headcount in 2023 was 4,130 (FTE 4,023), down from 5,009 (FTE 4,888) in 2019. The average age of an Inland Revenue employee is 45.3 years.

Performance delivering outcomes and services

During the year 1.6 million pieces of correspondence were completed and 1.3 million calls were answered. Overall Inland Revenue achieved 29 out of 36 (81%) of its output performance measures, an increase from 71% in the 2022 year. A selection of these output performance measures is set out below:

- Trust in Inland Revenue dropped 3%
- 88.8% of tax payments made by taxpayers were on time (target 90%)
- 99.1% of taxpayer ruling applications had a draft ruling within 10 weeks (target 90%)
- 100% of short process rulings had a draft ruling within 6 weeks (target 90%)
- $47.11 is collected for every debt dollar spent (target $40.00)
- 41.1% of unfiled returns are finalised within 6 months (target 60%)
- 74.5% of taxpayer's compliance behaviour improves after receiving an audit intervention (target 85%)
- 64% of audited taxpayers are satisfied with their experience (target 65%)
- 82% of taxpayers find it easy to comply (target 90%)
- Reduction in compliance time for SME customers was 5 hours (target 17 hours)



Graph source: Inland Revenue Annual Report 2022-23

The Annual Report shows it has been a pretty busy few years for the Inland Revenue with the BT programme, COVID-19 pandemic support, adverse weather events support and a new Commissioner. We are not expecting this to change over the next year with the Inland Revenues focus back on compliance and audit work and a new coalition Government.

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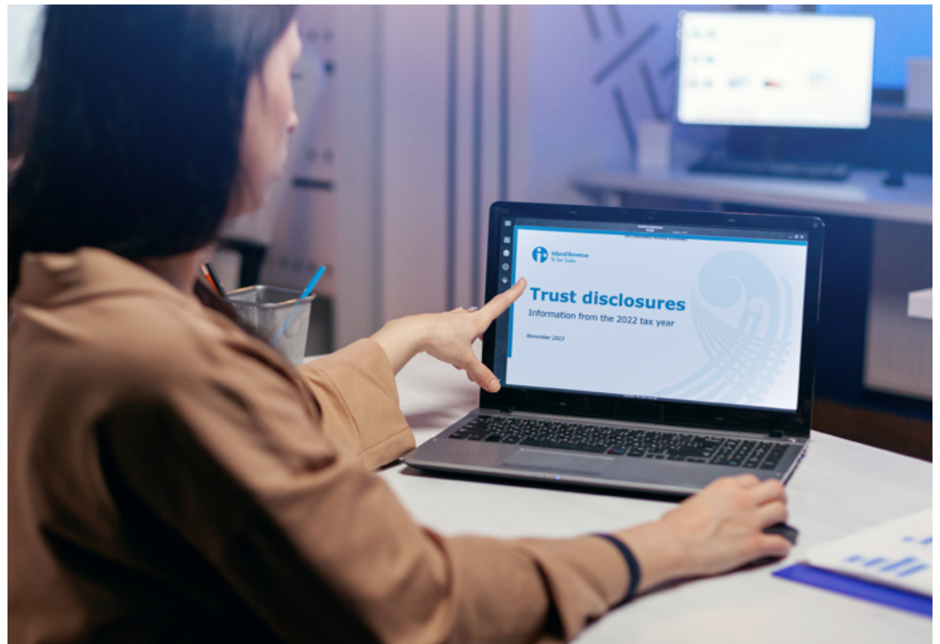
Inland Revenue reports back on trust disclosure data

By Viola Trnski and Robyn Walker

Following the introduction of the trust disclosure rules (the Rules) in s59BA of the Tax Administration Act 1994, Inland Revenue has now released its interpretation of the first dataset collected (from the 2022 income tax year), common errors that have been made, and an outline of what to expect going forward.

As a quick refresher, the Rules were and introduced for the 2021-22 and later income years with no consultation – and requires certain trusts (generally, domestic trusts with assessable income that are not specifically excluded) to provide additional financial information. Additional details of settlements and beneficiaries are also required, where applicable.



What are Inland Revenue's insights?

The raw data collected has not been published – instead, Inland Revenue released a report summarising the data and their insights (the Report).

The Rules were introduced to analyse behaviour change in response to the tax rate differential that was created between the trust tax rate (33%) and the top personal tax rate increasing to 39% and to provide insight into how trusts are being used.

Volumes of trusts and disclosures

The data, extracted in June 2023, covers 226,000 IR 6 forms received in the 2022 year, including 167,000 disclosures made under the Rules. The Report notes that:

- 26,000 trusts did not provide financial information despite indicating they were required to comply with the Rules;
- 16,000 only completed the IR 10 but were actually required to complete the IR 6 as well; and
- 11,500 made disclosures despite not being required to.

The amount of errors suggests that some trustees are not adequately informed about their tax obligations.

Trust assets and liabilities

The total value of assets reported by all trusts and estates amounted to $470 billion. Of this amount, $191 billion was held in land and buildings, and $91 billion was held in shares.

Trustee and beneficiary income: Beneficiary current accounts

The Report indicates a shift in behaviour following the increase in the personal tax rate to 39%. The number of individuals deriving beneficiary income from a trust with personal income between $170,000 and $180,000 increased from 450 individuals in 2020 to 1,850 individuals in 2022 – although this still remains a very small proportion of total beneficiaries (numbering 125,000).

Further, half of the 4,400 beneficiaries who were allocated income in 2020 and were earning over $180,000 are now earning less than $180,000. Inland Revenue speculates this may indicate structuring around the increase in the personal tax rate, or it could be due to some beneficiaries retiring.

The mean (52 years) and average (56 years) age of beneficiaries is provided, but information on what age these specific beneficiaries are, which may provide more context to evaluate these conclusions, is not.

The amount of beneficiary income derived by those earning between $170,000 and $180,000 increased between 2020 and 2022, while the amount of beneficiary income allocated to those earning more than $180,000 halved. This suggests that people earning just below the 39% personal income tax threshold may have reduced their salary to remain within the 33% income tax bracket, and then distributed prior year trustee income instead. However, the amount in question reflects a relatively small proportion of income overall, being $149 million of $4.6 billion allocated (0.03%).

The 2022 trust disclosure information showed the total number of beneficiary current accounts with a credit balance was 75,000, amounting to a net liability of $42 billion, while 24,000 trusts reported a debit balance, amounting to $12 billion. The net total balance is a $30 billion credit.

The largest category of beneficiaries, by age, is those aged 60-65, and the surrounding age brackets. This age group also retains the highest average beneficiary income, closely followed by those in the 16-20 age bracket. Inland Revenue comments that this 'significant spike' suggests trustees seem to be planning around the minor beneficiary rule. On the other hand, young adults in that age bracket also have increased responsibility and independence – and generally, lower income - and life changes such as attending university, moving out of home, and travelling overseas for this age group are genuine reasons these distributions might be made.

Inland Revenue focuses on cases of non-compliance with the minor beneficiary rules and allocating income to charities, which fortunately are rare – out of 315,020 active trusts, non-compliance with these rules occurred in 450-500 trusts, which equates to a rate of about 0.0016% of non-compliance.

The data picked up on $67 million of income allocated, but not distributed, to tax-exempt beneficiaries (i.e., charities). This may be due to a timing mismatch, however, Inland Revenue is now collecting opening and closing balances to monitor this trend going forward.

Settlors and Appointers: Settlements

The data showed that individuals, as opposed to companies or partnerships, were the main settlors and appointers of trusts, being 159,857 out of 165,350 unique settlors and/or appointers. Almost one-third of trusts (29%) required to provide details of settlors did not.

The total value of settlements disclosed was $14.1 billion, constituting $5.8 billion in cash, $2.5 billion each of shares, and financial arrangements. Other categories included services, land, buildings, and "other".

Despite the limitation in the data analysis, Inland Revenue's decision to produce the Report does provides helpful insight into how the data might be used to inform future changes to the IR 6, IR 6S and IR 6B forms, as well as compliance activity and potential policy changes.

Common errors

Inland Revenue has also explained some common errors they came across in the first round of trust disclosures. These included:

- Not including the details required for settlors, beneficiaries, and appointers;
- Recording an IRD number that does not match the name or date of birth of the person;
- Information not being provided on settlors and settlements;
- Disclosing historical settlements (which is not required); and
- Leaving financial boxes blank where there should be a value.

Are there any changes ahead?

Yes – but not significant ones. This is highlighted in the final Post-implementation review section of the Report.

In short, unless the new Government has an alternative view, the Rules are here to stay, but Inland Revenue, following consultation, has indicated some minor technical changes to wording, categories, and how amounts are calculated, may be made for the 2024 return process. The substance of the information being asked for remains the same.

Proposed changes include:

- Move 'Current account year-end balances' to the 'Liabilities' section, rename it to 'Beneficiary current account', and allow positive and negative values.
- Create a separate section ('Other metrics') for the trust's untaxed realised gains and drawings.
- Rename 'Drawings' to 'Amounts withdrawn by beneficiaries'.
- Add categories for 'Other assets' and 'Other liabilities' and change the 'Total assets' and 'Total liabilities' to calculated fields.
- Rename 'Equity' to 'Accumulated trust funds' and change this to a calculated field based on total assets minus total liabilities.
- Enable disclosure of distributions valued at nil.

Note that, as of 16 November 2023, Inland Revenue is "currently considering… whether [these] changes can be made" for 2024 returns. The above changes are only proposed at this stage and appear to depend on whether software providers can implement the changes for 2024.

Inland Revenue has committed to a more comprehensive post-implementation review in 2024.

What does it all mean for me?

The new Government has announced they will increase funding for Inland Revenue to complete audits and investigations. Officials have reflected this sentiment, advising that audit and investigation activity is likely to pick up now the demands of COVID-19 have passed. The Report notes that a key outcome of the data is "progressively deploying compliance interventions", which may range from education to direct investigations.

Further, the Report raised some policy issues that may lead to legislative amendments, such as creating a window during which income allocated to charities or tax-exempt beneficiaries must be paid or notified within, or else be taxed at the trust rate (such a rule exists in Australia). However, with a slew of other changes to implement under a new Government, it is unclear if changes to the Rules will sit high on the list of priorities.

Now is a good time to review the use of trusts and to ensure that all compliance obligations are understood and complied with.

If you have any queries, please contact your usual Deloitte advisor.

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Inland Revenue's recent spotlight on the GST treatment of subdivision projects

By Sam Hornbrook, Mirei Yahagi and Allan Bullot

In November 2023, the Inland Revenue issued a draft 20-page Questions We've Been Asked ("QWBA"), looking at the potential complexities surrounding the GST rules in subdivision projects. This statement highlights the importance of understanding when a subdivision project qualifies as a "taxable activity" for GST purposes. The concept of taxable activity is important because it impacts:

- The GST treatment of the property(ies) on acquisition;
- Whether a GST change in use might be required;
- The ability to claim (or not claim) GST on development costs; and
- The GST treatment once the project is complete and the subdivided lot(s)/ property(ies) are sold.

This makes it imperative for property developers to understand the GST (and income tax) implications at the commencement of a project and/or when intentions might change.

The guidance makes it clear that the outcome very much depends on the facts of a particular situation.

Many of the examples provided in the draft QWBA are for situations that are relatively clear from a GST perspective. Unfortunately, the draft QWBA does not provide much guidance for cases that are "on the margin". For example, a single one-off small-scale subdivision is unlikely to be a taxable activity and a large commercial subdivision of six lots is said to be almost certain to be a taxable activity. Unfortunately, there is no real guidance for what Inland Revenue considers to be the GST answer for a three-lot subdivision, etc.

The QWBA notes that if there is a change of intention during a development, the taxpayer has the onus of proving that intention changed (and when), as with other factual matters. It would be helpful for Inland Revenue to provide more guidance here, especially in the context of properties that may be tenanted on acquisition (but then subdivided at a later stage).

The QWBA confirms that even if a subdivision activity is not a taxable activity for GST purposes, the resulting sale may still be subject to income tax (for example, under the bright-line tests).

We recommend that property developers seek guidance from your usual Deloitte advisor to ensure the GST (and income tax) implications of a development are understood before a transaction goes ahead.

Understanding Taxable Activity in Subdivision Projects

A subdivision project is considered a taxable activity for GST purposes when it is conducted continuously or regularly, involving the supply of goods and services to another party in exchange for consideration. Various factors come into play when assessing the continuity or regularity of a subdivision project, including:

- The project's scale;
- Level of development work;
- Number of lots created and sold;
- Time and effort invested;
- Financial commitment;
- Repetition; and
- Whether the subdivision aligns with an existing taxable activity.

It is important to note that the list above

is not exhaustive, and all relevant factors must be evaluated collectively to determine whether an activity is carried out continuously or regularly.

The general position is that larger-scale subdivision projects involving extensive development work are far more likely to be considered a taxable activity. However, the construction and sale of a single house or residential dwelling within a subdivision project are generally insufficient to meet the criteria for continuous or regular activity. Each subdivision project must be assessed on a case-by-case basis, considering the actual circumstances, to determine its classification as a taxable activity.

It is also important to keep in mind that having the mere intention to engage in subdivision activities does not automatically qualify them as taxable activities. Intentions alone are generally inadequate, and this is something we often see clients overlook in terms of holding evidence/detailed plans etc. We can provide further advice here as it is often an area of contention.

Other factors that are typically not relevant include the commercial nature of the activity, activities undertaken before the intention to make supplies has arisen, and actions related to subdivided land not used for making supplies. The courts have clarified that commerciality is not a significant factor in determining whether an activity is continuously or regularly carried out. The focus should primarily be on whether the activity falls within the definition of a taxable activity. As a result, an activity does not need to generate profit to be considered taxable for GST purposes.

Mixed-use developments/change of use

If a developer originally intended to sell but decides to rent out residential properties (e.g. temporarily), it may lead to GST concurrent use rules and/or change in use adjustments for GST purposes. These scenarios often require careful consideration and expert advice to navigate potential GST complexities. For more details on this, please read our April 2023 Tax Alert article.

Concluding comments

While the recent draft QWBA from the Inland Revenue aims to provide clarity on GST treatment in subdivision activities, the complex nature of the rules demands thorough consideration. Therefore, businesses/sole traders/individuals subdividing land are urged to consult your Deloitte tax advisor to ensure compliance and assistance with navigating potential pitfalls in property development ventures. By understanding the complexities surrounding GST in subdivision projects, developers can make informed decisions and safeguard their projects from unforeseen tax implications.

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Snapshot of recent developments

Inland Revenue statements and guidance

Interpretation statement: Unit title body corporates

On 24 October 2023, Inland Revenue published IS 23/08 and accompanying f act sheets FS 1 and FS 2.

The interpretation statement explains the consequences of registering for GST for a unit title body corporate (UTBC) and the GST treatment of transactions with its members and third parties.

The item confirms a UTBC is a separate legal person to its members and, despite having a taxable activity, is generally not liable to register for GST because the value of supplies made to its members is not counted towards the $60,000 GST registration threshold. However, UTBCs can choose to register, and the GST treatment of different transactions for registered UTBCs is also set out.

QWBA re-issued: FIF calculation methods in cases of non-compliance

On 26 October 2023, Inland Revenue re-issued PUB00443 which explains that a person does have a choice of methods to calculate FIF income even if they fail to declare the income in a tax return and later file a voluntary disclosure or fail to file a tax return by the due date and later provide one including the income.

Inland Revenue changed its position from the original consultation document released in late 2022. The new item sets out that if the Commissioner issues a default assessment due to a person not filing a return, it will usually be based on the default calculation method. A person will need to file a return to challenge the assessment but can choose from the available methods in calculating the amount of FIF income to include.

The closing date for submissions is 7 December 2023.

Interpretation statement: R&D loss tax credits

On 27 October 2023, Inland Revenue issued IS 23/09 which provides guidance on who is eligible for R&D loss tax credits, and should be read alongside existing web guidance and this 2016 article (p 19).

Changes from the draft statement include clarifying the Commissioner's position on contractors who had been a member of an R&D group for part of the year, clarifying the Commissioner's position on deductions for expenditure on R&D allocated to a different income year, and adding an example to illustrate the treatment of a government co-funded R&D project.

The finalised statement sets out when companies are eligible to claim the credit, what their obligations are once eligible, the wage intensity calculation, when companies incur eligible R&D expenditure, treatment of losses, and "loss recovery events".

Tax Information Bulletin Vol 35 No 10

On 1 November 2023, Inland Revenue released the November 2023 TIB (Vol 35, No 10).

Interpretation statement: Deductibility of holding costs for land

On 3 November 2023, Inland Revenue published IS 23/10 and the accompanying fact sheet which sets out the deductibility of land "holding costs".

Changes from the draft statement include expanding the definition of "land holding costs" to include costs "such as" repairs and maintenance and body corporate levies as well as confirming that holding costs for land held on capital account are deductible from the time a binding contract for the sale of land is entered into if the sale will be taxed.

Inland Revenue weekend calling unavailable from 25 November 2023

On 14 November 2023, Inland Revenue announced that weekend calling will no longer be available, in line with other government agencies. This takes effect from Saturday 25 November 2023.

Global tax news

Australia: New interest limitation rules from 1 July 2023

After more than a year since the Australian Government formally announced its intention to introduce new interest limitation rules to replace the thin capitalisation regime, and almost six months after the general commencement date for the new rules, the new rules have now (almost) been finalised. The new regime applies to general class investors and is operative for years of income starting on or after 1 July 2023, whilst the new "debt deduction creation rules" (DDCR or debt creation rules) will be first operative for years of income starting on or after 1 July 2024. The latest on these new rules is summarised by Deloitte Australia here.

Austrian Federal Council approves protocol to tax treaty with New Zealand

On 8 November 2023, the Austrian Federal Council approved the amending protocol, signed on 12 September 2023, to the Austria - New Zealand Income and Capital Tax Treaty (2006).

Global tax reform is coming – and CEO's need to be ready

Deloitte Insights has published an article on the coming international Pillar Two tax reform which is set to go into effect in 2024. The article looks to understand the global tax reform scope and impact, how organisations can prepare and why C-suite executives well beyond the CFO should be engaged in their organisation's response.

OECD updates

OECD invites public input on proposed changes to Commentary on Article 5

Article 5 of the OECD Model Tax Convention on Income and on Capital deals with the definition of permanent establishment. A working party has developed an alternative provision on activities in connection with the exploration and exploitation of extractible natural resources, together with related commentary.

This public discussion draft includes proposals for changes to the Commentary on Article 5.

The OECD invites interested parties to send their comments on this discussion draft before 4 January 2024 by email to taxtreaties@oecd.org in Word format. All comments should be addressed to the Tax Treaties and International Co-operation Unit, OECD Centre for Tax Policy and Administration.

Please note that all written comments received will be made publicly available.

Webinar recording: MLC to implement Amount A of Pillar One

On 27 October 2023, the OECD presented a technical webinar on the key features of the MLC followed by a Q&A session. The recording is available here.

MLC Amount A fact sheets

The OECD has released fact sheets on Amount A of the Two Pillar solution which provide a step-by-step overview of the process to apply the MLC at market jurisdiction level.

New toolkits on mineral transfer pricing

On 6 November 2023, new toolkits for determining the price of minerals were published.

Global Forum publishes eight new peer review reports on transparency and EOIR

On 8 November 2023, the OECD announced that the Global Forum has published new peer review reports on transparency and exchange of information on request (EOIR) for six of its members (Latvia, Mauritania, Pakistan, Poland, Serbia and Thailand), and two supplementary reports (Botswana and Dominica).

More than half of the Global Forum members have now been fully reviewed. The ratings assigned are generally very good, with 88% of the jurisdictions obtaining satisfactory overall ratings.

OECD launch Corporate Tax Statistics and working paper on Effective Tax Rates

On 21 November 2023, the OECD released Corporate Tax Statistics 2023 which provides comprehensive insight into corporate tax systems around the world. The publication also includes a new working paper on the effective tax rates of multinational enterprises.

Model reporting rules for digital platforms: FAQs updated

The OECD has updated the FAQs for the Model Reporting Rules for Digital Platforms.

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

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