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Tax Alert

September 2022

New tax bill has something for everyone
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New tax bill has something for everyone

By Amy Sexton, Robyn Walker and Veronica Harley

It may feel like the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Act 2021 was only just passed, but the year has continued to speed along and late last month saw the introduction of the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) (we will call it "PERM", as it seems to have curled more than a few peoples hair when the GST and KiwiSaver news hit the media, but more on that later). Technically the PERM was withdrawn and has been reissued without the GST and KiwiSaver clauses.

As always, with any annual rates bill, the first part of the PERM Bill sets the annual tax rates for the 2022-23 income year. This part of the Bill has to be enacted by 31 March 2023, as without it the Government cannot collect income tax past 31 March 2023. There have been no changes by the Government to the income tax rates or brackets, even with the constant rumblings about tax bracket creep and high inflation.

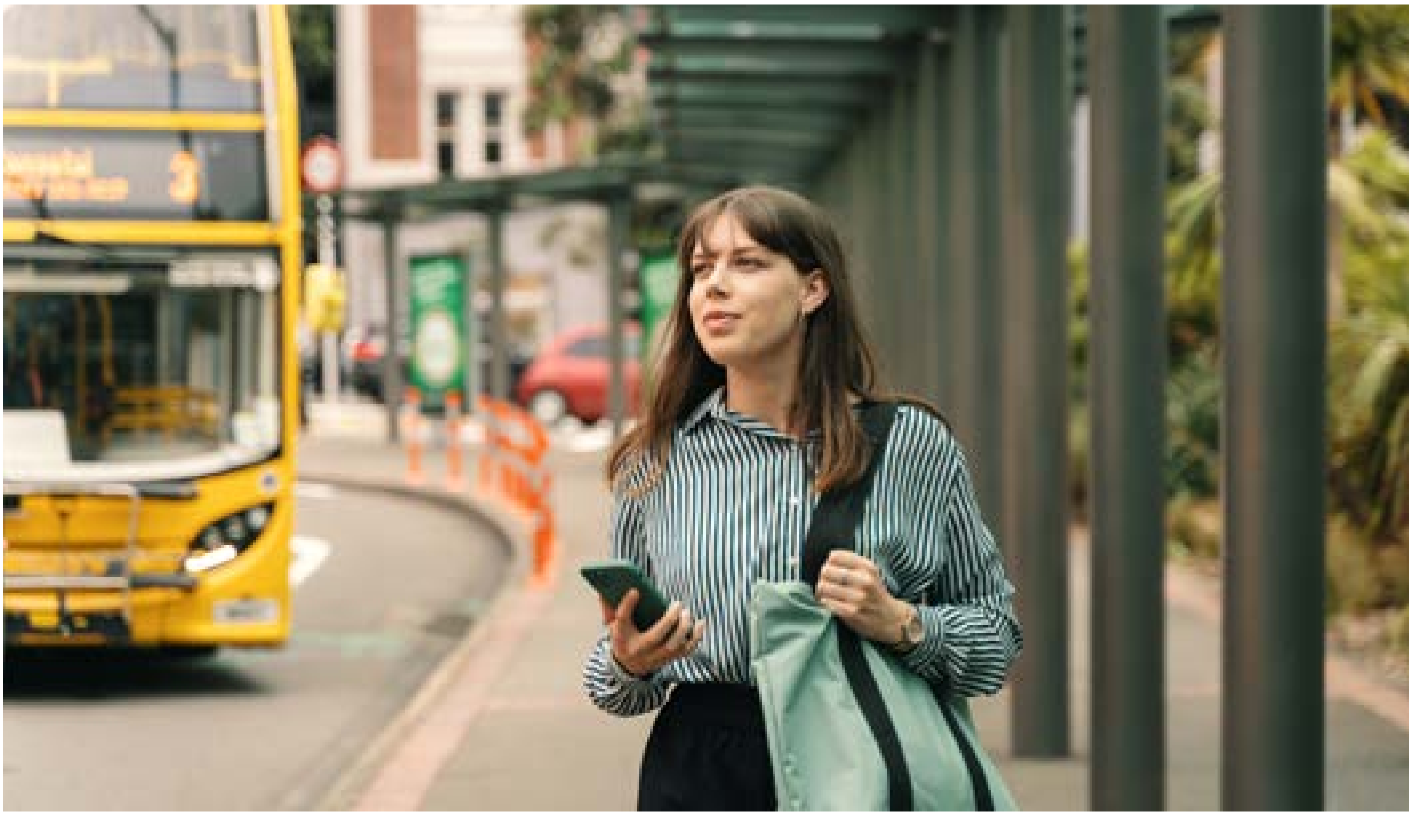
In this article, we will summarise a number of the changes or remedial matters in the PERM Bill that are not the focus of specific articles later in this issue of Tax Alert.

GST on fees charged to managed funds ("the KiwiSaver GST charge")

It would be remiss not to mention the elephant in the room for the PERM Bill, the rapid removal of the proposed introduction of GST on managed funds fees. The quick and loud reaction of those 3 million odd New Zealanders with KiwiSaver accounts resulted in the Government swiftly announcing that this proposal would not go ahead and these sections have been removed from the Bill.

So what was the fuss about? The original version of the bill proposed that from 1 April 2026 all fund manager fees and all KiwiSaver manager fees would be subject to GST at 15%, which would have raised $225 million per year. We understand the current legislative settings will continue. For KiwiSaver managers this leaves the GST position on their fees as having a GST exempt status (while KiwiSaver hasn't been around since 1986, that's how long this rule for retirement savings has).

For non-KiwiSaver fund manager fees, there has been a range of differing GST treatments which have arisen over the years, along with various differing views from Inland Revenue. If there is no legislative change, arguably the lack of certainty will continue in this area. Our suggestion has been that there be an acceptance that this particular area of GST is a historically messy area, and that legislative change to allow managers a degree of certainty for their current treatment would be useful. We note that the transition provisions in the original PERM Bill would have potentially provided this degree of certainty, at least



until 1 April 2026. However, given the recent statements from the Government as part of the withdrawal of the Bill, it will be interesting to see if there is any potential for some sort of pragmatic and practical legislative response. Businesses involved in this area should carefully consider their current treatment for GST purposes and be aware there may be more water to go under this bridge.

Wider scope for non-active trusts welcomed

Included in the Bill are measures that clarify and widen the qualifying criteria for non-active trusts. This change is positive and resolves a few issues that have emerged following the introduction of the new trust disclosure requirements. The changes, once enacted, will apply retrospectively for the 2022 and later income years.

Confusion has reigned for the past 6 months over whether a trustee needs to apply for an IRD number to file a non-active trust declaration. Many trusts may never have filed a gifting statement if formed after the abolition of gift duty, or perhaps they were created before the requirement to supply an IRD number became compulsory under the Land Transfer Act 2017 for land transactions. The legislation clarifies that it is not necessary for a non-active trust without an IRD number to apply for an IRD number simply to be able to file the declaration that it is non-active.

Pleasingly the thresholds, which income and expenditure must be under to qualify as non-active, are to be increased as follows:

- Reasonable administration fees (e.g. bank fees etc) are being increased from $200 to $1,000;
- The level of income that can be earned by the trust has been extended from being only bank interest of $200 up to $1,000 of "reportable income". This means income from which tax has been withheld as if the trust was a natural person earning this income. Practically for most trusts, this would include interest and dividends subject to RWT as well as attributed PIE income.

If a trust owns a dwelling, insurance rates and other expenditure incidental to the occupation of the dwelling which is incurred by the beneficiaries are not taken into account in determining whether a trust is non-active. The legislation is to be clarified so that interest incurred by the beneficiaries can be included as well.

For completeness, reasonable fees can also be paid to a professional trustee to administer the trust and there has been no change to this requirement as no dollar threshold was ever specified.

Finally, testamentary trusts (i.e. those created after the death of a person) with small amounts of income will not be required to file a tax return. This is to prevent any compliance costs diminishing the value of the trust. This rule would apply to a testamentary trust where:

- Total distributions during the income year do not exceed $100,000;
- Reportable income earned does not exceed $5,000 for the income year provided tax has been deducted at the correct rates; and
- If the trust derives non-reportable income of $1,000 or less, deductions against that income are at least $800 for the income year.

Foreign trust remedial changes

Several remedial measures for foreign trusts have been proposed. These include:

- Introducing a "foreign exemption trust" definition which would see the trustees of any trust which uses the foreign-sourced income exemption now be required to

comply with the foreign trust disclosure rules;
- Giving the Commissioner of Inland Revenue the explicit power to deregister a trust if it does not meet registration requirements of the Tax Administration Act 1994;
- Require trustees to update the information provided in annual returns, if it changes; and
- Giving the Commissioner of Inland Revenue the discretion to be able to backdate registration of a foreign trust where a trustee has made reasonable efforts to register on time.

Provisional tax rule tweak re instalment due on a non-working day

Whether provisional tax instalments using the standard method are calculated using the uplift factor of 5% of the preceding year's residual income tax (RIT) or 10% of the year before the preceding year's RIT, is determined by several factors. Namely, when the preceding income year's tax return is filed, which instalment we are calculating provisional tax for and whether a taxpayer has an extension of time for filing.

The Bill makes it clear that if a provisional tax instalment falls due on a non-working day, such that payment can be made on the next working day, this also extends for tax return filing purposes. This means that a tax return filed on the next working day after an instalment falling due over a weekend is deemed to have been filed on that instalment date and not after it. For example, if a 2022 tax return with a March balance date was filed on 29 August, being the next working day after the first instalment of provisional tax is due on 28 August, it would mean that first instalment of 2023 provisional tax would be calculated using the 105% uplift. This change will apply retrospectively from the beginning of the 2018 and later tax year.

There have been some other remedial changes to clarify interpretative issues on whether the 110% uplift can be used for an instalment.

FBT exemption for public transport

The Bill proposes to exempt from FBT public transport fares (train, bus, ferry, tram or cable car services) that are subsidised by an employer mainly for the purpose of their employees travelling between home and place of work. It has been specifically noted in the Officials Commentary that accompanies the Bill that there will be no exemption if employees are reimbursed directly through payroll though, as that falls under the employment income rules and not the FBT rules. Therefore to be able to obtain the benefit of this exemption an employer will need to either purchase a public transport pass directly and give them to their employees or come to an arrangement with a public transport provider to pay a portion of the fare directly to the public transport provider. Either of these options is not going to be easy for employers to implement.

Other changes include:

- Clarification that GST is payable on all legislative charges (including fees and levies)
- Clarification that voluntary administrators are personally liable for GST liabilities incurred during an administration
- Clarification of the business-2-business compulsory zero-rating of land rules
- Clarification that a GST-registered person can claim an input tax deduction to the extent that the goods/services are intended to be used by them in making taxable supplies
- Ensuring that electricity distribution network owners apply the component items approach, rather than the network approach, for depreciation and repairs and maintenance
- Introducing a four-year time bar to student loan repayment obligations
- Technical changes to the business continuity test to ensure ownership continuity provisions work correctly
- Updates to reflect that accounting standard IFRS 4 will be replaced with IFRS 17 from January 2023 for general and life insurance
- Allowing a tax return for a deceased person to include reportable income for up to 28 days after their date of death
- Allowing New Zealand resident investors holding an interest of 10% in an Australian Unit Trust to use the Fair Dividend Rate method to calculate the attributable FIF income
- Technical changes to the R&D Tax Incentive multi-year general approvals and material business changes
- Updates to charities on the overseas donee list
- Corrects the preferential debt status of employer KiwiSaver contributions in a liquidation

There is a lot in the Bill and we encourage you to read the more detailed articles that follow, as they are very useful guides to the changes coming. Please contact your usual Deloitte advisor if you would like to discuss how the changes in the Bill will impact you or your business

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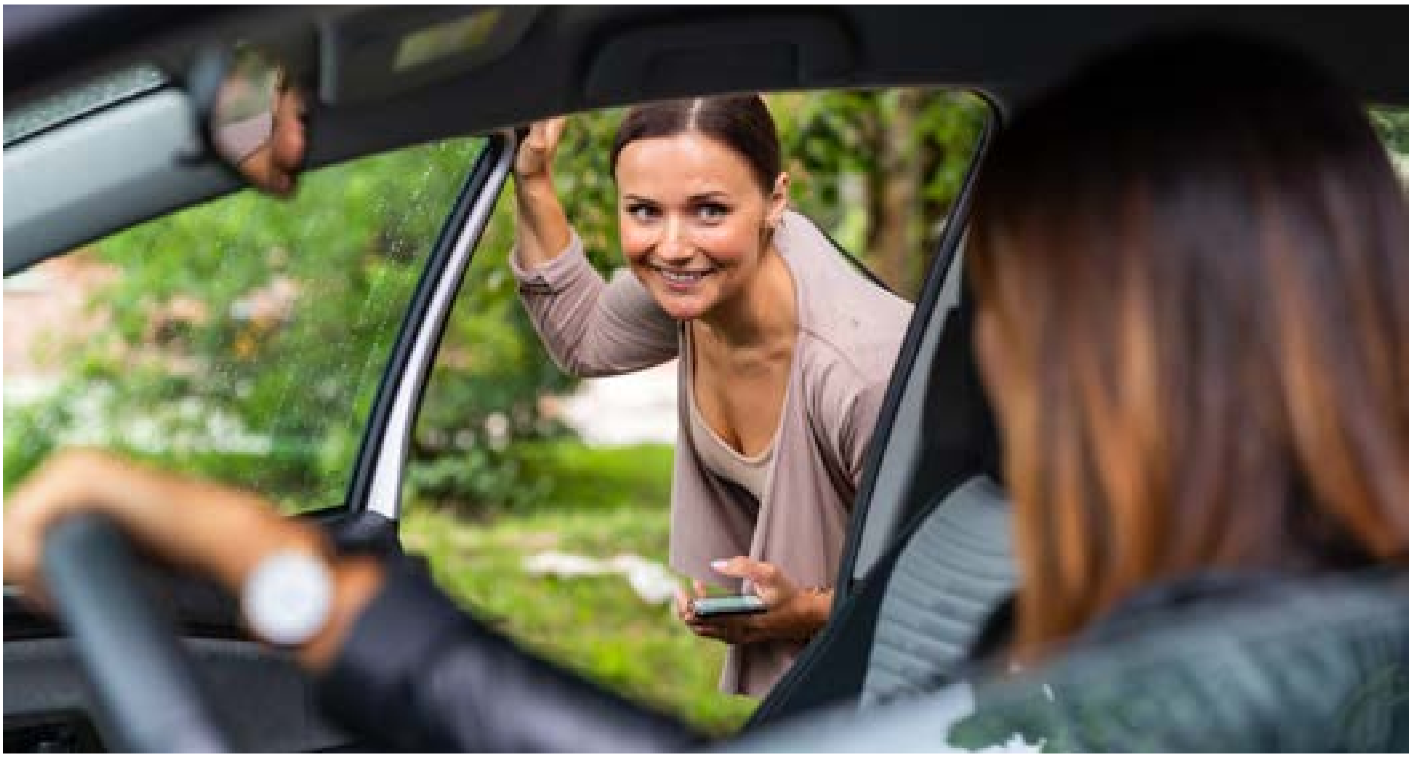
Substantial 'Platform Economy' changes proposed

By Robyn Walker



Tax reforms for the "Platform Economy" are one of the most substantial changes included in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2) (the Bill), but if you're not delivering people or takeaways, or supplying short stay accommodation, do you need to care about these changes? The answer is yes, because these changes are actually significantly wider.

The Bill contains two separate changes, which apply to different parts of the platform economy:

1. Extending the existing GST marketplace rules to capture accommodation, ride-sharing, and food and beverage delivery services provided through electronic marketplaces.
2. Implementing an information and reporting framework that will require New Zealand-based digital platforms to annual provide Inland Revenue with data about sellers. Platforms that are in scope are any that have sellers in the following sectors:

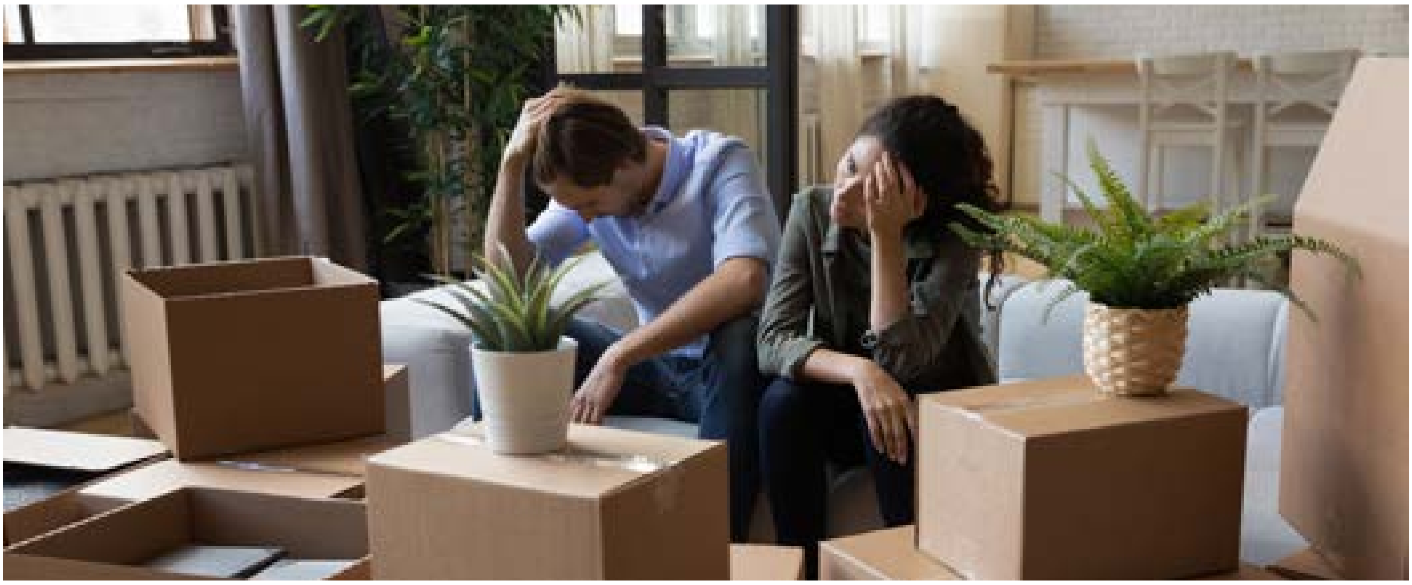
- Rental of immovable property (including commercial, short-stay, and visitor accommodation);
- Personal services (including any time- or task-based work);
- The sale of goods; and
- Vehicle rentals.

GST marketplace rules

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

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

The manner in which the GST obligations have been placed on the marketplace means that many ride-sharing or accommodation suppliers won't need to give GST any additional consideration if they remain below the GST registration threshold – however at some point consideration will need to be given to who will effectively bear the cost of the addition of GST – will it be passed onto the consumer



or absorbed by the supplier? The recent debate on GST suggests most expect increases to be passed onto consumers.

The new rules will apply from 1 April 2024, allowing about 12 months for systems and processes to be developed once the rules are exacted (expected to be in March 2023).

Information reporting

While most attention has been directed toward the application of GST, the Bill contains new provisions requiring the provision of substantial data to Inland Revenue by platforms. While this may seem innocuous, in fact it will have a profound effect on any platform caught within its ambit, with substantial penalties on the line if there is non-compliance (by either the platform or its sellers).

Ultimately there is a significant cost to businesses in having to collect, collate and provide extensive data sets to Inland Revenue. The purpose of the provision of the data is to give Inland Revenue visibility over the income earned by individuals/businesses operating through these platforms, both in New Zealand and overseas. The data collected about non-residents will then be shared under reciprocal data-sharing arrangements with other revenue authorities (so if you're trading through offshore marketplaces, your worldwide income will soon be visible to Inland Revenue).

So who is caught by these rules? This is where it becomes a little less clear. Rather than designing and implementing rules for New Zealand, our tax legislation is being updated to simply refer to two sets of OECD model rules… which amount to 59 pages of technical guidance. As a starting point, the OECD defines a "platform" extremely widely: *"A Platform means any software, including a website or a part thereof and application, including mobile application, accessible by users and allowing Sellers to be connected to other users for the provision of Relevant Services, directly or indirectly, to such users. The operations of the Platform may also include the collection and payment of Consideration in respect of Relevant Services. The term Platform does not include software exclusively allowing the: (a) processing of payments in relation to Relevant Services; (b) listing or advertising the Relevant Services; or (c) redirecting or transferring of users to a Platform without any further intervention in the provision of Relevant Services."* A Relevant Service is the rental of immovable property; personal services, the rental of a means of transportation, or the sale of goods for consideration.

The reporting requirements will vary depending on the type of relevant service being provided, but in essence will be details about all sellers (including IRD numbers or foreign equivalents) and details of all sales made and any fees, commissions or taxes withheld. For property, information will also need to be supplied on the number of days a property was rented.

Information reporting requirements will apply annually and will start from 1 January 2024, meaning that the first set of reporting will be due in early 2025.

Businesses operating digitally, including through a website, will need to consider whether they will be meeting the definition of a Platform and if they are providing Relevant Services. While there is still some time before the reporting will be required, systems will need to be designed as soon as possible to start capturing the required data. Non-compliance with the requirements will result in civil penalties, which could be as much as $100,000 in a year. Sellers who fail to supply necessary data to Platforms will also be liable for a $1,000 penalty.

If you think your business could be caught by these rules, please get in touch with your usual Deloitte advisor to understand more about these proposals.

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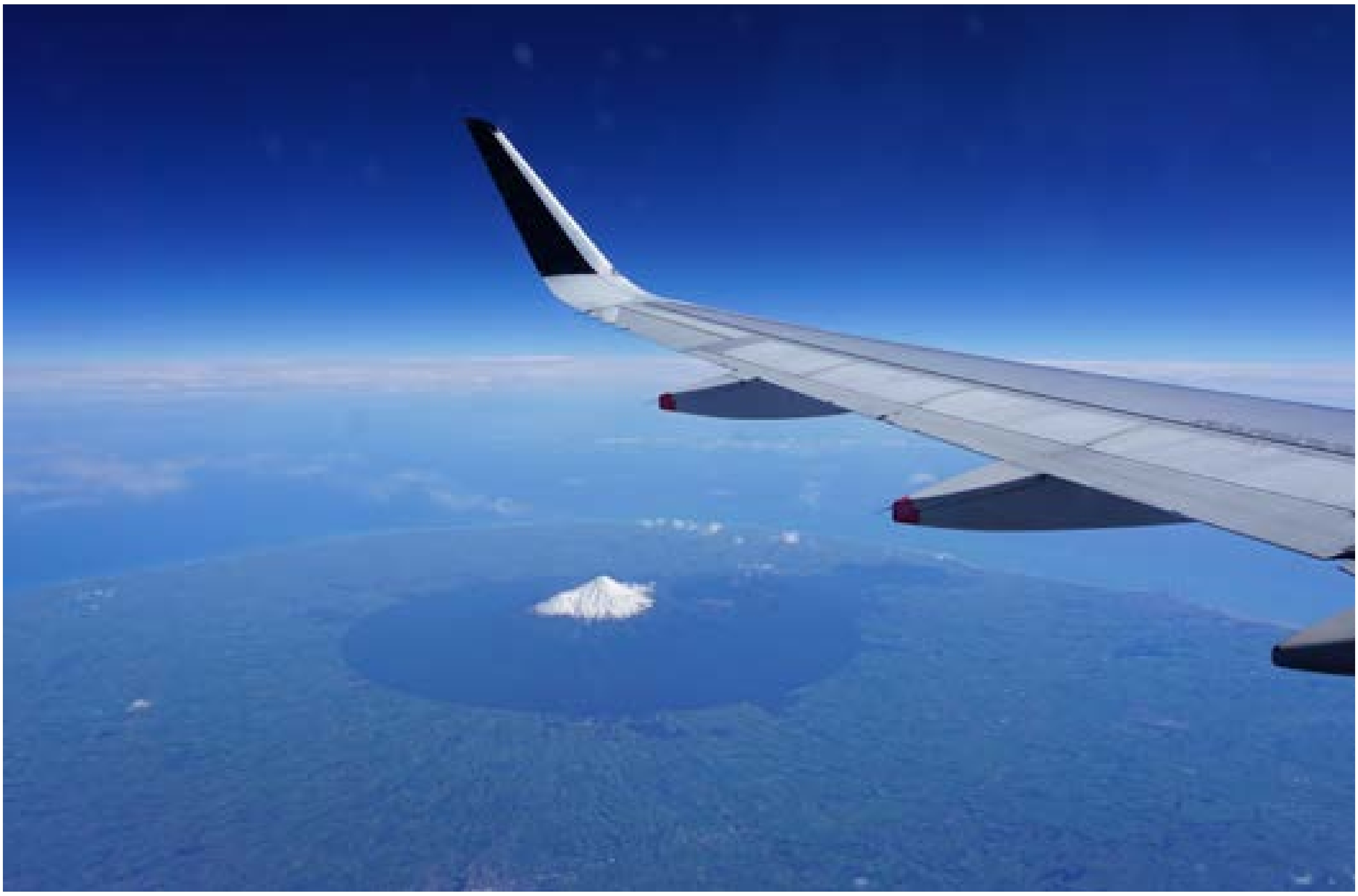
Bringing workers to New Zealand? Taxing rules to be modernised

By Jayesh Dahya and Mila Robertson



A common gripe for businesses bringing workers from offshore is that the New Zealand tax rules are difficult to comply with and expensive to get wrong, particularly non-resident contractors tax (NRCT). Consequently when Inland Revenue consulted on a range of improvements last year there was hope that these issues would be resolved. What we have in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2) ("the Bill") is a range of proposed changes which aim to simplify the issues and complexities involved with cross-border work and improve certainty, efficiency, and fairness in the tax system. While the aim of the reform is positive, we'd describe the proposed law changes as a bit of a "mixed bag" which does not solve all problems.

PAYE, ESCT and FBT proposals – increasing flexibility

Sending employees to work in New Zealand can be an expensive exercise, especially if advice is not taken and managed upfront. Foreign employers may not understand their New Zealand employer tax obligations or may rely on exemptions that do not apply. This often results in backdated tax obligations which are costly to correct.

Our tax system should not deter foreign employers from entering New Zealand and should not impose excessive compliance costs. To simplify the PAYE, FBT and ESCT rules that apply to foreign employers, the Bill proposes the following changes:

- A 60-day grace period that would enable an employer to meet or correct their PAYE, FBT and ESCT obligations where they have taken reasonable care to manage their employment obligations. This will assist employers who have employees present in New Zealand where there has been a breach of either the:
  - 92-day rule that exempts employment income derived by non-resident employees during short term visits to New Zealand tax; or
  - The 183-day rule provided for under a double tax agreement ('DTA').
- To allow employers of cross-border employees to apply for bespoke PAYE arrangements. This would apply in "special circumstances". Inland Revenue have noted that they will develop guidance on what constitutes "special

"Inland Revenue are clarifying that if a non-resident employer is not required to register as an employer in New Zealand, the PAYE, FBT and ESCT obligations transfer to the employee."

circumstances". This may be useful for non-resident employers with short term business travellers who have irregular travel patterns in and out of New Zealand, as this would allow PAYE to be settled once a year.

- Repeal of the PAYE bond system as this is rarely used.

Safe harbour for non-resident employers

Readers may recall on 1 December 2021, Inland Revenue published Operational Statement "OS 21/04 Non-resident employers' obligation to deduct PAYE, FBT and ESCT in cross-border employment situations". This imposed a "sufficient presence test" which was discussed in our February 2022 Tax Alert. A safe harbour has now been proposed if the non-resident employer has incorrectly determined they do not have an obligation to register as an employer in New Zealand. No penalties and interest will be imposed if:

- Either two or fewer employees are present in New Zealand at any point in the income year, or the non-resident employer pays $500,000 or less in employment related taxes in New Zealand for the income year; and
- The non-resident employer arranges for their employment related obligations to be met by another person, either a related entity or the employee themselves.

FBT for remote workers and employees of non-residents

Where a non-resident employer does not have a requirement to register for PAYE, FBT or ESCT, the obligation to account for PAYE falls to the employee and the tax is paid via registering as an IR56 taxpayer. Currently there is no obligation for those employees to account for FBT or ESCT.

Inland Revenue are clarifying that if a non-resident employer is not required to register as an employer in New Zealand, the PAYE, FBT and ESCT obligations transfer totheemployee.Thiswillmeanthatif remote workers receive fringe benefits or employer contributions to New Zealand superannuation schemes, the employees will need to shoulder the responsibility of complying with our FBT and ESCT rules. Employees will need to be aware that they will have to pay the FBT and ESCT arising, which are ordinarily costs that would be met by their employer. Where employees are responsible for the FBT and ESCT payable they are likely to be worse off.

Contributions to foreign superannuation schemes

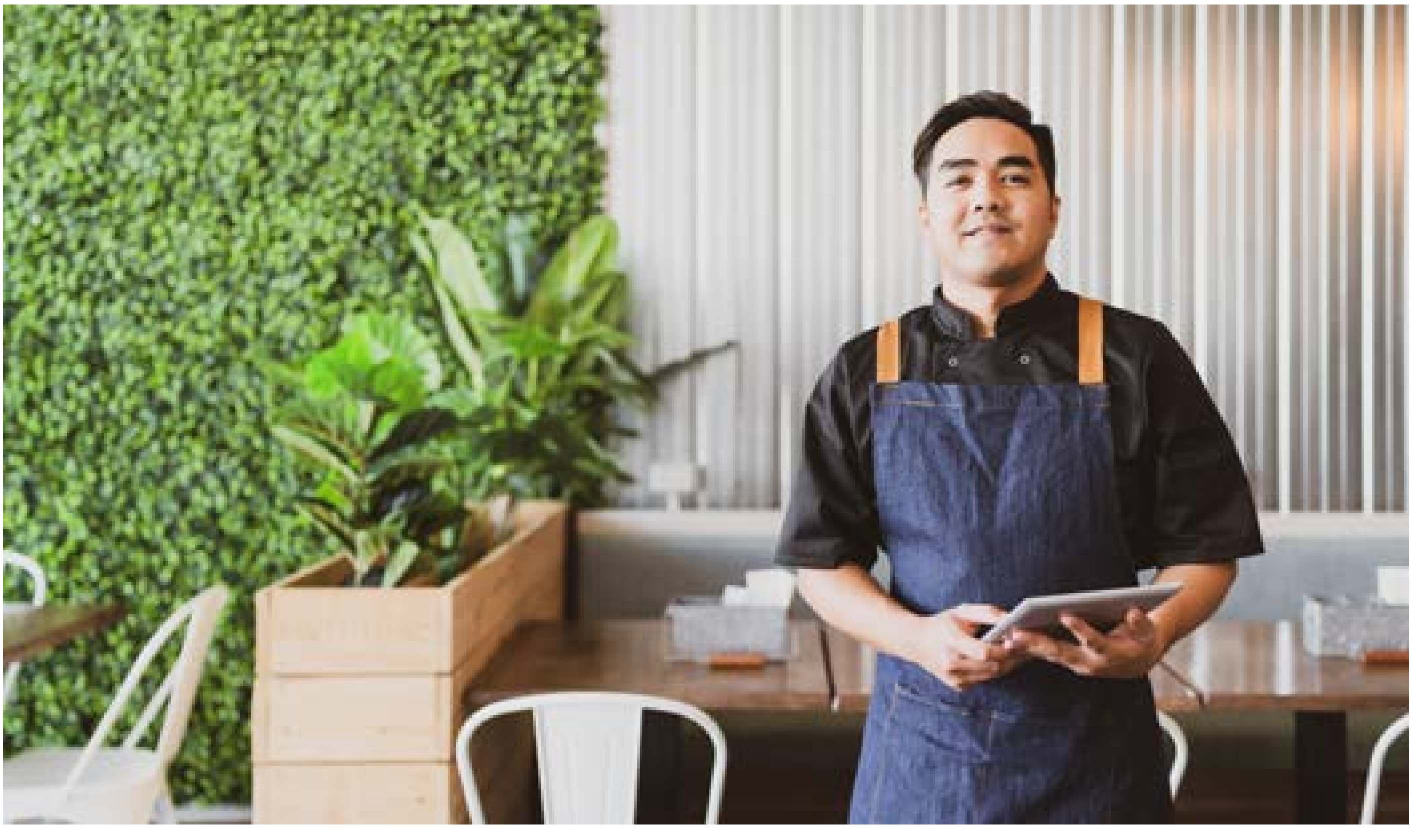
The Bill proposes that contributions to foreign superannuation schemes (including contributions to sickness, accident, or death benefit funds) will be subject to PAYE, rather than FBT.

This may be favourable for employers who currently have a FBT filing obligations solely due to foreign superannuation contributions. Foreign superannuation contributions will therefore need to be grossed up for New Zealand PAYE and other applicable payroll costs. For those employers, currently paying FBT a change in process will be required to ensure these payments are captured via their payroll systems.

Non-Resident Contractors Tax (NRCT)

New Zealand businesses often find themselves at odds with the NRCT rules. Many contractors looking to work in New Zealand are not aware of the tax, and often contractual arrangements will impose the liability to pay it on the New Zealand business. This makes exemptions from the tax more important, but also means the rules create a real headache for businesses when an exemption which was expected to apply does not. The Bill proposes the following changes to the NRCT regime which are aimed at reducing the compliance costs:

- A 60-day grace period for a payer to meet or correct their NRCT obligations where at the time a payment is made, it is not clear that NRCT withholding is required and a liability to NRCT subsequently arises. This will operate in a similar manner to the grace period for PAYE discussed above.
- Allowing nominated taxpayers to meet the NRCT obligations of a non-resident contractor. This is intended to simplify compliance for non-residents who may have activities in New Zealand through different businesses. Each person, however, would be jointly and severally liable for the amount of tax due under such an arrangement. For the purposes of obtaining certificates of exemptions, a nominated person can establish a good compliance history for the non-resident contractor.
- Introducing a "single payer view". This would mean the payer would only have to consider their contracts (and contracts with related entities) with the non-resident contractor in determining the days a non-resident contractor is present in New Zealand for the purposes of the 92-day presence rule or determining the total value of contracts under the $15,000 rule. Currently, payers are required to obtain details of all contracts the non-resident contractor has undertaken in New Zealand and in practice this has been difficult for payers to manage.
- Allowing certificates of exemption to have retrospective effect by allowing payments made before the exemption is issued to be covered. This would only apply to payments made 92-days before the person applied for an exemption.



Increased NRCT reporting requirements

With the good comes the not so good. New reporting requirements have been proposed that are likely to increase compliance costs for payers of NRCT. If enacted, this would require payers to provide the Inland Revenue with the following information:

- The names of the payer and payee;
- The date on which the schedular payment is made;
- Whether the schedular payment is paid within a grace period (detailed above);
- The contract address of the payer and payee, whether in NZ or otherwise;
- The tax file number of the payee of their foreign tax identification number;
- The gross amount of the schedular payment;
- The amount of tax withheld from the schedular payment;
- Whether an exemption applies in relation to the schedular payment;
- Whether a threshold applies in relation to the schedular payment; and
- The start and end dates of the contract under which the schedular payment is made.

The above information would potentially be required to be provided by electronic means on the 15th of each month following the commencement of a contract, a payment being made and the contract ending.

Conclusion

Overall it is positive to see reform to what is a deceptively complex area of tax, and incremental improvements are better than nothing. We hope that through the submission processes, some of the rougher edges can be taken away, particularly in relation to NRCT reporting requirements. Please get in touch with your usual Deloitte advisor if you'd like to understand more about how these proposals could impact your business.

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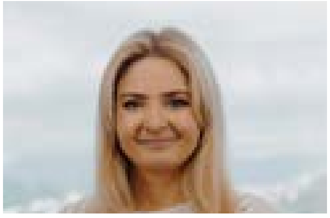

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Significant GST apportionment changes on the horizon

By Allan Bullot, Sam Hornbrook and Rachel Hale

The existing GST apportionment rules in the Goods and Services Tax Act 1985 ("GST Act") are extraordinarily complex and it is with (mainly) delight that the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2) includes wholesale changes to simplify these rules. As with everything to do with GST the devil is in the detail and some of the changes remove and replace complexity with a new type of complexity.

It is interesting to note that some of the proposed changes are in many respects "out with the old and in with the… older" – for example, partly reintroducing the 'principal purpose' test (that many might not have realised was removed in 2011), and potentially allowing property developers to 'remit' GST on residential rental income (as a proxy for their GST adjustment). Everything comes back into style if you wait long enough.

What are the GST apportionment rules and why are they changing?

Where an asset is used for both business use (known as taxable use) and non-taxable use (that is, private use or making exempt supplies, such as financial services or residential accommodation), the person can only deduct a percentage of the total input tax. GST is collected on the non-taxable use of an asset by denying a portion of the input tax deduction. This is known as GST apportionment. You can find a high-level summary of the adjustment requirements currently in force in a previous Tax Alert article.

Inland Revenue notes that *"the current GST apportionment and adjustment rules may create uncertainty, complexity, unintended consequences, or undue compliance costs."*

This is an understatement. The proposed changes are intended to simplify things - however, as is often the case with tax, there will still be complexity under the new rules, including in relation to when they apply as some are retrospective to 1 April 2011 and 30 June 2014, some apply from the date of enactment (expected to be late March 2023), and others will apply from 1 April 2024.

Do these rules apply to me?

Examples of taxpayers who need to consider these rules include:

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

It will be important to ensure there is a clear understanding of how the updated GST apportionment regime will apply to your business and how your GST obligations may change as a result of these changes. If you are a GST-registered business that is currently required to carry out GST apportionment adjustments, or if your business activities involve both taxable and exempt supplies, you need to understand how these rules will apply.

What are some of the key changes I need to know about?

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

One of the key changes is the reintroduction of the 'principal purpose' test for assets costing $10,000 or less (GST exclusive). At a high level, this rule will mean that GST-registered businesses will not need to carry out an apportionment calculation in respect of goods or services costing less than $10,000 and that have some element of mixed-use. Examples that might fall into this category include computers and low-value vehicles owned by sole traders.

Where these goods or services are acquired for the principal purpose of making taxable supplies, any minimal private use can be ignored and the GST-registered business can claim a full input tax deduction. Conversely, where goods or services are acquired for the principal purpose of private use, but there may be some taxable use, no input tax deduction will be available with respect to the taxable use (with no requirement for subsequent adjustments or for future disposal of the asset to trigger a GST liability).

Inland Revenue hopes these changes will reduce the cost of compliance for GST-registered businesses. However, it will be important to carefully consider whether the goods or services have been acquired for the principal purpose of making taxable supplies (or private use) as the principal purpose test does not necessarily mean a simple 50% use test. The longer-term overall purpose is key and there is historic case law in this area that may need to be revisited.

The principal purpose test will not apply to taxpayers who have an apportionment methodology agreed with Inland Revenue.

New disclosure requirements for assets acquired from 1 April 2024

Inland Revenue will impose obligations to disclose additional information upfront when land, aircraft and pleasure craft are acquired as part of a taxable activity. The rationale for this is to ensure that Inland Revenue has clear information about when a taxpayer is acquiring the high value asset so that any GST input credits (or benefit of and zero-rating) can be recouped in the event that the asset stops being used as part of a taxable activity (for example, Inland Revenue will be able to make enquiries if a taxpayer acquired a boat for running charter tours but starts filing consistent nil returns).

This new rule will apply from 1 April 2024, and Inland Revenue will be working out how to exempt taxpayers from being required to disclose information where they are at low risk of using an asset for exempt or private purposes.

Transition of goods outside of GST base

A proposal which will be of particular interest for those businesses who have mixed-use assets is the ability to elect for assets to be taken out of the GST net (to stop the future sale from being taxable).

This will be of interest for holiday homes that are rented out short term. Under this election, previously claimed GST will be repaid, with the quid pro quo being that GST is not required to be returned on a future sale – which may be a preferrable outcome for appreciating assets which may be likely to be sold to non-registered purchasers. This rule will also apply to the land acquired as a zero-rated supply.

The application of this rule is complicated and is best illustrated with this example taken from the Bill commentary:

Acquiring a holiday home as a zero-rated supply of land

Gavin is a registered person who acquires a holiday home from another registered person. Gavin's principal purpose for acquiring the holiday home is to use it for his own private recreation (and not as his principal place of residence). However, because Gavin also intends to use the holiday home for a secondary and more minor purpose of making taxable supplies of guest accommodation, he acquires the holiday home as a zero-rated supply under section 11(1)(mb) for $1m (rather than a standard-rated supply of $1m plus $150,000 of GST, which would have been the price had section 11(1)(mb) not applied to the supply).

Under proposed new section 20(3J), if Gavin intended to use section 14(4) to make his future disposal of the holiday home an exempt supply, he could choose to return output tax of $150,000, being the full amount of the nominal GST component. If he did this, section 14(4)(d) could then be satisfied for a future disposal of the holiday home.

Alternatively, Gavin can choose to return the smaller amount of $105,000 output tax under section 20(3J) based on his 70% expected non-taxable use of the holiday home at the time he acquires the holiday home. However, if he does this, a future disposal of the holiday home would not qualify for the exempt supply rule in section 14(4)(d) as he would not have returned the full amount of the nominal GST component on acquisition of the zero-rated supply of land.

> "One of the key changes is the reintroduction of the 'principal purpose' test for assets costing $10,000 or less (GST exclusive)."

Proposals in the Bill also allow a GST-registered person to elect to treat certain goods as being an exempt supply where the goods were not acquired for the principal purpose of making taxable supplies (even where there will be a small amount of business use). This change will be particularly relevant in the context of dwellings with a minor use in a registered person's taxable activity (such as the use of a home office).

GST-registered persons will be able to elect to treat the sale of that property as an exempt supply and therefore will not be required to carry out a GST apportionment calculation in respect of the business use. While this is a positive change to the rules, care should still be taken as there are a number of requirements that must be satisfied to make the election (including having not previously claimed any partial input tax deductions in respect of the business use of the asset). Again, this change is illustrated in the following example taken from the Bill commentary:

Dwelling with a minor use in a registered person's taxable activity

Rebecca is a registered person who acquired a dwelling that was not a zero-rated supply when it was acquired. She did not claim deductions under section 20(3) for the cost of acquiring the dwelling or of any subsequent capital improvements to the dwelling. Although part of the dwelling is used to run Rebecca's taxable activity of farming, the dwelling's principal purpose is a private residence. Rebecca claimed input tax deductions for certain overheads and operating costs, such as insurance, utilities and local authority rates, based on the percentage that these services were used to make taxable supplies.

Under the proposed amendments, when Rebecca sells the dwelling, she would be able to elect to treat the sale as an exempt supply of goods as it meets the requirements of the proposed new section 14(4).

Number of adjustment periods

There are changes to the number of adjustment periods required for mixed-use goods. The key changes in this area are:

- The threshold for not requiring any adjustments increases from goods valued at $5,000 or less to $10,000 or less (as outlined above in relation to the principal purpose rule); and
- Land (regardless of the value of the land) will now require a maximum of 10 adjustment periods only (under current law, the required number of adjustment periods for land is unlimited).

This land change is significant for long-term property owners who have both exempt residential rental and commercial leasing on the same site. The change is also significant for the retirement village sector where land is typically used for a mix of taxable and exempt purposes.

Whilst on the topic of adjustment periods, in situations where there is a permanent change of use, there will no longer be a requirement to make the permanent change over two adjustment periods – instead, the change will apply at the end of the adjustment period in which the permanent change in use occurs. This is great.

More flexibility in GST apportionment methodologies - another case of out with the old and in with the… older

Another change is that Inland Revenue will have the ability to approve a greater range of GST apportionment methodologies than can be approved under the current legislation. The key overarching requirement under the proposed change here is that any alternate apportionment methodology must be a 'fair and reasonable method' of GST apportionment (or proxy).

Of particular interest is that it appears Inland Revenue are open to allowing property developers to 'remit' GST on interim residential rental income prior to sale (as an alternative to having to make GST input tax apportionment calculations). This used to be fairly common practice and is a pragmatic outcome we support.

What should I do next?

Now is a good time to look at GST apportionment methodologies and seek advice from experts. Unexpected GST bills can be significant so it is worth looking at these rules closely. Reach out to your local indirect tax specialist for how we can help you navigate the proposed changes.

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The future of GST - taxable supply information

By Jeanne du Buisson and Haidee Watkin

The latest Tax Bill includes a number of further remedial tidy-ups to the major changes around GST tax invoicing that were in the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill and which largely come into effect on 1 April 2023. We've set out below the updated position that will apply from 1 April 2023, assuming, of course, that the updates contained in the latest Bill are enacted as proposed. Deloitte will be making submissions to try and make a number of the changes more practical. This area is still a bit of a moveable feast, and it will be important that businesses ensure they are aware of the final position before the new rules apply on 1 April 2023.

Moving from Tax Invoices to Taxable Supply Information

Since the inception of the Goods and Service Tax in 1986, despite significant changes in the business environment, the rules governing tax invoices have largely remained unchanged. From 1 April 2023, the current tax invoice requirements are being relaxed and new 'taxable supply information' is being introduced. Current requirements to 'issue and hold' a valid tax invoice to claim an input tax deduction will no longer be mandatory. The new 'taxable supply information' requirements will operate in parallel with the current 'tax invoice' requirements, thus giving organisations the flexibility to choose to maintain the 'status quo' or adopt the new requirements. These changes are the first step in the movement towards modernising and future-proofing GST information requirements, particularly as e-invoicing becomes more prevalent.

So, what is taxable supply information?

Taxable supply information is an aggregate of supply information collected from a variety of sources, that organisations are required to hold in order to claim input tax deductions or issue so the other party can claim a deduction.

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

x no longer required

"Taxable supply information will enable organisations a greater degree of flexibility in the form and type of taxable supply information that they provided to customers and receive from suppliers."

The existing mandatory requirement to hold a 'tax invoice' to claim an input tax deduction has been replaced with a requirement to 'hold' business records showing that GST has been borne on the supply. These information requirements no longer need to be contained in a tax invoice and can be contained in a variety of business records such as **documents** containing contractual information, **systems** and **databases** holding key supplier/customer information or **sales** and **purchasing** documentation issued. As an aggregate, these documents may already exist in organisations' systems and provided they met the minimum information requirements, become taxable supply information.

Operationally how will taxable supply information work?

An organisation's requirement to 'hold' business records now not only extends to customers but also to suppliers as well. Taxable supply information will enable organisations a greater degree of flexibility in the form and type of taxable supply information that they provided to customers and receive from suppliers. This will allow organisations to collate taxable supply information such as customer name, physical or mailing address, email address, phone number, website and/or NZBN, and store them in formats such as:

- Customer and supplier master databases; **and/or**
- Customer and supplier onboarding documentation; **and/or**
- Supply or other contractual agreements with customers and suppliers.

Provided this information is held by the organisation, when a taxable supply is made or received, only supply particulars that change, such as a description of goods, consideration and GST inclusive or exclusive need to be disclosed. As taxable supply information does not have a prescribed format, this gives organisations the flexibility to issue the invoice particulars through a variety of mediums such as a physical invoice, a data file, e-Invoicing, or an upload to an app.

Organisations may choose to maintain the 'status quo' on the issuance of tax invoices, which is entirely acceptable post-1 April 2023, however, key suppliers may move to the new taxable supply information requirements, so organisations need to prepare accounts payable systems to 'deal' with new types of taxable supply information that won't look like a traditional tax invoice.

Taxable supply information from a data integrity point of view

Conceptually a move away from the rigidity of 'valid tax invoices', provides organisations with a greater degree of flexibility in interactions with suppliers and customers. However, from a practical point of view, financial systems have been built around the fundamental concept of issuance and collection of valid tax invoices and change at the outset can be complex and time-consuming. In moving to a reliance on business systems it is key that organisations are thinking about data integrity controls built around valid tax invoices and ensuring they are updated to accommodate new taxable supply information requirements, especially if any invoice scanning software is utilised. As organisations move to adopt these new information requirements there will need to consider a shift in focus on GST compliance testing from valid invoice checks to supplier/customer maintenance and validity checks, as well as integrity checks on electronic files.

This is a snapshot of the taxable supply information changes, navigating these new requirements can be difficult and often complex. Now is a good time to get Deloitte to undertake a GST review to assist with preparedness for 1 April 2023 and in addition consider data analytics to assess data validity before adopting the new taxable supply information requirements. For more information contact your usual Deloitte advisor.

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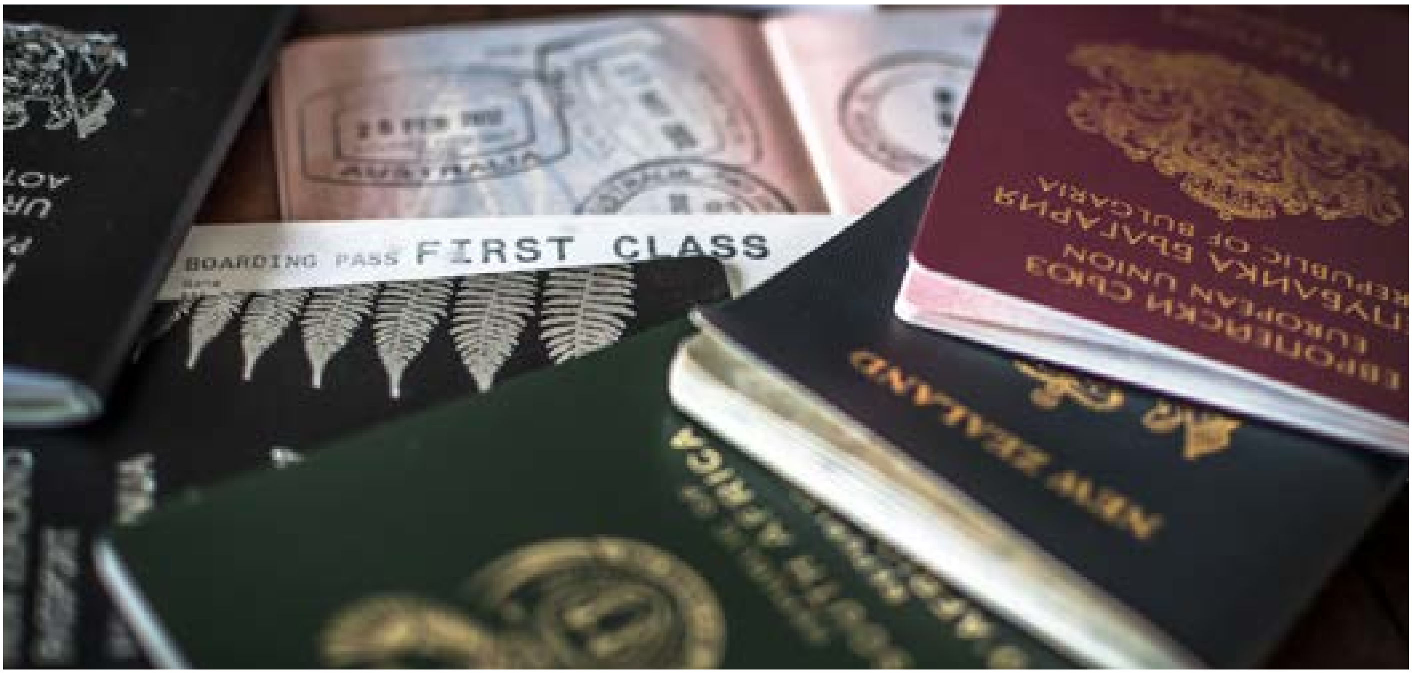
Dual resident companies get some relief under proposed tax changes but watch out! There may also be tax to pay!

By Kirstie Anderson and Annamaria Maclean



Background

New Zealand companies managed or controlled from Australia should now be familiar with the risk of dual residency, which has been elevated in recent years by developments in the corporate residency landscape in Australia (refer to our [prior article]() on this if you need a recap).

Australian rules aside, there is still a real risk that New Zealand companies can find themselves tax resident in another jurisdiction depending on the tests of residency employed by other countries they are operating in. Similarly, our domestic rules on tax residency can treat offshore companies as tax resident here where they are managed or controlled from New Zealand, or if they have their head office here.

Under current rules, the consequences of being dual resident can lead to a number of headaches for New Zealand companies that find themselves resident in another country – notably including forfeiture of imputation credits, inability to offset losses to group companies and the inability to be part of a consolidated group.

Changes have been proposed in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2) ("the Bill") to ease the burden on companies that find themselves dual resident, in response to the wider net that the ATO has cast which is currently capturing many New Zealand businesses.

But watch out because Inland Revenue has also proposed integrity measures for companies whose residence tie-breaks to another country which could result in additional tax to pay.

So what's changing?

Relief for dual resident companies

Although in many instances there will still be plenty of reasons to avoid becoming dual resident, New Zealand companies that do find themselves in that position may benefit from some of the proposed changes in the Bill. Under the proposed changes, companies which are dual resident will be able to:

- Offset tax losses with other group companies, subject to the usual continuity and commonality rules; and
- Continue as part of, or join a consolidated tax group.

Dual resident companies are currently excluded from the loss offset and consolidation regimes to prevent "double dipping" of expenditure. However, this integrity issue is now addressed by the hybrid and branch mismatch rules.

A further proposed change will allow (and in fact require) New Zealand companies that are also tax resident in Australia to maintain an imputation credit account. No election will be required (as is currently the case to maintain a trans-Tasman imputation credit account), and imputation credit balances existing at the time a New Zealand company becomes tax resident in Australia will be able to be retained and such entities would be eligible to be part of an imputation group.

With these changes set to be effective from 15 March 2017 (being the effective date of the ATO Ruling TR 2018/5), this will be of particular benefit to companies whose dual residency risk was caused by the Australian central management and control ("CMAC") test.

Dual resident company integrity measures

Companies that are dual resident under the domestic rules of two jurisdictions need to look to the relevant double tax agreement (DTA) for the "tie-breaker", to then determine how the DTA applies and whether relief is available.

The current Bill also proposes changes aimed at addressing integrity issues involving New Zealand companies whose tax residence tie-breaks to another country under a DTA (that is, they are treated as tax resident outside New Zealand under the relevant DTA), referred to as "DTA non-residents".

While the first set of changes above provides relief for dual resident companies, these proposed integrity measures are targeted at restricting unintended benefits currently enjoyed by DTA non-residents. In particular, the proposed changes would:

- Remove the exemption which applies to dividends paid within wholly-owned New Zealand groups for certain dividends paid to DTA non-resident companies. This may require NRWT to be withheld on certain dividends paid within wholly-owned New Zealand groups.
- Extend the corporate migration rules to certain New Zealand companies whose residence tie-breaks to another country under a DTA, treating the company as migrating its residence to that other country in certain circumstances. This could essentially result in a deemed liquidation, disposal of assets and distribution to shareholders for tax purposes, giving rise to an income tax and/or NRWT liability for the company.

These changes are proposed to take effect from 30 August 2022 (the date of original introduction of the Bill), and in some instances, there will be a two-year grace period to allow the DTA non-resident to become a resident in New Zealand.

The implications of the integrity measures for DTA non-resident companies could have significant tax implications and therefore it is important that tax residency of New Zealand companies continues to be closely managed.

Next steps

While most of these changes are favourable for New Zealand companies at risk of dual residency, there will be a few things to work through to determine how the rules will apply. This can include careful consideration of loss commonality periods depending on when a loss-making company generated its tax losses and when it became dual resident. In addition, the implications of the integrity measures for DTA non-resident companies could have significant tax implications and therefore tax residency should continue to be closely managed.

Perhaps the moral of the story, is that tax residency is something which should be actively managed, preferably to avoid dual-residence in the first place, but also to ensure that any issues are swiftly identified and dealt with within the two-year grace period (and before any other triggering events occur).

If you would like to learn more about these changes or discuss how they could affect your company please reach out to your Deloitte tax advisor.

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R&M on the residential property rules

By Robyn Walker and Susan Wynne

Spring is a popular time to tidy up your property, so it is timely that the recently legislated residential property changes (the interest limitation rules and bright-lines test) are also getting a tidy up; perhaps reflecting their hasty construction and build.

Most of the changes proposed in the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) are taxpayer friendly or allow the rules to operate as planned where the original legislation was not clear or did not give the desired result.

Bright-line rollover relief improvements

The "bright-line test" taxes residential land sales when a property is sold within the bright-line period (currently either five or ten years) and no other land sale rules apply to tax the property. Rollover relief from the bright-line test allows certain transfers of property to be ignored and for the recipient to take on the original owner's acquisition cost and date. Once enacted, the fixes to the rollover relief rules should allow a residential property to be:

- Transferred from a family or Māori trust back to the settlors of the trust, regardless of whether the property was transferred into the trust by a settlor or purchased by the trust. Noting that certain conditions must be met. The requirement that a settlor receiving the property must be an original settlor has also been removed.
- Resettled from a family or Māori trust to a new family or Māori trust provided there is the required association between both trusts' settlors and beneficiaries.
- Transferred from a family or Māori trust back to the settlors of the trust in a different capacity, e.g., to a look through company or partnership they are the owner or partner in provided there is no intervening transfer to a third party.

The rules have also been clarified to ensure that where rollover relief applies the start of the bright-line period does not reset (e.g., when the clock runs from) and the original bright-line test rather than the test applying at the time of transfer applies to recipient (e.g., the five or ten year test).

Care should be taken around applying these updates to property transfers, as some changes will apply from 27 March 2021, some will apply from 1 April 2022 but the rest will take effect after the Bill introducing the changes receives royal assent, expected to be late March 2023.

Interest limitation also has broader rollover relief

The interest limitation rules apply to residential rental property owners claiming tax deductions for interest on the borrowing for their rental properties. Rollover relief for interest limitation purposes applies in the same situations as the bright-line rollover relief, so will also apply more broadly. The rollover relief should allow loans and interest deductions to be treated by a new owner in the same way as the original owner provided the required conditions are met.

Build-to-rent

Residential property developments that qualify as a build-to-rent development will be completely excluded from the interest limitation rules (compared with the 20 year exemption for new build

"The extent of the changes being proposed to tidy up the residential property tax rules demonstrates that these are no longer simple to apply, and the devil is indeed in the detail. Of concern is that if the architects themselves are unable to get the design right so the rules work, how is the average homeowner expected to comply with the rules?"

properties). This is intended to apply to new and existing developments who met the requirements for the exclusion, being:

- The relevant land together with attached or adjoining land owned by the same person has 20 or more dwellings; and
- Each dwelling is used, available for use, or being prepared for a residential tenancy, with an option of a 10-year term, the ability to give 56 days' notice of termination and the tenancy agreement includes a personalisation policy.

A development must continuously meet the requirements of the definition of "build-to-rent land" summarised above to qualify for the exemption. Existing developments have until 1 July 2023 to meet the definition requirements which would apply retrospectively allowing any interest deductions denied from 1 October 2021 to be claimed. Those wanting to qualify for the exemption would need sign-off from the Chief Executive of Te Tāūpapa Kura Kāinga – Ministry of Housing and Urban Development.

Co-ownership clarification

The bright-line rules apply where there is a disposal of residential land. Where residential land is co-owned Inland Revenue commentary (IS 22/03) confirms that if the proportional or notional share in the property (e.g. 50:50) doesn't change, regardless of whether there is a change in the type of co-ownership, there shouldn't be a disposal under the land sale rules. If a co-owner is added or removed (e.g. from 50:50 to 25:75) there is a disposal for the owner reducing their ownership interest. The wording of the tax legislation concerning changes in co-ownership of residential land is being updated to reflect that a change in the legal form of co-ownership, for example from joint tenants to tenants in common or vice versa, is a conversion rather than an acquisition.

A helpful change is the clarification that when a person acquires different part shares of a residential property at different times and later sells the property, the bright-line test length (e.g. zero, two, five or ten years) that applied when they first purchased an interest in the land will apply to all of the sale. This is achieved by the introduction of a new section that provides the ten year bright-line test does not apply where a person first acquired an interest in the land before 27 March 2021. The different acquisition dates will still mean a different start date applies for counting the bright-line period for each share of the land.

Partitions of land not a disposal

The definition of "disposal" is being amended for the land sale rules to exclude the allocation of subdivided land among co-owners. This applies to situations where taxpayers may purchase land together, subdivide the land and allocate the subdivided land to each co-owner based on the ownership interests in the original undivided land. The exclusion applies for the bright-line test and other land sale provisions. It will only apply to the extent that there is the same economic ownership by the parties before and after the transfer. Any difference, including wash up payments between parties, may to be subject to tax (where applicable) on the basis there has been a change in economic ownership and a disposal of land.

Conclusion

The extent of the changes being proposed to tidy up the residential property tax rules demonstrates that these are no longer simple to apply, and the devil is indeed in the detail. Of concern is that if the architects themselves are unable to get the design right so the rules work, how is the average homeowner expected to comply with the rules? It may be a better to go back to the drawing board to design something more fit for purpose rather than simply patching up a shoddy build.

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

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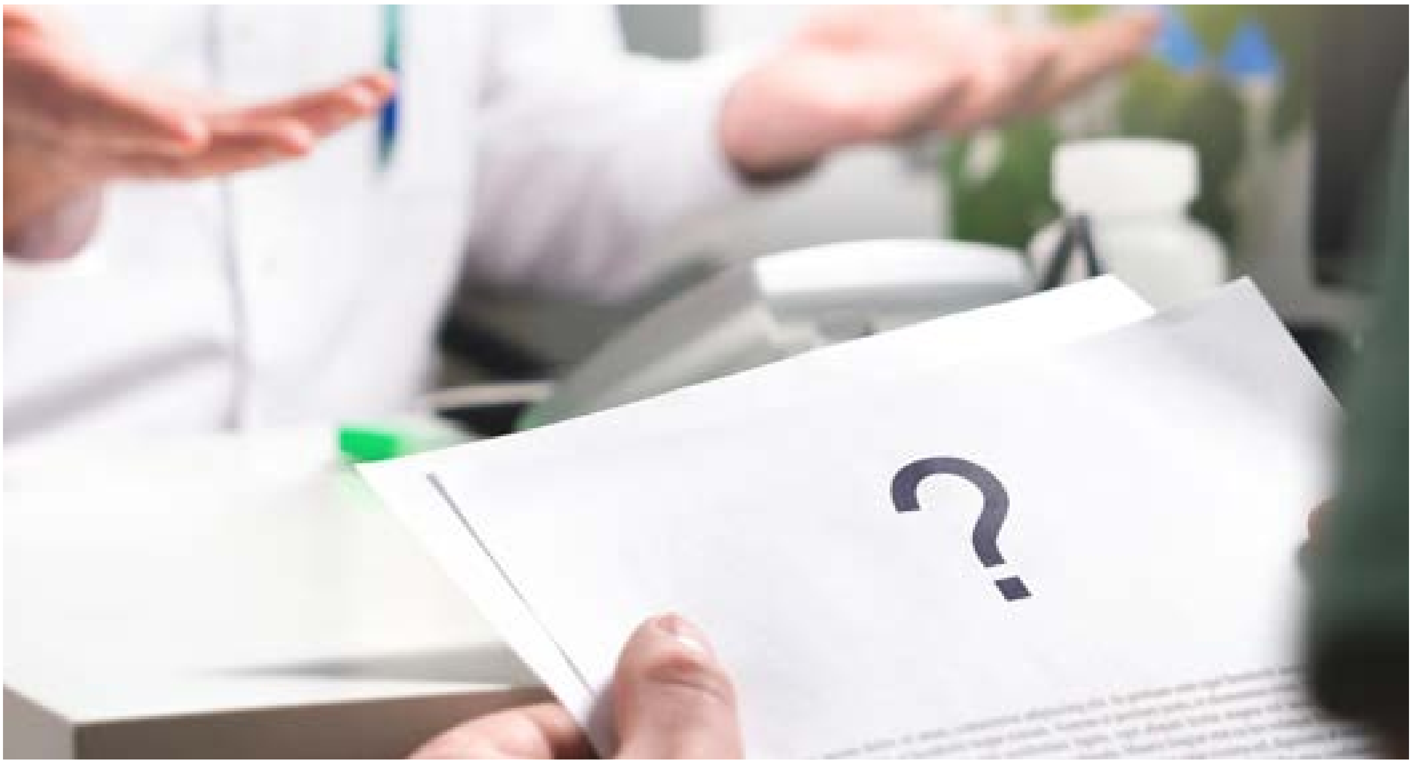
Questions over FBT regime

By Robyn Walker



Fringe Benefit Tax (FBT) is a tax that everyone loves to grumble about…. and why not? It has unintuitive rules, some unfair outcomes, complicated formulas, high compliance costs, and widespread perceptions that no one is paying it.

Inland Revenue has now completed and released a Regulatory Stewardship Review (the Review) of FBT and the conclusion is that while FBT serves a useful and important purpose in supporting the Pay As You Earn (PAYE) regime, it's not necessarily functioning as optimally as it could be.

The Review does not seek to provide specific answers to policy issues related to FBT, instead, it considers the health of the FBT system "to ensure it is functioning as intended and, if not, to identify and prioritise significant issues." As part of the process of undertaking the Review, Inland Revenue spoke to a range of internal and external stakeholders (including Deloitte), to get views on the operation of the FBT regime.

The Review notes that there was a high level of agreement between Inland Revenue and external participants about FBT's areas of strength and weakness across all areas of the stewardship review. However, the report does note that there are constraints on the ability to review the effectiveness of FBT due to a lack of data being collected by Inland Revenue.

In considering the health of the FBT system Inland Revenue has approached the review with three questions:

1. Does the design of FBT meet the policy intent?
2. What is the employer and business experience of complying with FBT?
3. How does Inland Revenue administer FBT?

Does the design of FBT meet the policy intent?

FBT is designed to ensure the tax system does not favour cash or non-cash remuneration, this is a necessary design of the tax system. Perhaps by design or simplicity, there is a general view in New Zealand that employers prefer to pay employees in cash – this simplistic approach takes away the subjective value in the eyes of the beholder of non-cash benefits (e.g. the car park one employee loves is worthless to someone without a car, a company car is more burden than benefit to someone living inner-city without a car park).

What is the employer and business experience of complying with FBT?

The Review calls out FBT as complex, "being both difficult to understand and hard to comply with". That's definitely the feedback that we receive, with even the most sophisticated employers often stumped by whether something falls within the FBT or PAYE or Entertainment regimes, and why there are different outcomes under each. Another common gripe is the extension of FBT to items that would not be considered remunerative to most people, such as flowers for a family bereavement. The rules for determining when a motor vehicle fringe benefit arises are called out as being complex, illustrated by Inland Revenue having issued a 57-page guidance item on this topic.

In absolute dollar terms, FBT revenue has increased over the last 12 years (rising 24% to $592million in 2019/20), but proportionately FBT is a tiny fraction of total tax collected (it is only 0.9% of total tax) and that proportion has been steadily dropping. This reduction in proportional FBT collections could have several explanations: (a) people are paying employees more in cash than kind, (b) people are not complying with FBT rules, or (c) something else. There isn't sufficient data available to Inland Revenue to actually conclude on this.

How does Inland Revenue administer FBT?

A common perception of stakeholders is that FBT is not being enforced. It is rarely raised in audits despite many holding the belief that FBT is not complied with, particularly the work-related vehicle exemption. Ultimately, if taxpayers think that one area of tax is not being enforced this can undermine the integrity of the whole tax system. However, the Review notes that the declining importance of FBT as a revenue source relative to other tax bases can make the decision to increase spending on FBT compliance management difficult. Despite this, the Review does recommend that FBT is included in a future operations work process and it notes that Inland Revenue has prepared a marketing campaign that focuses on "common errors in FBT", expect to see this later in 2022 (and see below for our own assessment of common errors).

Recommendations

In light of the above, the Review does recommend that FBT come under the spotlight of a policy review of some sort – at a minimum reviewing thresholds and compliance costs, through to a full policy review of the whole regime. Whether this recommendation is taken up is in the hands of the Government, as they determine what is included in the Tax Policy Work Programme and the priority of items. Given the perceptions of FBT having low compliance, operational steps must be taken in relation to compliance and enforcement; however, the timing of this needs to fit logically with whatever decision is made about a policy review.

What we do know is that Inland Revenue does intend to publicise common FBT errors. Based on our experience, what do we expect to make the list?

- Incorrectly believing the work-related vehicle definition applies to a vehicle, and, in particular, all that is required is a sign-written ute.
- Thinking there is an exemption from FBT on any day that an employee with a motor vehicle is away on holiday and the vehicle is left at home.
- Calculating the number of days a motor vehicle is "available for use" incorrectly, and having an error in the motor vehicle formula (e.g. subtracting the number of exempt days from 90 and/or using the number of days in the quarter rather than 90 as the denominator).
- Forgetting to increase the value of benefits in the general ledger by GST before calculating FBT.
- Thinking that FBT does not apply to the provision of goods that the business manufactures on the basis that these are provided for "marketing purposes".
- Providing employees with a prezzy-card and incorrectly returning GST on this benefit.
- Paying FBT on insurance premiums over the term of the insurance rather than when the premium is paid.
- Believing that the de minimis threshold allows unclassified fringe benefits to be exempt from tax provided that no employee has received more than $300 of benefits in a quarter, regardless of the total spend overall. As well as forgetting that all associated employers need to be factored in when determining whether the de minimis exemption has been complied with.
- Incorrectly thinking that the de minimis exemption or a specific FBT exemption allows a benefit to be provided without tax when the FBT regime does not actually apply and the benefit is subject to PAYE.
- Assuming the formulas in last year's excel spreadsheet are still correct and not checking them when FBT rates change.

For more information about the Review or common FBT errors please contact your usual Deloitte advisor.

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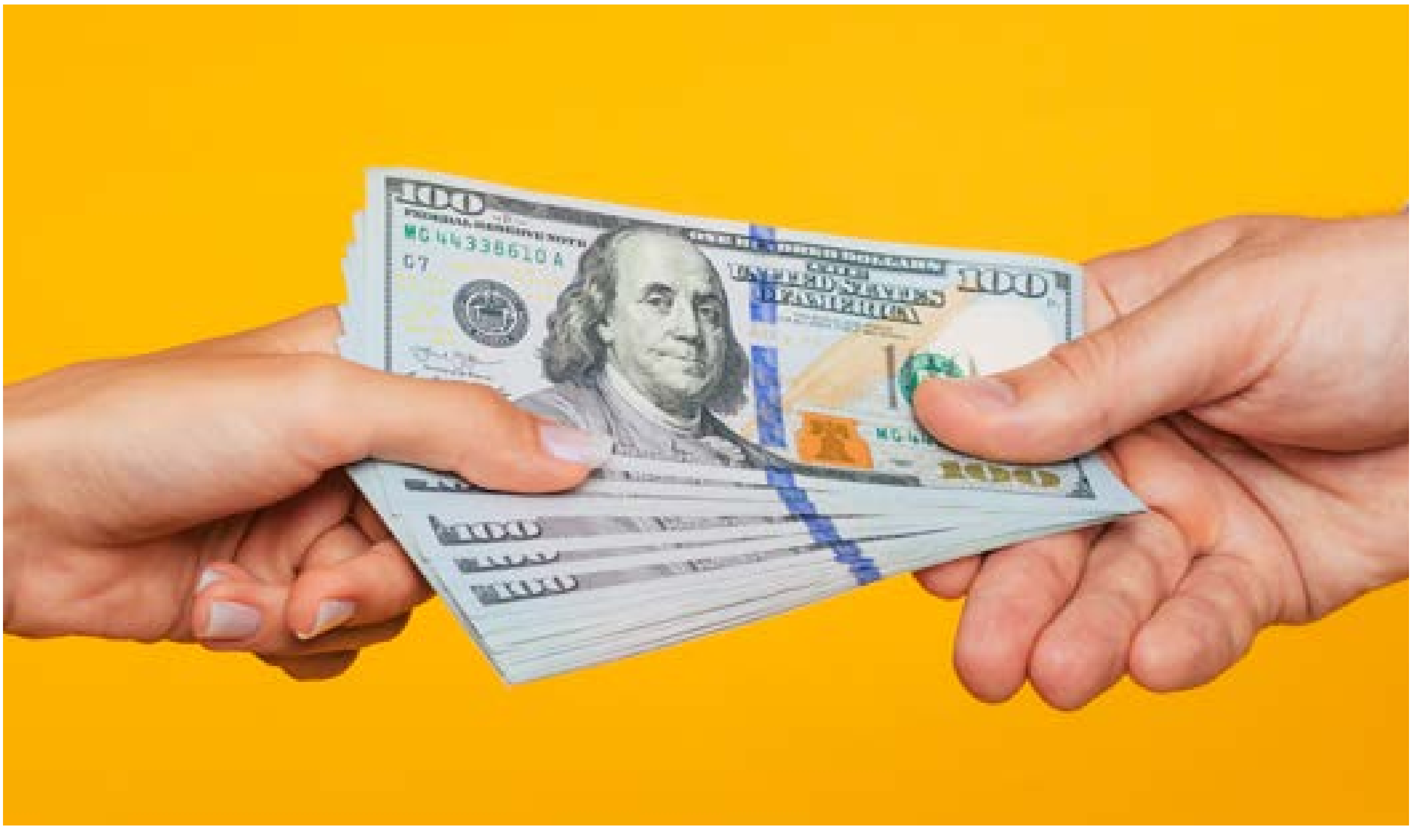
Expanding your business offshore? Here's what you need to know about transfer pricing

By Allan Munro and Lucy Scanlon



There are a myriad of issues to consider when expanding your business offshore, one of which is transfer pricing. But what is transfer pricing and why is it important to get transfer pricing right?

First up, what actually is transfer pricing?

With corporations operating across multiple countries, every revenue authority wants to make sure that it receives its fair share of the tax pie. Transfer pricing is simply the rules applied to make sure every country gets the right amount of tax. The rules apply to ensure that every entity within a multinational group (whatever size that group may be) earns an arm's length return for the functions performed, assets held and risks assumed by the entity. A good way to think of transfer pricing is as the economic overlay on the commercial operations to make sure every entity is rewarded fairly.

What do you mean by arm's length?

Arm's length simply means that any transactions between associated entities across jurisdictions are undertaken as if the related entities were independent third parties, i.e., as if the two entities were unrelated and transacting with each other on standard commercial terms.

But transfer pricing is just a year-end compliance requirement, right?

Not quite. While there are compliance requirements to prepare an appropriate level of transfer pricing documentation annually (we will come back to what an appropriate level of documentation looks like), to be able to meet those compliance requirements the transfer pricing approach needs to be in place during the year, so you need to understand and apply the transfer pricing approach in the business operations before you can document the approach to meet any compliance requirements.

OK, so what is an appropriate level of documentation?

Inland Revenue expects taxpayers to support the arm's length nature of its related party transactions through the preparation of an appropriate level of documentation. The appropriate level depends on the level/materiality of the

"Please do not fall into these traps, they can be expensive to unravel especially when discovered a few years down the track."

transactions and should always include the appropriate intercompany agreements. So, if the transactions are limited Inland Revenue would anticipate a level of documentation in line with that risk (so practical and succinct) as opposed to a large multinational business with complex and multiple transactions (in which case Inland Revenue would anticipate full technical transfer pricing documentation).

How do I figure out my transfer pricing approach and how do I apply it?

In short, talk to a transfer pricing person. The mistakes we often see are ignoring transfer pricing until it's too late or applying a transfer pricing model that worked for a mate who did something similar or just assuming that the offshore entity should be in a loss because it is in a start-up phase and reverting back to ignoring transfer pricing. Please do not fall into these traps, they can be expensive to unravel especially when discovered a few years down the track, remembering that revenue authorities can go back at least four years to ensure to correct amount of tax has been paid and an adjustment in one jurisdiction will also require an adjustment on the other side of the transaction. The key to getting the right transfer pricing model in place is to talk to a professional about what's happening in your specific circumstances. A good practitioner will identify and tailor the level of assistance you need for your circumstances and the level of any supporting documentation required to ensure a practical and efficient outcome.

So, I should sort the transfer pricing but really, what's the worst that can happen if I don't, I'm pretty small and I'm sure I can fly under the radar...

- **It's not just one year and it's not just one revenue authority** – transfer pricing looks at transactions between related entities. In every transaction, there are two parties. If one revenue authority decides to adjust, that means the other side of the transaction also needs to adjust. A revenue authority can also typically go back at least four years to ensure an arm's length outcome so the risk is not just for one year (Inland Revenue in certain circumstances can go back seven years).
- **Thinking about transfer pricing can help you think strategically about your offshore expansion** – transfer pricing looks at the business operations at an economic level and can help clarify exactly what you want your offshore entities doing and from that, where your people should be sitting/what they should be doing/when further expansion may be required, which can also help in mapping and managing other tax considerations and requirements (i.e., compliance, residency, etc).
- **Permanent establishment risk** – permanent establishments (i.e., a taxable presence) in other jurisdictions can be easily created, often unintentionally created and only discovered in retrospect (please note that if you have people offshore then you need to be thinking about whether these people are creating a permanent establishment). If you have considered your transfer pricing upfront you will know who is and should be doing what functions in which entity, ensuring an arm's length return for the offshore entities, thereby reducing the risk of invertedly creating taxable presences and tax risks in offshore locations.
- **Tax deductibility** – transfer pricing should be part of your business operations and not just a year-end journal entry to retrospectively reflect the right economic outcome. There needs to be real transactions between the related entities, supported by actual executed intercompany agreements, to ensure expenses are deductible in the right company and in the right year. The risk of not considering, implementing and supporting your transfer pricing approach in real-time is that a revenue authority could consider that there is no actual legal transaction, potentially leaving deemed transfer pricing income in one jurisdiction but no deduction in the other jurisdiction.
- **Tax losses trapped**– if transfer pricing has not been set up correctly then tax losses may be recognised in the wrong jurisdiction. To the extent a profitable return is expected by the foreign jurisdiction but the entity has returned losses, these losses may not be allowed to be utilised, effectively trapping the losses offshore. Alternatively, paying too much tax offshore (and not enough in New Zealand) could lead to double taxation.
- **Tax obligations missed** – if you don't think about your intercompany transactions upfront, you might miss some tax obligations in relation to those transactions. A good example is royalties and interest transactions, both of which have withholding tax obligations on payment and likely penalties for late payment.
- **Global compliance rules** – documented transfer pricing approaches are a common requirement in all markets, major and minor alike. These compliance expectations vary greatly between jurisdictions. It is therefore important to be aware of what these may include to avoid any unwanted surprises. In addition, adhering to compliance rules often mitigates any shortfall penalties (within reason) in most jurisdictions.
- **Customs is also interested in your transfer pricing** - Import and export transactions should be correct at the time of transaction. Importers who find they need to change the value of

goods after importation can be subject to fines and penalties on underpaid GST and customs duty. As such it is important that transfer pricing has been considered early and followed throughout the year to ensure no unexpected customs problems arise later. It also pays to remember that in many jurisdictions the customs authorities work closely with the transfer pricing teams at the relevant revenue authorities so consistency is key.

- **Sale and exit** – If the ultimate goal is to eventually exit, transfer pricing will come up as part of the due diligence process. Potential acquirers will want to see that an appropriate transfer pricing approach has been applied and documented. Not having a transfer pricing approach or the appropriate level of documentation can be identified as a tax risk that can impact the purchase price.

What should I do?

From a New Zealand perspective, Inland Revenue expects an approach that is commensurate with your transfer pricing risk. This can range from a discussion through to full suite of documentation. As such, it is critical to have a discussion with a transfer pricing specialist upfront to understand the appropriate transfer pricing approach and what level of documentation would be required for your level and risk profile. This discussion would also cover the implementation and operationalisation of transfer pricing to ensure these processes become part of BAU operations.

If you would like to discuss any of the above in more detail, please contact your usual Deloitte advisor or Deloitte's specialist transfer pricing team.

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Insights from Inland Revenue's International Questionnaire campaign. Are you in the expected normal range?

By Bart de Gouw and Riaan Britz

Inland Revenue has published the latest results of its 2021 International Questionnaire and it's fair to say the trends are consistent with prior years. However, the latest intelligence gathered through the process could indicate something different and you may be considered an outlier (by Inland Revenue) even if you think you have all your international tax affairs in order.

In 2021 was an increase in the number of foreign-owned groups that were required to respond to the questionnaire (755, up from 713 in 2020) as Inland Revenue continues to cast it's net wider.

We summarise some of the interesting trends identified from the questionnaire results below:

Thin capitalisation

66% of all respondents had a thin cap ratio (or New Zealand debt percentage) of 20% or less and only 8% recorded a ratio above 60%. This indicates that a thin cap ratio close to the 60% mark may be perceived as being at the aggressive end of the range as it appears that most New Zealand entities in the sample have relatively low levels of debt. Also of relevance is the application of the Restricted Transfer Pricing rules which apply to inbound debt and can be triggered by a thin cap level of 40%.

Mix of ownership

The USA, Japan and Australia continue to be the countries with the highest ultimate ownership of foreign-owned New Zealand companies. USA leads this category with 22% of New Zealand companies headquartered there.

An interesting trend is that ultimate ownership out of Australia is declining with 20% in 2017, 18% in 2019 and now only 16% in 2021. At the same time, we are also seeing more ownership out of Japan with 10% recorded to have Japanese head offices. Ultimate ownership out of China remains under the radar, although over time it is expected to increase. The location of both the direct and ultimate ownership of the NZ companies is important when considering the application of tax treaties for intercompany transactions.

Transfer pricing methods

The transactional net margin method (TNMM) remains the primary method (40%) used in setting transfer prices with the use of appropriate benchmarking studies becoming increasingly important. The use of the profit split method remains low at 3%.

As mentioned above, the data collected through the International Questionnaire could shape Inland Revenue's view of "normal" and in this case, transfer pricing methods not commonly used in practice (in New Zealand and OECD member states) would naturally be under more scrutiny by Inland Revenue. It is important the transfer pricing method that is the most appropriate for the taxpayer's facts and circumstances is applied and analysis is documented in support of the same. Any company not using a TNMM would be wise to review its transfer pricing documentation to ensure that it can defend the use of the alternative approach that has been taken. In many cases, an alternative method is a better method than the TNMM, so it is often a matter of documenting support for that.

Country-by-country reporting

Although no summary was given in 2021, based on the 2017 statistic that 67% of groups participated in country-by-country reporting (CbCR), it is considered this trend would continue.

Through the relevant information-sharing platforms, Inland Revenue holds a lot more information about taxpayers which they have made clear they would use for risk assessments. The ability to identify New Zealand outliers in global Group-wide data makes this a powerful platform for Inland Revenue to leverage.

COVID-19

Today a revenue authority questionnaire would not be complete without COVID-19 specific questions and the 2021 International Questionnaire recorded responses to such questions.

24% of Group entities indicated that COVID-19 impacted their financial performance during the year. Only 5 Groups (1%) experienced material changes to their transfer pricing due to COVID-19. Whether your transfer pricing model has changed or your profit margins were squeezed as a result of COVID-19 or any other relevant commercial factor, it is important the appropriate level of transfer pricing documentation is in place to support the positions taken in New Zealand. Not mentioned by the Inland Revenue in the questionnaire results is their particular focus on the interaction of wage subsidies and transfer pricing.

Follow-ups - what is Inland Revenue doing next?

Inland Revenue added additional questions to the 2021 International Questionnaire, one of which required the taxpayer to disclose whether its cross-border associated party supplies (to or from) exceed 20% of gross revenue. Inland Revenue asked similar questions in its recent transfer pricing campaigns and went so far as to immediately ask for the transfer pricing documentation to be provided.

It is our understanding that Inland Revenue will continue to ask for relevant supporting documentation to support transfer pricing positions taken and therefore if you exceed the 20% threshold and have no defence documentation in place (i.e., more than just legal agreements / transfer pricing policies) or have been significantly impacted by / changed your cross-border associated party arrangements as a result of COVID-19 (or any other commercial factor), get in touch with your Deloitte advisor and the specialist transfer pricing team.

Inland Revenue has confirmed that these questionnaires remain a key part of its annual risk assessment process and the intelligence from the analysis continues to inform key policy and operational decisions, particularly if you are operating away from the so-called norm or perceived norm.

If you would like to discuss any of the above in more detail, please contact your usual Deloitte advisor.

"Inland Revenue has confirmed that these questionnaires remain a key part of its annual risk assessment process and the intelligence from the analysis continues to inform key policy and operational decisions, particularly if you are operating away from the so-called norm or perceived norm."

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Commissioner's variation of due dates extension

On 1 September 2022, the Tax Administration (COVID-19 Response Variations) Order 2022 (SL 2022/245) was notified in the New Zealand Gazette. The Order extends the application of s 6I of the Tax Administration Act 1994 until 30 September 2023. Section 6I gives the Commissioner of Inland Revenue discretion to vary due dates, or other requirements when compliance with those requirements becomes impossible, impractical, or unreasonable in the circumstances arising from either COVID-19 response measures or as a consequence of COVID-19. The Order extends the Commissioner's ability to exercise this discretion for another year.

The order comes into force on 30 September 2022 and is revoked on 1 October 2023.

R&D tax credits - extension of notification deadline

On 1 September 2022, the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 (SL 2022/244) was notified in the New Zealand Gazette. The Order extends the notification deadline under s 68CB(1)(d) of the Tax Administration Act 1994 for the 2021–22 income year to 30 April 2023.

The Order has been made because, for a number of persons, the notification deadline has passed without the required notice having been filed. Without this Order, those persons would be ineligible for a R&D tax credit. However, in some cases, it was unreasonable or impossible for those persons to make the required notification.

The order comes into force on 1 September 2022.

Tax Relief for August Weather

On 29 August 2022, the Government enacted the Tax Administration (August Flood Events) Order 2022. The heavy rainfall experienced from 17 to 21 August 2022 was declared an emergency event. This applies to the regions of:

- The Far North of the North Island
- Marlborough
- Nelson
- Tasman

Taxpayers will be able to apply to have late payment interest waived once they have filed their returns and paid due taxes. The order expires on **31 January 2023.**

Refinements to Cost of Living Payment screening tests

On 29 August 2022, the Right Hon David Parker, Minister of Revenue announced that the Inland Revenue will be refining the eligibility screening tests for the second Cost of Living Payments (paid from 1 September). Refinements relate to the implementation of the payment as opposed to the criteria of eligibility, for instance, other data will be cross-matched and look for whether an overseas IP address has been used to log into myIR or file a non-resident IR3. As a result, some people will need to confirm they are living in New Zealand.

$1 billion in RDTI activity

On 25 August 2022, the Government announced that Research and Development Tax Incentive activity reached $1 billion, representing $150 million in tax credits allocated over the first 2 years of the scheme.

The Government stated that there are now 1,625 businesses enrolled in the scheme.

Changes to compensatory interest

On 22 August 2022, Customs updated the main rate of its compensatory interest charged to compensate the Crown for loss of use of money when duty is not paid in full and on time. The main rate aligns with that used by Inland Revenue and the rate of compensatory interest payable under ss 154 and 161 of the Customs and Excise Act 2018 will change with effect on and after 30 August 2022 from 7.28% to **7.96%.**

Tax Relief for July Weather

On 18 August 2022, the Government declared the series of adverse weather fronts that crossed NZ between 11 July and 31 July 2022 as an emergency event for use of money interest remission under the Tax Administration (July Adverse Weather Event) Order 2022 (SL 2022/232).

The regions covered are Canterbury, Gisborne District, Northland, Otago, and Wairoa District.

The Commissioner of Inland Revenue may remit use of money interest if he is satisfied that:

- It is equitable that the interest be remitted;
- The taxpayer asked for the relief as soon as practicable; and
- The taxpayer made the payment as soon as practicable.

The Inland Revenue has also exercised its discretion to allow late deposits and early withdrawals from the Income equalisation scheme to assist affected farmers and growers for the 2022 year.

The Order expires on **30 September 2022.**

Use of money interest rates increase

On 18 August 2022, the Taxation (Use of Money Interest Rates) Amendment Regulations (SL2022/233) amend the Taxation (Use of Money Interest Rates) Regulations 1998 to:

- Increase the taxpayer's paying rate of interest on unpaid tax from 7.28% to **7.96%** per annum; and
- Increase the Commissioner's paying rate of interest on overpaid tax from 0.0% to **1.22%** per annum.

The increased rates apply from **30 August 2022.**

Update on the Operation of Inland Revenue's New Information Collection Provisions

On 28 July 2022, Cabinet paper DEV-22-SUB-0111: Update on the operation of Inland Revenue's new information collection provisions (dated July 2022) was released. The paper reports back on the operation of the new trust disclosure rules and the new power to collect information for tax policy purposes. No new information is contained in the paper.

The Inland Revenue will undertake a post-implementation review of the disclosure rules in 2023, after all the returns for the 2021–22 year have been filed (31 March 2023).

Inland Revenue statements and guidance

Draft Interpretation Statement – Application of the s CZ 39 bright-line test to certain family and close relationship transactions

On 31 August 2022, the Inland Revenue published PUB00351 – Income Tax – Application of the s CZ 39 bright-line test to certain family and close relationship transactions and accompanying fact sheet. The Interpretation Statement considers the requirements of the bright-line test for residential land in s CZ 39 of the Income Tax Act 2007 and how it applies to certain family and close relationship transactions, where the ownership of residential land changes from:

- Parents to child to assist the child with buying their first home;
- One partner to themselves and their new partner; and
- All the beneficiaries who inherit the land under a will or rules of intestacy to some of the beneficiaries.

The test under s CZ 39 requires income tax to be paid on amounts derived from the disposal of residential land acquired and disposed of within the bright-line period of 5 years (s CZ 39 applies if a person first acquired an estate or interest in residential land on **29 March 2018 to 26 March 2021** inclusive).

The s CZ 39 bright-line test does not apply if the main home exclusion (s CZ 40 applies). The transactions considered in this statement are not the main home of the person disposing of it or a beneficiary of a trust, therefore the main home exclusion is not considered.

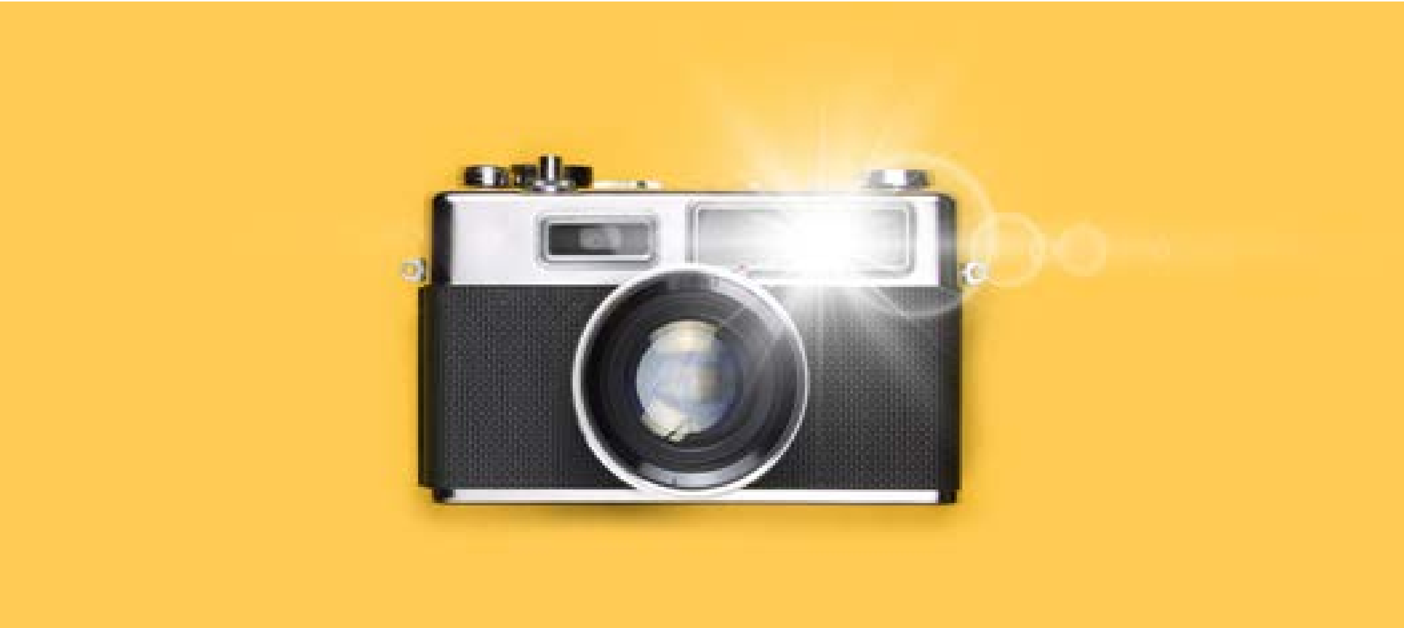
The Commissioner of Inland Revenue has determined that the s CZ 39 bright-line test applies to the following family and close relationship transactions because a person has derived an amount from disposing of residential land (assuming all other requirements of s CZ 39 are met):

- A disposal from parents, as individuals, to their child;
- A disposal from a company (which is not a Look-through-company) where the parents are shareholders, to their child;
- A disposal from parents, who are the trustees of a trust, to their child who is a beneficiary of the trust;
- A disposal from one partner to themselves and their new partner, to the extent of the new partner's share in the land;
- A subsequent disposal from the two partners to a third party; and
- A disposal from beneficiaries under a will or rules governing intestacy to a third party to the extent that the disposal interests are not their original shares acquired under a will or rules of intestacy.

If the amount derived from the disposal is below market value, it is treated as being the market value.

The Commissioner of Inland Revenue has determined that s CZ 29 does not apply to the following family and close relationship transactions involving residential land:

- A disposal from parents who are nominees or bare trustees for their child to their child;
- A disposal from a person who dies to an executor or administrator;
- A disposal from an executor or administrator to the beneficiaries under a will or rules governing intestacy;
- A disposal from some of the beneficiaries under a will or rules governing intestacy to the other beneficiaries; and
- A disposal from beneficiaries under a will or rules governing intestacy to a third party to the extent of their original shares in the land acquired under the will or rules governing intestacy.



The outcomes in the scenarios apply regardless of the relationships of the parties.

While the scope of the draft statement focuses on s CZ 39, the Commissioner of Inland Revenue notes that the same conclusions are likely to apply to s CB 6A. A separate interpretation statement on the application of the 10-year bright-line test in s CB 6A is intended to be released at a later date.

Deadline for comment is **12 October 2022.**

QWBA – Deductibility of overseas expenses

On 30 August 2022, Inland Revenue published Question's We've Been Asked (QWBA) QB 22/06 - Deductibility of overseas travel expenses. This considers whether income tax deductions can be claimed for overseas travel costs (other than meal costs) and how to apportion costs when only part of the total amount incurred is deductible. The Commissioner of Inland Revenue's view is that income tax deductions can be claimed for overseas travel costs (other than meal costs) but only to the extent that they have a connection with deriving assessable income or carrying on a business. Deductions cannot be claimed for any part of the costs that are of a private or domestic nature, of a capital nature, or incurred in deriving exempt income or income from employment. If the costs need to be apportioned between deductible and non-deductible amounts, then this must be done on a basis that is reasonable in the circumstances. The QWBA discusses previous Tax Review Authority cases and provides several examples.

Draft Determination – Depreciation Rates for automated ship mooring systems

On 30 August 2022, the Inland Revenue published draft determination ED00244 - Tax Depreciation Rates for automated ship mooring systems for consultation. This determination sets depreciation rates for automated ship mooring systems (AMS) that are used for mooring ships at wharves and port facilities. A generic asset class description is introduced to cover the varied designs for AMS technology with the proposed estimated useful life and depreciation rates of:

- Estimated useful life: 10 years
- DV Rate: 20%
- SL Rate: 13.5%

Deadline for comment is on **13 October 2022.**

Inland Revenue – Long-term insights briefing

Public service agencies are required to publish a long-term insights briefing at least once every three years. These aim to provide information on medium and long-term trends, risks and opportunities and impartial analysis on possible policy options.

Inland Revenue's final briefing Tax, foreign investment and productivity – long-term insights briefing and it's technical appendices were presented to the House of Representatives on 30 August 2022. The briefing examines how New Zealand's tax settings are likely to affect costs of capital (or hurdle rates of return) for investment into New Zealand and the implications for productivity and economic performance. It also considers the pros and cons of a set of policy reform options that could affect cost of capital. Some points from the briefing are:

- Compared to other OECD countries, New Zealand appears to have relatively high taxes on inbound investment. These taxes are likely to mean higher costs of capital (or hurdle rates of return) for investment into New Zealand than for investment in most other OECD countries.
- High taxes on inbound investment have the potential to reduce economic efficiency and be costly to New Zealanders by reducing New Zealand's capital stock and labour productivity.
- The briefing suggests that, despite New Zealand's broad-based income tax settings, there is likely to be considerable variability in costs of capital. This variability is increased significantly by quite small levels of inflation, especially while real interest rates are low.
- The briefing considers several possible tax changes;
  - A cut in the company tax rate;
  - Accelerated depreciation provisions;
  - Inflation indexation of the tax base;

- A higher thin capitalisation rule safe harbour;
- An allowance for corporate equity;
- Special industry-specific or firm-specific incentives; and
- A dual income tax system.

Inland Revenue also released the Public submissions and external reviews received on the draft long-term insights briefing.

Draft QWBA's: Payments made by parents to private schools

On 15 August 2002, Inland Revenue published PUB00341 which is two draft Questions We've Been Asked (QWBA) QB 22/XX Income Tax – Payments made by parents to private schools and donation tax credits and QB 22/XX Goods and Services Tax – Payments made by parents to private schools. The draft QWBA's are accompanied by a fact sheet.

When will a parent's payment to their child's private school qualify for a donation tax credit?

Payments parents make to private schools are gifts for donation tax credit purposes where:

- The school is a donee organisation;
- The payment is money of $5 or more;
- The parent makes the payment voluntarily to benefit the school either generally or for a specific purpose or project; and
- The parent or child gains no material benefit or advantage in return for making the payment.

There are no donation tax credits for any payments paid by parents to private schools incorrectly described as "donations" (Revenue Alert 14/01).

When will a parent's payment to their child's private school be subject to GST?

In most cases, a parent's payment to their child's private school will be subject to GST. Private schools make taxable supplies of education and education-related goods and services to parents. Usually, schools will charge GST on these supplies at the standard rate of 15%. However, there can be exceptions, in particular:

- An "unconditional gift" a parent makes to their child's private school is not subject to GST; and
- Some of the boarding fees a parent pays to their child's private school can be subject to GST at what is, in effect, a reduced rate of 9%.

Consultation closes **26 September 2022**.

Draft Interpretation Statement – Company losses – ownership continuity and losses

On 12 August 2022, Inland Revenue published a draft IS PUB00398 – Company losses – ownership continuity, sharing and measurement which considers the rules applying to company losses, including carrying forward losses, sharing losses and the measurement of ownership interests.

This draft statement includes examples and diagrams and is accompanied by a fact sheet that summarises key requirements for carrying forward a loss to a later year and for sharing a loss with a profit company.

Deadline for consultation is on **23 September 2022.**

Interpretation Statement – Attributing interest in a foreign investment fund and the fair dividend rate method

On 1 August 2022, Inland Revenue published FDR 2022/01 - A type of attributing interest in a foreign investment fund for which a person may use the fair dividend rate method (Units in the Two Trees Global Equity Macro Fund – Class Z).

Any investment by a New Zealand resident investor in units in the Two Trees Global Equity Macro Fund — Class Z, to which none of the exemptions in ss EX 29 to EX 43 of the Income Tax Act 2007 apply, is a type of attributing interest for which the investor may use the fair dividend rate method to calculate foreign investment fund income for the interest.

The determination applies for the 2023 and subsequent income years.

Other guidance

Australia: Multinational tax integrity and enhanced tax transparency

In August 2022, the Australian government published Government election commitments: Multinational tax integrity and enhanced tax transparency.

This consultation paper seeks to consult on the implementation of the proposals to:

- Amend Australia's existing thin capitalisation rules to limit interest deductions for MNEs in line with the Organisation for Economic Cooperation and Development (OECD)'s recommended approach under Action 4 of the Base Erosion and Profit Shifting (BEPS) program (Part 1);
- Introduce a new rule limiting MNEs' ability to claim tax deductions for payments relating to intangibles and royalties that lead to insufficient tax paid (Part 2); and
- •Ensure enhanced tax transparency by MNEs (Part 3), through measures such as public reporting of certain tax information on a country-by-country basis; mandatory reporting of material tax risks to shareholders; and requiring tenderers for Australian government contracts to disclose their country of tax domicile.

US Inflation Reduction Act

The US has recently enacted the Inflation Reduction Act which has several tax implications, including:

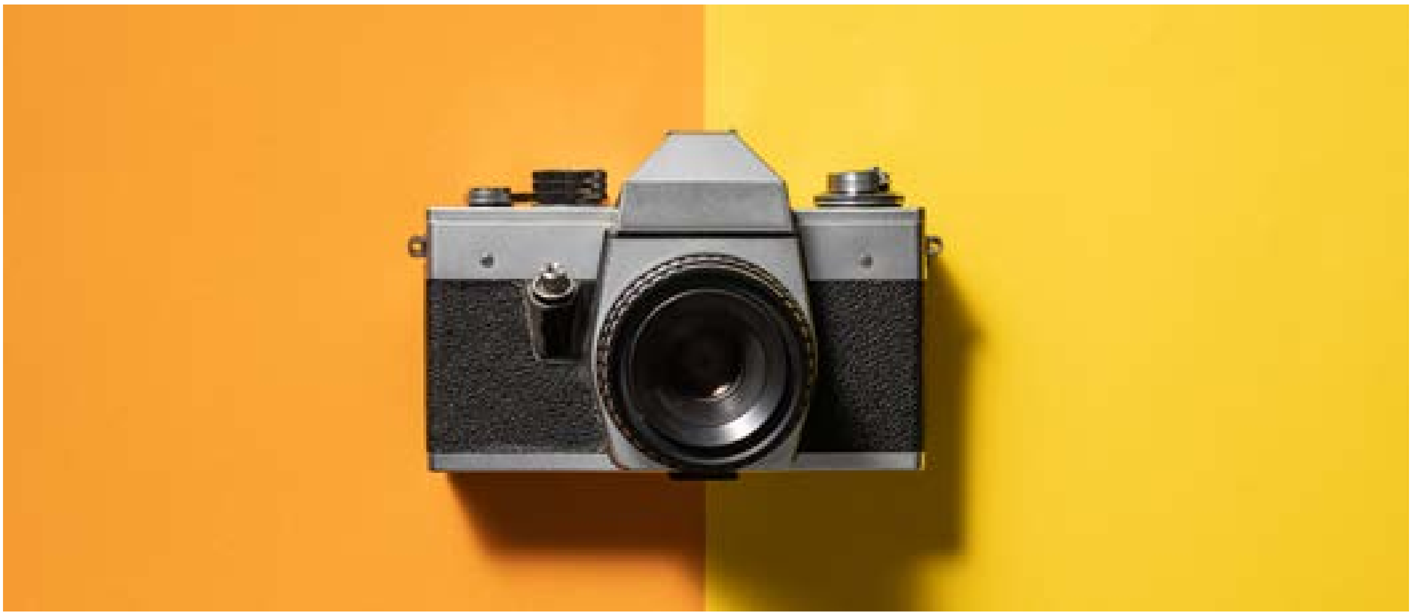
- Introducing a 15% minimum tax on corporates earning over US$1b and a 1% excise tax on companies who carry out share buybacks. The purpose of these taxes is to collect revenue to address climate change.
- A revenue allocation of US$80b to the IRS, US$40b of which is allocated to enforcement.

UK: New trust registration requirements

Changes have recently been made to the trust registration requirements in the UK. The new rules are wide-reaching and may result in certain arrangements being implicated which may not be immediately apparent upon initial consideration.

Particularly, the following arrangements will need to be registered:

- All UK trusts, including those that do not have a UK tax liability
- Non-UK trusts that acquire UK land or property after 5 October 2020.
- Non-UK trusts with at least one UK resident trustee that, after 5 October 2020, enter into a new business relationship with certain defined persons (which includes many UK professional advisors).
- Non-UK trusts that incur a UK tax liability on UK income or UK assets will continue to need to register with HMRC, as has been the case for some time.



- Trusts which were in existence on 6 October 2020 but which have since been terminated (trustees will be required to register then immediately deregister).

Limited exemptions from these registration requirements apply for certain non-taxable trusts.

OECD Updates

OECD – Tax challenges arising from digitalisation: Public comments received on the Progress Report on Amount A of Pillar One

On 11 July 2022, as part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the OECD invited public comments on the Progress Report on Amount A of Pillar One to assist members in further refining and finalising the relevant rules.

The OECD is grateful to the commentators for their input and now publishes the public comments received. You can now download the comments here.

Deloitte Global News and Resources

2022 Global Tax Survey: Beyond BEPS

The annual Deloitte Global Tax Survey of multinationals provides valuable insight into the strategies of some of the world's largest multinational companies in the face of changes in the international tax framework. In this survey Deloitte asked tax and finance managers and executives from across the globe about topics that were high on their agenda in 2022:

- The Pillar One/Pillar Two project
- Tax governance
- Tax transparency
- Digital taxation
- Effect of EU tax directives on tax compliance
- Progress of BEPS related measures

Some key points from the survey:

- Tax governance remains high on the Board's agenda.
- The Pillar One/Pillar Two project remains a 'hot topic' and businesses are preparing for impact.
- Voluntary tax transparency standards are increasingly being adopted by businesses.
- EU tax directives are seen as increasing rather than simplifying tax compliance.

The full survey results, an executive summary, a narrative paper, and an infographic can be found here.

Deloitte and SAP – Transforming Tax Together

You can now check out the Deloitte and SAP: Transforming Tax Together website and learn how Deloitte and SAP are supporting customers' tax departments with their digital transformation enabled by SAP S/4HANA Cloud, analytics, and next-generation best practices.

Global Trends in Tax Controversy

The 2022 Deloitte Tax Controversy Research Report "Age of Controversy", conducted by the International Tax Review, surveyed more than 300 companies around the globe and across all major sectors. The survey's goal is to illuminate the most frequent areas for controversy, how companies formulate responses and what drives their decision-making. The survey concluded that:

- Tax controversy levels have risen, and involve multiple jurisdictions
- Disputes are taking longer to resolve
- Experience is crucial in resolving controversies
- Companies value a strong, established relationship with tax authorities
- Companies value advisors with prior experience in tax controversy cases
- It is important to embed strong dispute resolution processes in the wider tax governance and keep senior management in the loop
- Companies have responded by hiring dedicated resource in tax departments
- "Best in class" businesses typically support in-house teams with a combination for risk and project management tools, external advisors, good comms channels with internal and external stakeholders and a well-understood decision tree

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

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