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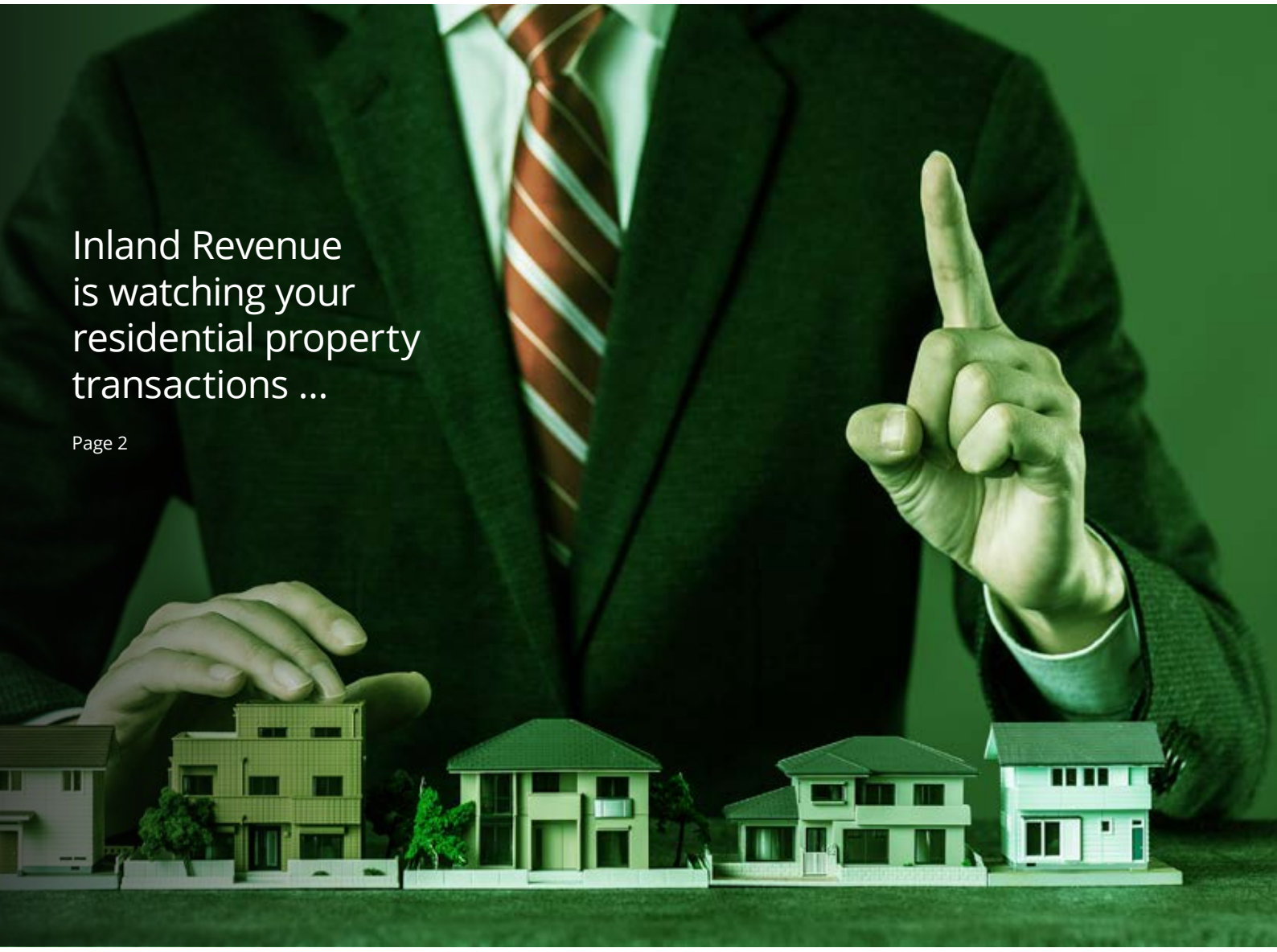
Tax Alert

May 2021



Inland Revenue is watching your residential property transactions ...

Page 2

Inland Revenue is watching your residential property transactions ...

By Susan Wynne

Anyone keeping up with the debate on the housing sector will be aware that the tax system is one of the tools being used to try and slow demand and assist first home buyers over investors. The bright-line test, which taxes profits made on residential land acquired and disposed of within the applicable bright-line period, subject to some exceptions, is one such tool.

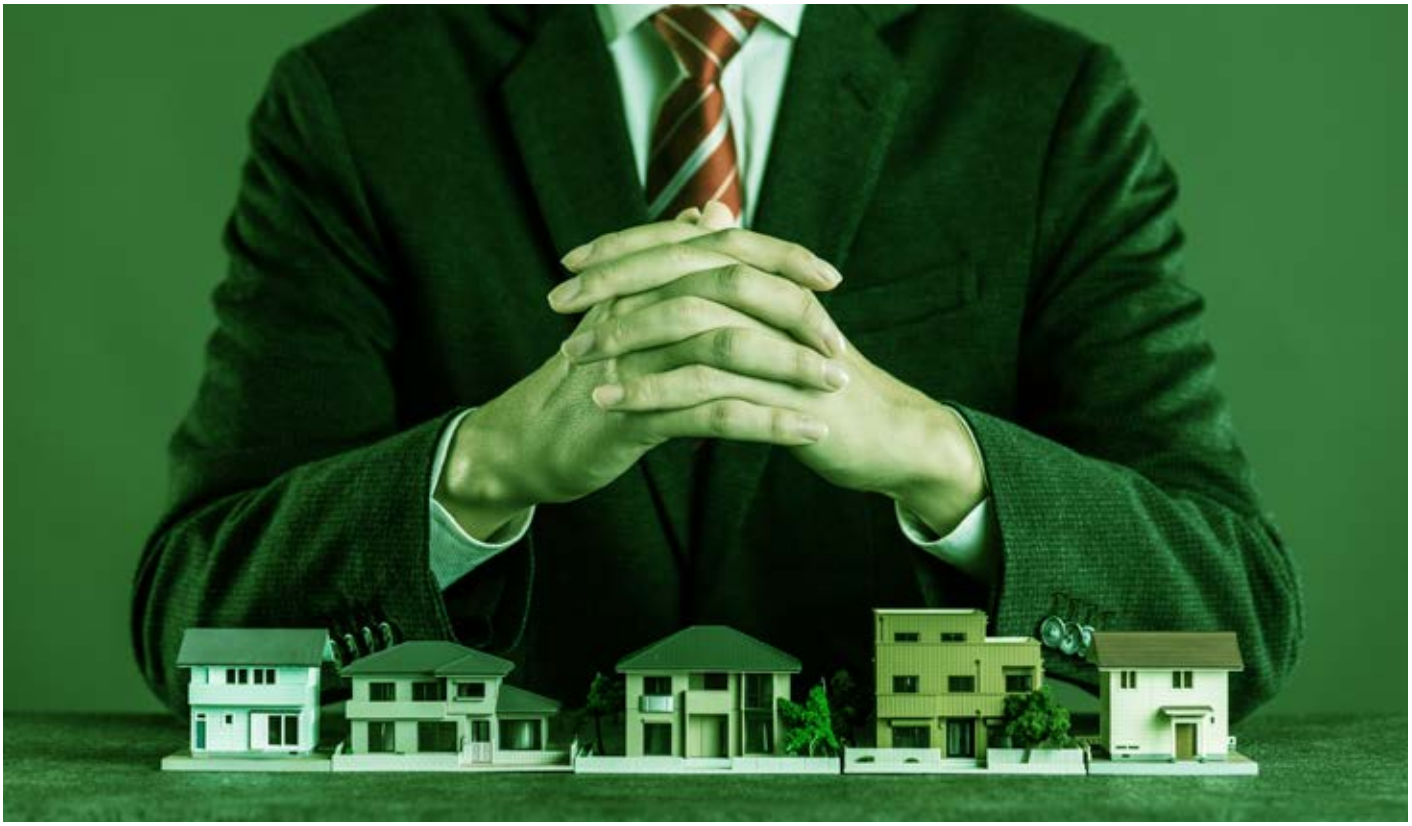
The extension of the bright-line test from 5 years to 10 year (see our comments in the April 2021 Tax Alert) has generated interest in the level of compliance with the bright-line rules. As a result, Inland Revenue has recently released information on its compliance activity and compliance rates in this area.

An important takeaway from the information Inland Revenue has provided is that it is actively monitoring when residential properties are bought and sold and how this compares to income tax returns filed. The information collected via the land transfer tax statement completed by both buyers and sellers of land (unless exempt) and provided to Land Information New Zealand (LINZ) includes IRD numbers to identify the parties to a transaction and is being used by Inland Revenue to monitor land transactions.

We have previously discussed increasing Inland Revenue activity in relation to the bright-line test in the December 2020 Tax Alert. The results of that initial activity are now available and make for interesting reading.

To better understand taxpayer compliance with the bright-line rules Inland Revenue has looked at data from the 2019 and earlier tax years where property sales have been completed and the related income tax return has been filed. From this data, Inland Revenue has determined:

- For 2019 of the 28,552 property sales which occurred during the bright-line period, 9,126 transactions were identified as being potentially taxable based on the information Inland Revenue has on when properties are bought and sold.
- While Inland Revenue has noted that investigations into the 2019 property sales are on-going, 33% correctly included bright-line income in their income tax return filed. Inland Revenue usually has sale price data so can determine what it might expect to be included as taxable income.
- Based on prior year investigations, experience tells Inland Revenue a further 37% are likely not subject to the bright-line rules, usually due to the main home exemption. Taxpayers are simply not completing the land transfer tax statement correctly to indicate this.



- Other taxpayers will have included the bright- line income in their income tax return but not in the right way.
- Where taxpayers were found to have not reported income under the bright-line test, 80% will correct their mistake when Inland Revenue first contacts them.
- A small percentage (estimated at 3%) will not be reporting income required under the bright-line test and will require further enforcement to return bright-line income.

Based on this early data Inland Revenue notes that most of the bright-line property sales reviewed were meeting their bright-line test obligations.

What we can learn from these results:

- If you are selling residential property check if you will be subject to the bright-line rules. Taxpayers may not be familiar with how the rules work and there is some complexity with how the dates apply – especially as these have been changing. Your usual Deloitte advisor can help if you have any queries.
- Compete your land transfer tax statement correctly and in full as part of the sale and purchase documents. A large proportion (37%) of taxpayers identified by Inland Revenue as potentially subject to the rules were actually excluded, usually by the main home exemption. Further investigation by Inland Revenue could have been avoided by completing the paperwork correctly, e.g. ticking the main home box if applicable.
- Correctly input any bright-line income into your income tax return to save getting questions from Inland Revenue later on. Inland Revenue has an optional bright-line property form IR833 that can be completed and submitted with your income tax return either in paper form or in myIR. Any taxable gain on sale calculated should also now be included in the Residential Income box in your income tax return – this is a new box on income tax returns intended to make the process of returning bright-line income easier. Remember that you cannot claim a loss on sale under the bright-line rules in most circumstances.

The bright-line test timeframes make it easy to monitor compliance with these rules through the use of data analytics – and we know that Inland Revenue is watching. It is worth understanding your obligations and requirements in relation to the bright-line rules when selling residential property and when filing your income tax return to save the hassle of dealing with Inland Revenue enquiries at a later date.

As always, contact your usual Deloitte advisor if you have any questions about the tax treatment of selling property.

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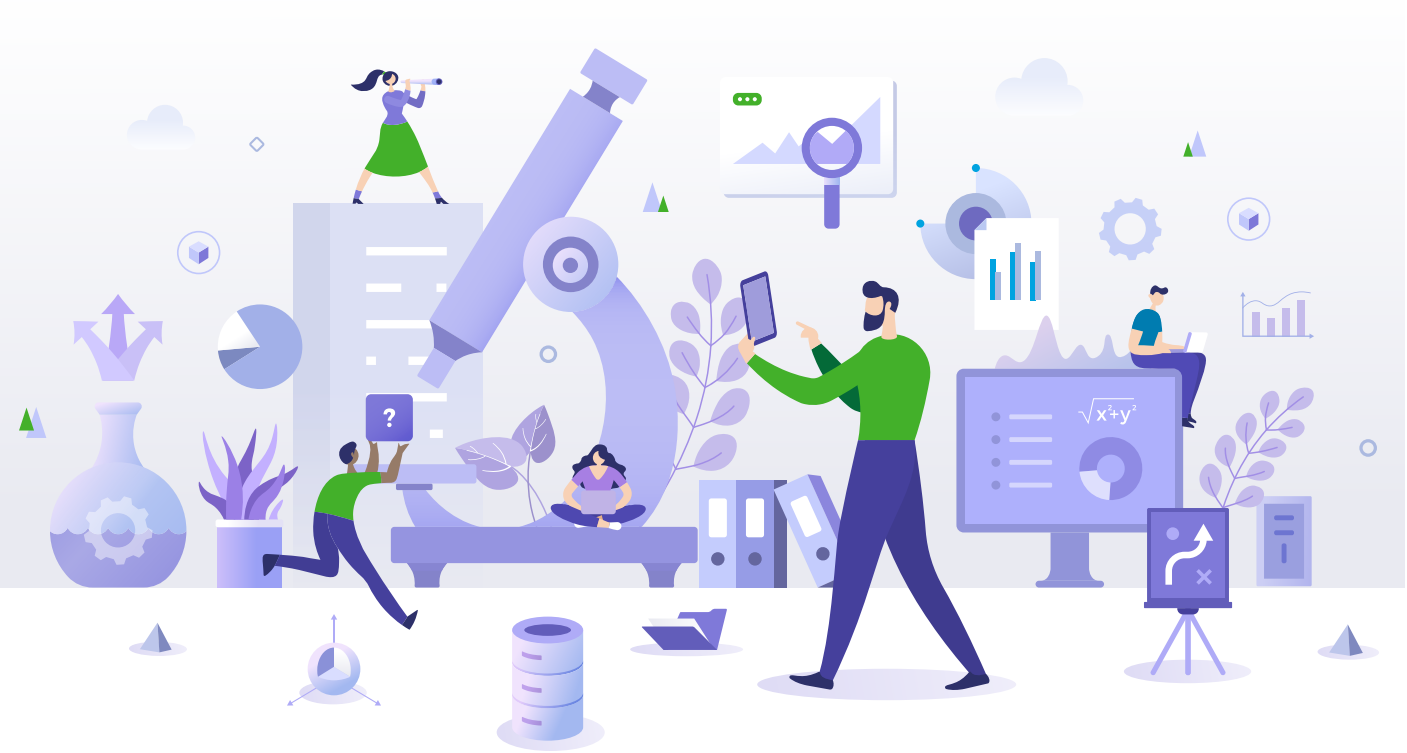
It is worth understanding your obligations and requirements in relation to the bright-line rules when selling residential property and when filing your income tax return to save the hassle of dealing with Inland Revenue enquiries at a later date.

R&D new guidance and deadlines - you might be back in the running for a 15% credit

By Simon Taylor, Brendan Ng and Denver Ingram



If you previously thought that the scope of the Research and Development Tax Incentive (RDTI) was very narrow, now is a great time to reconsider how it could benefit your business under Inland Revenue's updated guidance and extended deadlines.

New R&D guidance material released by Inland Revenue brings a welcome broadening of the interpretation of the rules, and filing extensions are available, including if your R&D activity (or preparation of your claim) has been materially delayed or disrupted by COVID-19. The broadening of the interpretation brings the regime more into line with the overall policy intent of incentivising R&D activity.

New guidance material issued – what does this change?

Following a consultation process, Inland Revenue has released two new RDTI resources:

- New 5-page R&D activity eligibility summary
- Refreshed R&D Tax Incentive Guidance

These and other documents can be found on the Inland Revenue RDTI page.

There has been some media coverage expressing disappointment in the application of the RDTI to date, especially for software companies. Previously many applications were being declined based on a very strict interpretation of the R&D Tax Incentive Guidance. While the underlying legislation remains the same, the new guidance confirms how the legislation should be applied in practice, and the team assessing RDTI claims has been trained on the new guidance and follow it closely. The eligibility summary was finalised after the detailed guidance, so the comments in the eligibility summary should prevail.

Further specific guidance on the software sector is also being prepared.

Where wording has changed or a new example introduced this can be seen as a correction or clarification to the previous interpretations that may have been applied too narrowly.

Some of these changes include:

Criteria	Then	Now
New knowledge, and/or new or improved goods, processes or services	"Newness" test on a worldwide basis.	Intent to create something that was "better" than the original should meet the test.
Scientific or technological uncertainty: what is science and technology	Did not specify what the realm of science and technology covered.	Defines science and technology to include specifically software development, product development, manufacturing process improvement and medical and food industry science.
Scientific or technological uncertainty: deducible by a competent professional	Asks whether a competent professional knows that an existing methodology will achieve the goal.	Asks whether, in fact, the competent professional can resolve the uncertainty without undertaking a systematic course of investigation – the test is not one of the degree of confidence which the competent professional has.
Scientific or technological uncertainty: nature	Applies when a competent professional does not know whether something is achievable.	Includes a problem of a scientific or technological nature.
Use of known processes	No uncertainty if a competent professional knows an existing methodology will achieve the goal.	Allows the use of known processes where the result or outcome is unknown.
System uncertainty	Not addressed.	Scientific or technological uncertainty includes the situation where the components of a system and their interactions are known, but the outcome of the system cannot be deduced from the outset. This is a key development for software.
Systematic approach	Required a planned and structured approach.	Still requires a planned and structured approach but allows for flexibility and adaptation as the process plays out, as long as it remains logical and focused on solving the problem.

As a new incentive, it was always intended for the application of the RDTI's rules to be reviewed and consulted on to ensure they were achieving the desired outcome of increasing the amount of R&D done in New Zealand. It is great to see this in action here.

What should I do now?

If you had considered the regime based on the historical guidance and thought it did not apply, then it is worth re-assessing the level of benefit available under the revised interpretation.

If you see something in the new resources that materially affects what you have already submitted (or did not submit) to Inland Revenue, please get in touch with our R&D team or your usual Deloitte advisor.

COVID-19 extensions

Two RDTI deadline extensions are now in effect:

- In April 2021 the due date for 2020 supplementary returns (being the all-in-one application for a 2020 income year R&D tax credit) was extended from 30 April 2021 to 29 June 2021, and the deadline for 2021 criteria and methodology approvals (part of the significant performer regime) was extended – see table for relevant dates.
- In September 2020 the due date for general approval (being the application for pre-approval of an activity for a 2021 income year R&D tax credit) was extended – see table for relevant dates.

In both cases the deadline variation only applies where "the planning or conduct of eligible research and development or the ability to appropriately obtain necessary information, seek advice and formulate an application... on time has been materially delayed or disrupted by the COVID-19 outbreak and its effects."

RDTI obligation	Original due date	COVID-19 extension
2020 supplementary return (all balance dates with extension of time)	30 April 2021	29 June 2021
2021 general approval application (March balance date)	7 May 2021	7 August 2021
2021 general approval application (other balance dates)	7th day of the second month after balance date	7th day of the fifth month after balance date
2021 criteria and methodologies approval (March or late balance dates)	7th day of the second month after balance date	7th day of the fifth month after balance date
2021 criteria and methodologies approval (early balance dates)	7th day of the second month after balance date	7 August 2021

How do I access the extension?
Register for the RDTI, then file your return or application by the extended due date – no official opt in is required. Ensure that you have records available supporting your eligibility for the extension. As we all know, COVID-19 had wide-ranging impacts. The need for the extension may come from various areas of your business, from the actual R&D work to the recording. Documentation explaining why time was spent elsewhere (e.g. finance team members were required on wage subsidy matters and delayed in reviewing eligible R&D expenditure) would be useful.

There are some quirks to the application of these extensions, please get in touch with your usual Deloitte advisor if you are unsure on how they apply to your business.

Further extension
Note that following the initial publication of this article, a further extension of due dates has been announced to 31 August 2021 for:

- year one (2019-20 income year) supplementary returns; and
- year two (2020-21 income year) general approvals and criteria and methodologies (CAM) approvals.

Callaghan Growth Grant top up, and refundability

In addition to the above, former Growth Grant claimants have been notified of an additional transitional support in the form of a one-off adjustment to the RDTI claim entitlement for the 2022 income year (and potentially earlier years). In order to be eligible for the support, businesses will need to enrol and complete an RDTI application. Further details on the transitional support and how to access it will be released in the coming months, please get in touch if this is of interest to your organisation.

The Government is also investigating how businesses in a non-taxpaying position may be able to access RDTI refunds in-year. This would be a welcome change to assist with cash flow.

Keep in mind some of the key points for preparing your RDTI claim covered in our previous Tax Alert article here.

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

There are some quirks to the application of these extensions, please get in touch with your usual Deloitte advisor if you are unsure on how they apply to your business.

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Loss carry back rules – is it too late to get the benefit?

By Hiran Patel

If you are considering the application of the loss carry back rules, then it's time to act as the 2021 income year is the last opportunity to use this concession.

The introduction of the temporary loss carry back rules was part of the Government's response to the impacts of the COVID-19 outbreak (see our article at the time the rules were introduced). This was a positive initiative from the Government, however this measure was only intended to apply to businesses being in losses for the 2020 and 2021 income tax years.

The Government had indicated an intention to develop a permanent loss carry-back mechanism to apply from the 2022 income year onwards, but this has been put on hold due to fiscal concerns.

To recap on the eligibility requirements, a taxpayer must have made or anticipate they will make a loss in either of the 2020 or 2021 income years. The taxpayer must have a profit in the year prior to the loss year. Given tax returns for the 2020 income year should already have been filed, the remaining option available to taxpayers is to carry a loss from the 2021 income year back to the 2020 income year

Given the temporary rules have been in place for a year, we have seen some practical issues as follows:

- **Ease of making elections**: A key benefit of this temporary regime was the ability to elect through the 2020 income tax return process for losses to be carried back to the 2019 income year. Now that the filing deadline for 2020 income tax returns has passed, if an anticipated loss for 2021 was not already factored into the 2020 tax return, until the 2021 tax return is filed the only method to access an anticipated 2021 tax loss is to undertake a section 113 request in relation to the 2020 tax return. While not explicitly clear in the enacted legislation, Inland Revenue has also indicated that taxpayers should make an election to use the mechanism through the myIR portal.

The introduction of these rules during the COVID-19 pandemic was a great initiative, however, taxpayers should be prudent when looking to use these rules to ensure they are correctly applied, and that UOMI risk is mitigated.

- **UOMI exposure**: Many taxpayers would have been able to carry back losses from the 2020 income year to the 2019 income year using finalised loss positions for 2020. However, taxpayers carrying back 2021 losses to the 2020 year through the income tax return process may have been using forecasted losses for 2021. This creates an exposure to use of money interest from the first provisional tax instalment date in the 2020 year if forecasted 2021 losses turn out to be incorrect. While it *was* possible to re-estimate the 2021 loss carry back once an election was made, this was only able to be done before the 2020 return was filed or by the due date for filing (which has now passed). As a result, taxpayers who have carried back losses based on forecasted results should be mindful of the election made during the process of preparing their 2021 tax position, and should look to use tax pool intermediaries if they have overstated their loss carry back position.
- **Group of companies**: Where taxpayers have a group of companies and tax losses can be offset, then this requires consideration prior to a loss carry back election being made. The ordering rules require losses to first be offset against profits in the group in the current year (e.g. 2021 losses should first be applied to any 2021 taxable income of group entities). Following this, once the quantum of losses to be carried back have been calculated, the loss entity is first required to carry back its losses to be offset against its own taxable income in the prior year. If excess losses are still available, then the excess loss can be offset against the taxable income of other group companies in the prior year. Inland Revenue have a loss carry back grouping template which can be used as part of the election process to assist with applying the ordering rules.
- **Imputation credits**: Refunds are only available to the extent the taxpayer (if a company) has sufficient imputation credits at the date of the most recently ended tax year, so it's important to check your imputation credit account balance before using these rules. As losses can only be carried back one year, if a refund of provisional tax was obtained from filing the 2020 return, then this would also impact on the imputation credit account balance.

Conclusion

The introduction of these rules during the COVID-19 pandemic was a great initiative, however, taxpayers should be prudent when looking to use these rules to ensure they are correctly applied, and that UOMI risk is mitigated. Given the rules are only applicable for losses in the 2020 and 2021 years, taxpayers will have until the filing date of 2021 returns of 31 March 2022 (provided they have an extension of time) to make use of this initiative.

Contact your usual Deloitte advisor for more information.

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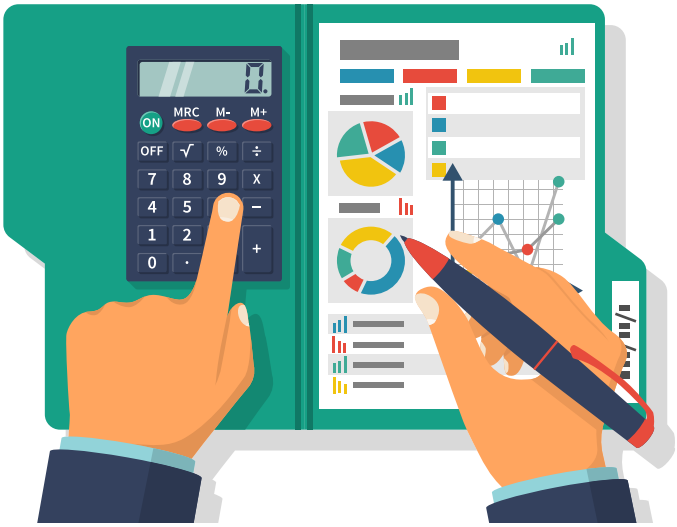
Data analytics - Inland Revenue loves it, how can you make it work for your business?

By Emma Marr



For the last couple of years Inland Revenue have been sounding a drum – the Business Transformation project has substantially improved the depth and breadth of data Inland Revenue have at their fingertips, and their ability to analyse it. The tax collectors are starting to flex their new muscle (as real estate agents and builders would be aware, which we discuss below), and we can expect to see more proactive activity by Inland Revenue as a result.

On the other hand, firms like Deloitte have had sophisticated data analytics tools at their disposal for some time. We use these tools to review a wide range of information for clients who deal with huge volumes of data. In the tax context, this enables clients to confirm their processes are working as expected, and assist in identifying any areas for improvement.

First: focus on real estate agents

An example of Inland Revenue mining their vast pool of information is a recent focus on expenses claimed by real estate agents. Inland Revenue identified that real estate agents were claiming a high level of expenses compared to income, relative to other businesses, and believed they could be claiming personal expenses against their income, rather than identifying those that were business-related. This would reduce taxable income and the amount of tax real estate agents would pay.

Inland Revenue advised they would be contacting any such real estate agents to request records supporting the expenses claimed. Inland Revenue has provided specific information for such agents and sales people, including a guide to tax for those working in the real estate industry, information on record keeping, making voluntary disclosures for past returns that might be wrong, and a link for people to anonymously report tax evasion or fraud.

Second: builders cash jobs

The next area of interest is the construction industry, with Inland Revenue launching a campaign based on the idea that cashies won't rebuild our country.

Encouraging the construction industry taxpayers to "get it right from the start", Inland Revenue invoked Big Brother levels of observation, noting:

"We can see when tradies buy supplies, such as paint, carpet or timber without a corresponding declared job. We can also access information held by other Government departments, banks, loyalty cards, casinos and many other organisations to make sure all income is being declared."

As well as providing guides on record keeping, GST and employing staff, as with the real estate agent campaign, Inland Revenue again encourages making voluntary disclosures for past returns that might be wrong, and provides a link for people to anonymously report tax evasion or fraud.

Third: new 39% rate

Although no official "campaign" has been announced, Inland Revenue will undoubtedly be checking that payroll taxes (including FBT and ESCT) are being correctly aligned with the 39% rate, and that employees receiving salary and wages taxed at 39% are applying the top marginal tax rate to other income they receive. From 1 October RWT will also increase. The information that Inland Revenue receives from payers of income will be matched with the tax paid by the recipients to ensure the right amount of tax is being paid.

What's next: your business?

This approach will inevitably be rolled out for any other industry or tax that Inland Revenue identifies as being an area of concern. All taxpayers should be thinking about the insight that data analytics will give Inland Revenue into the tax they pay, and their tax compliance processes.

If you'd like to discuss Deloitte's data analytics tools and capabilities, or how we can help you gain visibility and control over your tax profile and compliance processes, contact your usual Deloitte advisor.

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Time to review your Employer Superannuation Contribution Tax rates

By Robyn Walker and Charlotte Monis

When it comes to payroll, everything should be simple right, what could possibly go wrong? The truth is that plenty can go wrong, and one aspect of payroll has recently hit the headlines as a tax which can cause large and costly errors over an extended period. The culprit? Employer superannuation contribution tax (ESCT).

What is ESCT?

ESCT is a tax which is deducted from employer contributions to employees' KiwiSaver or other complying funds. The correct rate of ESCT to apply to each employee is based on the employee's marginal tax rate. However, determining which rate will apply requires knowledge of an employee's annual income. While this may seem simple, it's not always the case. The ESCT rate is calculated based on the employee's "ESCT Rate Threshold Amount", as set out in the following table:

ESCT Rate Threshold Amount	ESCT Rate
$0 - $16,800	10.5%
$16,801 - $57,600	17.5%
$57,601 - $84,000	30%
$84,001 - $216,000	33%
$216,001 upwards	39%

ESCT is applied at a flat rate based on the most appropriate rate for each employee. That ESCT rate is based on the ESCT Rate Threshold Amount, which is determined based on historical data or predicted information, depending on the length of service of a particular employee:

Option 1: If the employee was employed for the whole of the previous tax year; the total of prior year salary or wages, plus the gross amount of employer superannuation contributions (before deduction of ESCT) in the prior tax year.

Option 2: If option 1 doesn't apply; the total amount of salary or wages that the employer estimates will be derived by the employee in the tax year the contribution is paid, plus the amount of gross employer superannuation contributions (before deduction of ESCT) that the employer estimates they will pay in the tax year.

Common ESCT mistakes you don't want to make

Some common mistakes to avoid:

- Don't set and forget. ESCT rates need to be reviewed annually. This is especially important for employees who need to move from the "option 2" to "option 1" methodology described above.
- Make reasonable estimates of earnings and superannuation contributions if you've got new employees.
- Sense check and do spot checks. While many employers use payroll software, many software packages don't calculate ESCT rates correctly.
- Don't forget former employees. If contributions are still made after an employment relationship has ended, ESCT still applies; but it applies at a flat rate of 39%.
- Don't assume that you've got it right in the past. Until recently, Inland Revenue hasn't had a computer system which could catch errors on a timely basis. Inland Revenue's new computer system makes it easier to detect potential errors – they'll start sending letters to employers from May 2021.

What to do if there is an error

Inland Revenue's greater visibility of ESCT data now begs the question of what should be done if an error is identified? To correct a payment mainly depends on whether you paid too much or too little, and how the error occurred.

A) If you've paid Inland Revenue too little

When ESCT has been underpaid, the new ESCT figure is calculated using a gross-up formula. The net employers' contribution to the superannuation scheme should not be adjusted, instead the resulting ESCT is corrected by applying the gross-up formula.

Example

Delight Limited makes a 3% employer contribution to its employees' KiwiSaver funds. Delight reviews its ESCT rates and discovers it has had two employees on the wrong ESCT rates

Delight was deducting ESCT from contributions to Kerry at a rate of 30% but should have been using 33%. Kerry's gross earnings for the return is period was $4000.

The gross employer contribution is $4000 x 3% = $120.

ESCT on this at 30% would result in a net employer contribution of $84 and ESCT of $36.

Since the ESCT was underpaid, Delight would need to use the following to calculate the correct ESCT:

[(tax rate ÷ (1 – tax rate) × contribution to fund) – tax already paid]

= [(.33 / (1-.33) x $84) - $36] = $5.37

Delight would need to increase the ESCT amount from $36.00 to $41.37 without making any adjustments to the net employer contribution of $84 previously made to Kerry's KiwiSaver provider.

B) If you've paid Inland Revenue too much

When ESCT has been over-deducted, effectively the over deduction can be calculated, and Inland Revenue can transfer the excess amount to the superannuation fund.

Example

Delight was deducting ESCT from Duncan's contributions at a rate of 33% but should have been using 17.5%. Duncan's gross earnings for the return is period was $1500.

The gross employer contribution $1500 x 3% = $45

ESCT on this at 33% would result in a net employer contribution of $30.15 and $14.85 ESCT.

ESCT on this at 17.5% would result in a net employer contribution of $37.13 and $7.87 ESCT.

To correct this, the Delight should contact Inland Revenue and arrange to decrease the ESCT from $14.85 to $7.87 and increase the net employer contribution from $30.15 to $37.13.

Next steps

Taxpayers should be undertaking regular reviews of taxes, including payroll related taxes. If it's been some time since you last lifted the lid on employment taxes, now is the time to do it. Deloitte is very experienced in conducting employment tax reviews so don't hesitate to get in touch with your usual Deloitte advisor for more information.

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Taxing Social Media

By Robyn Walker and Mila Robertson

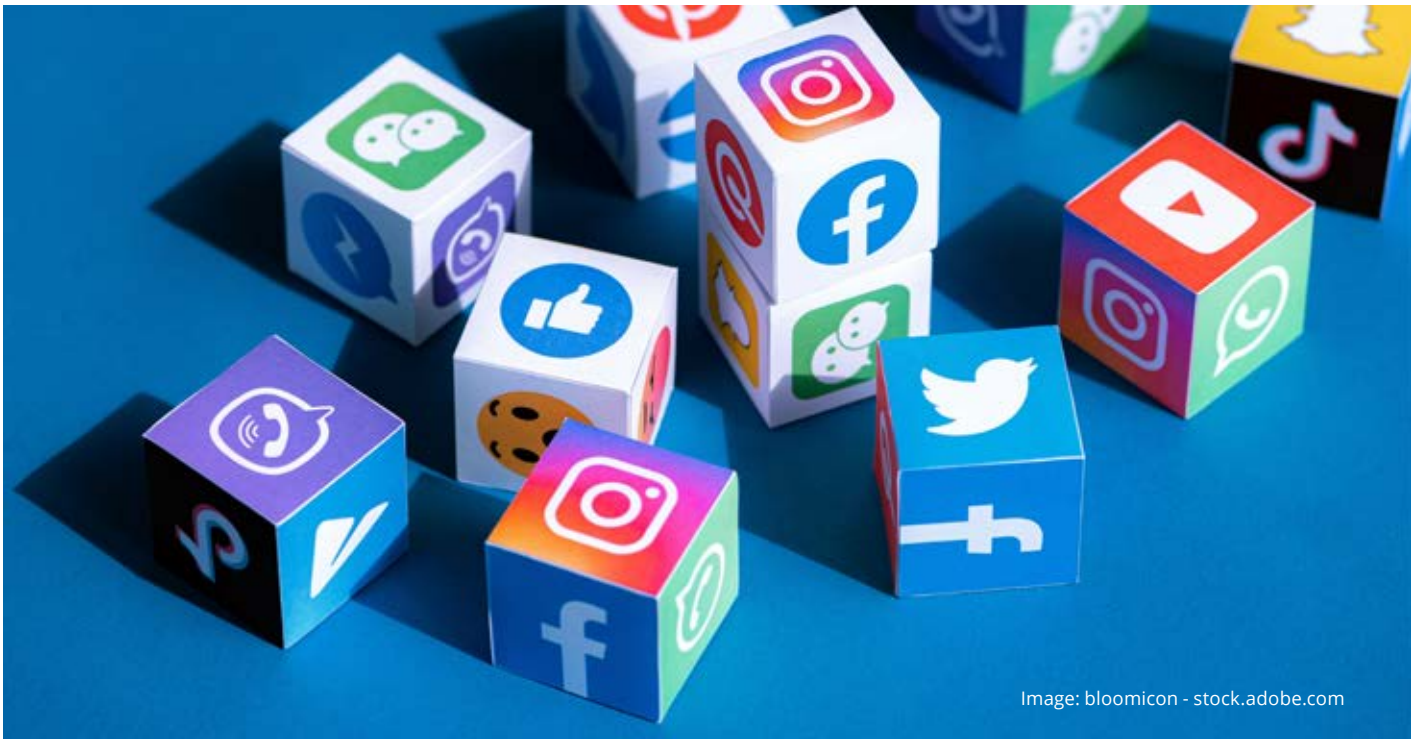

Image: bloomicon - stock.adobe.com

Social media influencers can live a complex life. From keeping up with TikTok trends, to 'vlogging' their morning routines, and even live streaming their gaming habits. With the release of Inland Revenue's ('IR') latest draft Interpretation Statement, their lives are about to get just that little bit more taxing, literally.

Positively, social media creators are joining cryptocurrency investors in a group of taxpayers deemed to have situations complicated enough they deserve tailored guidance from IR for their nuanced circumstances (see our previous articles here and here). This guidance shows that IR are committed to helping taxpayers with unique situations take a correct tax position.

Much of the contents of the draft interpretation statement should not be new to accountants, but they serve as a reminder of the general principles that underpin our tax system, and, importantly how they apply to a some unique situations. Essentially, this statement applies to anyone that posts online content including bloggers, youtubers, gamers and even Instagram models. We summarise some of the key points from the draft statement below.

Income

When considering whether income will arise in the hands of the content creator, the general factors that deem income to arise for an individual need to be considered. These boil down consideration of the following points:

- The regularity of receipts;
- The relationship between the recipient and the payer; and
- The reason for the payment of the amount.

For amounts received to be income for content creators IR suggests the most important consideration is likely to be the regularity of receipts. For content creators, it would likely be a question of whether they are regularly receiving compensation for their posts or content. Obviously, payments to influencers are not likely to be neatly tied into the concept of regularity like salary and wage earners. However, if there is a pattern of the influencer receiving payments, income is likely to be derived and will need to be included in their tax returns.

As discussed further below, income does not just relate to cash payments influencers receive.

Barter transactions

Influencers and companies who leverage influencers as a part of their marketing strategies will be aware payment for online content is not always, or often, received in cash. This means that influencers have to be a bit more creative in order to derive financial gain from their online content. Often this results in companies providing creators with their products to promote to their audiences - "freebies" can be the currency being operated in rather than cash. This is what IR terms a barter transaction.

For example, you are a company that specialises in producing the latest in hair straightening products. A way to directly market your hair straighteners to your

Obviously, payments to influencers are not likely to be neatly tied into the concept of regularity like salary and wage earners. However, if there is a pattern of the influencer receiving payments, income is likely to be derived and will need to be included in their tax returns.

target market would be to provide a beauty influencer with your newest hair straightener. The obvious benefit to the creator being the free hair straightener (which may have a retail price of several hundred dollars), with the company able to achieve low cost, targeted marketing in return, through the influencer posting on social media promoting the product. Although no cash is being exchanged, IR's guidance suggests that if this was a regular occurrence for the beauty influencer, or part of their overall income earning activity, the influencer would be subject to tax on the re-sale value of the hair straightener.

A further closely related issue is if the influencer then goes on to actually resell the hair straightener. The implication of this being that income is again likely to arise for the influencer, being the amount the influencer resells the hair straightener for. IR is clear that there will be no double taxation and the guidance notes that a deduction will be allowed for the 'cost' (being an amount equal to the receipt).

Interestingly, when the influencer is provided with an experience or consumable item, income is unlikely to arise – unless the item can be monetised through sale. IR provides an example where a fashion blogger is invited to attend a runway show and her name is put on the door. In this instance there is no invitation or ticket that the influencer can re-sell and as such there is no income that arises. The same position is also true for consumable items that must be used during the promotion of a product or service (for example an online gamer who receives energy drinks to consume while streaming). IR also accept that some items may be a very low, or no, resale value; for example second-hand personal items.

Claiming deductions for expenditure in connection with income

Like with all self-employed individuals, certain expenditure will be deductible where it is incurred in connection with an income earning activity. IR emphasises in this guidance the point that expenditure that is private and domestic in nature, such as clothing, will almost always not be an allowable deduction. IR also notes that where content creators are incurring expenditure with a dual purpose of deriving income and their own personal use, there will need to be an adjustment to apportion the private use element as non-deductible. For example, claiming a deduction for depreciation loss on a creator's laptop will likely need to be apportioned for the element of personal use that most likely occurs on the laptop.

Withholding obligations

One topic that may come as a surprise is that some payments to influencers will be considered schedular payments. The implication of this is that the person or company paying the creator has an obligation to withhold tax on these payments. Some examples include payments for:

- A performance at a sporting event or competition (or advertising a product as part of the event);
- Acting, signing, playing music, dancing or entertaining generally (or advertising a product as part of the event);
- Modelling fees (which includes personal attendance for any promotional purpose, for photography, for supplying personal photographs, or for supplying personal endorsements or statements); and
- Media production fees (e.g. producing a video for an advertisement).
- Payments to creators to livestream their online gaming in an esports competition is explicitly given as an example of a schedular payment.

GST considerations

A further matter that content creators need to keep in mind is the GST implications of their activities. This guidance provides a timely reminder that where creators expect their supplies of goods or services to exceed $60,000 in any 12 month period, they need to register for GST and charge it on the goods and services they provide. This supply includes amounts derived in barter transactions as detailed above.

For more information on any of the topics above, please contact your usual Deloitte advisor.

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Do you know who can sign your corporate tax return?

By Justine Reed and Aryana Nafissi

The lead up to the 31 March tax filing deadline can be hectic. The last thing on anyone's mind is who is responsible for signing the final tax return but every year it is one of the most common questions we get asked. It can lead to delays in filing the return as companies try to track down a director or executive office holder to sign the return. This is more common for companies who operate their New Zealand business from an overseas jurisdiction, particularly if there is a legal requirement to appoint a specific person, and they are the only person who can sign the return. Case in point, companies in Australia are required to appoint a public officer for this task.

Luckily, in New Zealand there is no legal requirement to appoint a specific person. A company has the option of electing a nominated person to sign on the company's behalf, otherwise the return can be signed by whoever the company deems to be an authorised person.

So how do you decide who can be an authorised person?

Unfortunately (or fortunately), there is no definition of "authorised person" in the tax legislation. The Tax Administration Act 1994 just states that a return signed and filed by a person is deemed to have been made by that person or by their authority, unless proved otherwise.

Over the years, IR has taken the view that anyone can sign a tax return if they have the authority to do so. The company can expressly provide authority, or it can be implied by virtue of the position that the signer holds. So, this means that anyone that a company authorises to sign off the tax return has the authority to do so. It could be the CEO, General manager, CFO or even the tax manager along with the more usual directors or executive office holders of the company.

It should be noted that tax returns do not have to be physically signed, they are able to be e-signed (which the majority of our clients now do) and emailed to us for filing. However, if you do wish to physically sign the return, you do not need to provide us with the original copy, scanned copies are fine.

With the 2021 tax season kicking off, now is a great time to think about who within the company you are comfortable with signing the tax return and putting processes in place to ensure a streamlined approach, to ensure that there are no delays in getting the return signed.

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Snapshot of recent developments

Tax legislation and policy announcements

Special report on the Annual Rates Act

On 9 April 2021, Inland Revenue released a special report on the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Act 2021 and this has been further updated on 28 April 2021, to incorporate a few minor corrections and updates under feasibility expenditure. The report includes further guidance and examples on key areas of the Act. This precedes the coverage of the Act in an upcoming edition of the Tax Information Bulletin.

Order in Council – Meaning of accommodation

On 22 April 2021, the Income Tax (Employment Income - Meaning of Accommodation) Regulations 2021 was issued under s CE 1(4) of the Income Tax Act 2007 and came into force on the same date. This Order in Council establishes a tax exemption in relation to accommodation that is provided to an employee between 22 April 2021 and 30 June 2022 in order to enable the employee to isolate due to the risk of the outbreak or spread of COVID-19.

Inland Revenue statements and guidance

Deduction notices

On 12 April 2021, Inland Revenue issued Standard Practice Statement SPS 21/01 – Deduction notices. This replaces SPS 11/04 – Compulsory deductions from bank accounts and takes effect from 12 April 2021. The statement sets out Inland Revenue's power to issue a deduction notice to recover outstanding amounts of tax from a third-party and provides guidance on how the Commissioner will use such notices.

Depreciation rates for e-scooters and e-bicycles

On 26 March 2021, Inland Revenue published Determination DEP106 - Tax Depreciation Rates for e-scooters and e-bicycles used in the ordinary course of business, and e-scooters, e-bicycles and bicycles (pedal) used for short term hire of 1 month or less. This determination applies for the 2020/21 and subsequent income years.

Consultation items

Deemed dividends

On 21 April 2021, Inland Revenue published consultation document PUB00362 - Deemed dividends. This draft interpretation statement considers when a transfer of company value from a company to a shareholder is treated as a dividend for tax purposes. It focuses on the types of transactions that are often entered into between small and medium-sized companies and their shareholders. It also considers when a transfer of value from a company to a shareholder is not treated as a dividend and is instead taxed under other rules. Submissions close on 27 May 2021.

Compulsory zero-rating rules in transactions involving commercial leases

On 14 April 2021, Inland Revenue released consultation document PUB00383 – GST – How do the compulsory zero-rating of land rules (CZR rules) apply to transactions involving commercial leases? Submissions close on 25 May 2021.

Income tax and GST treatment of meal expenses

On 21 April 2021, Inland Revenue published consultation document PUB00361 - Income tax and GST - Treatment of meal expenses. This draft interpretation statement covers the income tax and GST treatment of meal expenses incurred by self-employed persons. It also discusses the treatment of meal allowances paid to employees to illustrate the differences with the treatment of self-employed persons, as well as the treatment of entertainment expenditure for the same reason. Submissions close on 27 May 2021.

Deductions for businesses disrupted by the COVID-19 pandemic

On 15 April 2021, Inland Revenue published consultation document PUB00393 – Income tax and GST – deductions for businesses disrupted by the COVID-19 pandemic. This draft interpretation statement considers whether a business can claim an income tax deduction for expenditure or loss incurred where the business has downscaled or stopped operating because of the COVID-19 pandemic. This statement also briefly considers the GST implications of these events. Submissions close on 28 May 2021.

Depreciation rates for brake test rollers

On 7 April 2021, Inland Revenue released consultation document ED0229 – Tax depreciation rates for brake test rollers. This draft determination sets depreciation rates for brake test rollers used in the ordinary course of business and applies for the 2020/21 and subsequent income year. Submissions close on 20 May 2021.

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

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