

# Tax Alert

October 2023

## FBT exemption for bikes – where to start

Page 2



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**Insights from Inland Revenue's 2022 International Questionnaire campaign and lessons in transfer pricing risk management**  
[Page 5](#)

---

**To Trust or not to Trust...**  
[Page 7](#)

---

**Will the Business Payment Practices Regulations affect you?**  
[Page 10](#)

---

**Deloitte wins big in the 2023 ITR Asia-Pacific Tax Awards**  
[Page 12](#)

---

**Snapshot of recent developments**  
[Page 14](#)

# FBT exemption for bikes – where to start

By Robyn Walker and Blake Hawes



Six months have now passed since we saw the introduction of some eco-friendly Fringe Benefit Tax (FBT) exemptions for the [provision of bikes, scooters and public transport](#). While these new rules were introduced with great intentions, as the rules were added into legislation without any public consultation many employers remain uncertain about how to use these initiatives.

In this article, we explain some things to consider when considering an employee bike scheme.

## It sounds simple, right?

When an employer provides benefits outside of the usual salary & wages or bonus, those additional benefits are (generally) subject to FBT. From 1 April 2023 a new exemption was introduced to remove FBT when a bike, e-bike, scooter or e-scooter (collectively referred to as 'bike' for the purposes of this article) is provided by an employer for the main purpose of an employee travelling between their home and place of work.

Upon first glance at the new rules, they look just like how you'd think; if an employer provides a bike to an employee for the purposes of travelling to and from work the provision of the bike will not be subject to FBT. However, employers have a number of issues to work through. To start with, will the employer own a fleet of bikes that employees can use, rent bikes, or purchase and transfer ownership of the bikes to employees? The issues to consider vary depending on the approach taken. In this article we'll focus on the last scenario.

## Why have an employee bike scheme?

Employer bike purchase schemes achieve multiple outcomes at once. A key one is that they help to overcome the barrier to employees of the high upfront cost of a bike, by spreading the cost over time. They deliver a tangible benefit for employees in facilitating a purchase that in turn enables better employee health and wellbeing outcomes, as well as commuting time and cost savings. These benefits are available across age groups and flow through to the workplace.

As well as the health and productivity of their employees, such schemes also deliver benefits more directly to organisations. Bikes can be used for work-based travel, enabling time and cost savings, as well as reducing carbon dioxide emissions, contributing to corporate sustainability goals. Having a bike purchase scheme could aid in the recruitment of staff and generally improve staff morale.

While employers may wish to consider implementing a scheme, employees may also wish to champion this issue with their employers by proposing a scheme. Waka Kotahi NZ Transport Agency has a wealth of [useful resources](#) to help with the development of employer bike purchase schemes; however, a word of warning, these have not yet been updated to incorporate the impact of the new FBT exemptions.

## Employee bike purchase schemes

When an employer is providing an employee with a bike, the employer needs to consider whether the bike is

gifted outright or whether the employee effectively pays for the bike through a reduction in salary and wages. In most instances we've come across, including for employee equity purposes (some employees may already own a bike, be unable to ride, or not have circumstances conducive to riding a bike) it is intended that employees who opt for a bike would need to enter into a salary sacrifice arrangement in order to fund the cost of the bike. That is, remuneration is looked at as a package, a combination of cash and a bike.

Even if an employee is required to effectively pay for the bike through a salary sacrifice, the existence of the FBT exemption means that an employee may effectively obtain a bike at a significant discount. To put this into an example, consider an employee earning \$60,000 who wants to purchase a bike costing \$5,000:

Bike purchase without salary sacrifice		Bike purchase with a \$5,000 salary sacrifice	
<b>Gross earnings</b>	\$60,000	<b>Gross earnings</b>	\$55,000
<b>Tax</b>	(\$11,020)	<b>Tax</b>	(\$9,520)
<b>After-tax earnings</b>	\$48,980	<b>After-tax earnings</b>	\$45,480
<b>Purchase of bike</b>	(\$5,000)	<b>Purchase of bike</b>	Nil
<b>Remaining income</b>	\$43,980	<b>Remaining income</b>	\$45,480

In this example, the effective cost of the \$5,000 bike to the employee is only \$3,500 and the employee is \$1,500 better off compared to if they purchased the bike themselves. This example does not consider whether the employer is able to negotiate a bulk purchase discount or GST. In some examples we've modelled, employees may be able to effectively purchase a bike at a greater than 50% discount through developing a bike purchase scheme.

While this sounds great, as always with tax, the devil is in the detail and when the practical implications of getting a bike to an employee are considered, the ability to make use of this new FBT exemption can be more complex than first thought.

**What tax issues need to be considered?**

The first and biggest roadblock to encouraging employers to take up this exemption is that unfortunately it only applies to FBT, therefore if an employee were to go out and buy a bike and seek reimbursement from their employer, that would remain subject to tax through PAYE. This means that the employer must be the one paying for the bike and providing it to the employee.

As noted above, an employer may wish to implement a salary sacrifice arrangement to effectively have employees fund the purchase price of the bike. Salary sacrifices however come with their own web of complexity and if a salary sacrifice is not "valid" the tax savings may not actually eventuate. Where an employee agrees for an amount to be deducted from salary and wages, this will not be a valid salary sacrifice, and the deduction will need to be made from after-tax income. To be a valid salary sacrifice an employee must have no rights under their employment contract to receive the relevant part of the salary in money instead of a bike.

If a valid salary sacrifice is not achieved there is a risk that the employer could be considered to have given an employee a loan which the employee slowly pays back through payroll deductions. In this circumstance the employee will remain taxable on their full salary/wages, the payroll deduction will be made from after-tax earnings and a taxable fringe benefit may arise on the interest-free loan provided by the employer. If the employee is paying for a bike that the employer purchased, there is a risk the employer is deemed to have sold the bike to the employee, in which case GST would be

likely be payable on the "sale" of this bike.

Even where a salary sacrifice is valid, consideration then would need to be given to the flow on effects it might have to the payments of bonuses, or the impact on employer and employee KiwiSaver contributions, and other social assistance payments.

The new FBT exemption for bikes applies if it has been provided for the main purpose of the employee travelling between their home and place of work. Employers will need to ensure they have complied with this requirement. The "main purpose" test is designed to acknowledge that there can be other use of the bike without the bike being disqualified from the exemption. While the employer is not expected to monitor the use of the bikes, Inland Revenue expects appropriate steps to be taken to ensure the main purpose test is satisfied. In our view, this is a test that employers need to apply at the time the benefit is provided, whether that is a one-off provision of a bike, continuously through access to an employer-owned fleet of bikes, or rental arrangements.

### What other issues exist?

While the exemption from tax brings several tax issues, before implementing an employee bike purchase scheme there are other non-tax issues to consider, including:

- Under a salary sacrifice, the employee will essentially be paying for the bike over an extended period (e.g., twelve months) and employers will need to consider bonding arrangements to recover amounts from employees who leave before the salary sacrifice period has ended.
- What is the funding cost to the organisation of the upfront purchase of bikes.
- Who in the organisation will be responsible for running the scheme, including entering into supplier agreements.
- Minimum wage laws should be considered (an employer should not be allowing an employee to salary sacrifice their wages below the minimum wage).
- Are there any health and safety obligations? The FBT exemption extends only to bikes and not any accessories. Employers may wish to consider whether they provide a helmet and other must-haves for commuters (lights, a lock, wet weather gear).

- Insurance and warranties.
- Ensuring there is sufficient secure storage available at or near the workplace.

### What next?

The new FBT exemptions represent an opportunity to realise the wider societal benefits from an increased mode-shift by employees out of cars and onto bikes.

While there are a number of complexities to work through, these are not insurmountable. While this article considers a bike purchase scheme, at least one supplier is working on the introduction of an alternative bike rental scheme (which may simplify matters for employers).

From a tax perspective, the key issues for employers are to ensure arrangements are structured to fall within the FBT rather than PAYE regime and to ensure arrangements with employers are worded appropriately to be valid salary sacrifice arrangements.

If you want to talk to someone who is as enthusiastic about bikes as they are tax, please reach out to the authors or your usual Deloitte advisor.

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# Insights from Inland Revenue's 2022 International Questionnaire campaign and lessons in transfer pricing risk management

By Bart de Gouw and Riaan Britz

Inland Revenue has published the latest [results](#) of its 2022 International Questionnaire capturing responses from nearly 800 foreign-owned multinational companies operating in New Zealand. We summarise the interesting trends and global developments for international businesses navigating a post-pandemic world.

## Mix of ownership

The USA continues to have the highest ultimate ownership of foreign-owned New Zealand companies with a 21% share. This is followed by Australia with 18% and Japan with 9%. Ultimate ownership by Chinese multinationals remains under the radar, although given New Zealand and China's strong trading relationship, it is expected to increase in the future.

With the global trend of businesses adopting regional business models, it is not surprising to see that despite ultimate ownership potentially sitting in the US, Japan or elsewhere, many New Zealand subsidiaries have immediate ownership out of Australia increasing to 41% (up from 39% in 2021). The location of both the immediate and ultimate ownership of the New Zealand companies is important when considering the application of tax treaties for intercompany transactions.



Highest Ultimate Ownership  
(excl. Foreign Syndicates)



**USA**

177  
(66 immediate)



**Japan**

75  
(27 immediate)



**Australia**

140  
(322 immediate)

### Transfer pricing methods and wider New Zealand / OECD considerations

Perhaps a surprising trend is that the use of the transactional net margin method (TNMM), in its capacity as the primary transfer pricing method in New Zealand, is steadily increasing. 43% of respondents indicated that the TNMM is being used as the primary transfer pricing method in 2022, up from 40% in 2021 and 37% in 2020. The use of the profit split method remains very low at 3% (despite extensive OECD commentary on the approach).

Distributors/wholesalers make up the largest industry (27%) of those who have received the questionnaire. Groups operating in this industry will closely be monitoring the developments of the OECD, in particular Pillar One Amount B where there is a growing consensus to seek a streamlined approach to reaching an arm's length price for baseline distributors. However, there is still a lot of water to flow under the bridge for the rules to be enacted globally. Given New Zealand's unique market characteristics, care should be taken in selecting the most appropriate transfer pricing method that will produce the most reliable transfer price.

### Risk-based questions

Inland Revenue have been clear that the International Questionnaire remains a key part of their risk assessment processes. Asking groups to answer targeted questions, allows Inland Revenue to assign risk ratings to companies that do not operate within the expected norm.

7% of respondents indicated that the New Zealand entity had over \$30 million of expenditure on goods and/or services with associated parties in Hong Kong, Ireland, Luxembourg, the Netherlands, Singapore and Switzerland (countries with low company tax rates and/or incentive regimes that make these jurisdictions more attractive to multinationals).

Businesses seem to be bouncing back after the pandemic as only 3% indicated that they have undergone restructuring during the 2022 income year (a similar level to that reported in 2017 and 2018).

12% of companies made cross-border supplies to related parties that exceed more than 20% of gross revenue and 33% of companies received cross-border

supplies from related parties exceeding more than 20% of gross revenue. These companies have also for the first time been asked if they have prepared transfer pricing documentation to demonstrate their consistency with the arm's length principle. The results of this question have not been published by Inland Revenue, but it is our understanding that active follow-ups are occurring in relation to the answers.

Now would be a good time for New Zealand entities to reconsider their transfer pricing governance if they rely on global transfer pricing documentation to support the arm's length nature of the pricing of their cross-border associated party transactions.

### Thin capitalisation

Consistent with prior results, most New Zealand companies in the sample have low levels of debt, with 63% of companies having a debt percentage of less than 20%. Only 9% of companies have debt percentages where interest deductions could be subject to denial under the thin capitalisation regime.

Also, of importance is the application of the Restricted Transfer Pricing rules which apply to related party inbound debt and where restriction is triggered by a debt percentage of 40% or greater, which was relevant for 22% of respondents. The Restricted Transfer Pricing rules first came into effect on 1 July 2018 and many loans that were reviewed and amended to comply with the new regime are likely to need review and renewal shortly (as the regime restricts the pricing of debt to five-year tenures). Current financial market conditions will have a material impact when renewing loans that were entered into five years ago. We are also aware Inland Revenue is actively following up with companies that have loans coming up for renewal that are subject to the New Zealand Restricted Transfer Pricing rules.

### What is next on Inland Revenue's radar?

There is a continued drive by Inland Revenue to ask more and more taxpayers to provide contemporaneous transfer pricing documentation to support the positions they take in tax returns. This is evidenced by the fact that a specific question was added to the 2022

International Questionnaire that asked companies to disclose whether they have prepared transfer pricing documentation if their cross-border supplies (to or from associated parties) exceeded 20% of gross revenue.

Based on the type of questions that have been asked in the International Questionnaire, it is clear where Inland Revenue will be targeting their resources. It is our understanding that Inland Revenue is also actively following up companies that have been identified as part of their risk-based assessments and will continue to ask for relevant supporting documentation to support transfer pricing positions taken.

If you would like to discuss any of the issues raised above in more detail, please contact your usual Deloitte advisor who will refer you to our specialist transfer pricing team.

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# To Trust or not to Trust...

By Viola Trnski, Amy Sexton and Robyn Walker



Trusts are always very topical, but with an [increase in the trustee tax rate](#) likely after the election, recent changes to [trust disclosure rules](#) and Inland Revenue currently consulting on an updated [Taxation of Trusts Interpretation Statement](#), trusts are again a hot topic. This article goes back to basics, providing a general overview of trusts, when taxpayers may want to consider settling assets on trust, the obligations of those involved in a trust as well as a look at the draft Taxation of Trusts Interpretation Statement.

## A brief history of trusts

The concept of “the trust”, as we know it today, has its roots in Roman times. As early as two centuries BC, the *fideicommissa* emerged; this concept involved Roman knights leaving property to a person for safekeeping when they left for war.

However, following the knight’s wishes was solely a moral obligation of good faith.

In the 14th century, English landowners used trusts to pass on land after death while avoiding inheritance rules (which, at the time, meant land could only be left to the eldest male heir).

The trusts we use today are based on the same concept, albeit with a few more rules and legislative oversight. The Trusts Act 2019 (the Trusts Act) was the culmination of a decade-long project to make trust law more accessible, codify trustee obligations, and set out reporting and filing requirements.

## Trusts Act 2019 reform

While overseas trusts are primarily a vehicle for the wealthy, in New Zealand, they are utilised by a wide range of society

including many middle-income New Zealanders. As of 30 June 2022, there were over [400,000 trusts registered](#) with Inland Revenue.

The Trusts Act reformed and modernised the legislation governing trusts in New Zealand, making trust administration less expensive and increasing the duties and obligations of the trustees. This represented a radical shift in New Zealand’s trust law and a divergence from England’s approach.

Prior to this reform statute law governed the administration of trusts. Longstanding principles of equity were drawn from English case law, and there was limited codification on the obligations of trustees or rules establishing a trust.



### Trust structure and requirements

For an express trust to exist, there must be identifiable beneficiaries, identifiable trust property, and the intention to create a trust. While a written trust deed is not required, it is commonplace and good practice to create certainty around who the beneficiaries are and what the trust property is. Trusts are flexible and can be structured in a range of ways for a variety of purposes.

There are three key roles in a trust:

1. **The settlor(s)**, who settles the property on the trust by transferring assets to the trust
2. **The trustee(s)**, who makes decisions about the trust property and decides what distributions are made to beneficiaries
3. **The beneficiary(ies)**, who receive distributions from the trust

Trusts are a creation of the law of equity and are not a separate legal entity distinct from its trustees.

### Purpose of trusts

Common purposes for settling assets in trust include (but are not limited to):

- **Ring-fencing assets for specific purposes:** you can set aside money or assets for a specific purpose, or beneficiary, by putting them into a trust. Examples of this might be to pass on

the family home to the next generation, retirement planning, education fees, or looking after minor or disabled family members.

- **Protecting assets from creditors:** trusts can be settled so that assets are protected from personal claims by creditors (given the large number of small business owners in New Zealand, this can be a common risk management strategy).
- **Relationship property:** trusts can protect assets that would otherwise be subject to relationship property claims if a relationship failed.
- **Long-term “special” assets:** long-term assets like family holiday homes can be placed into a trust to ensure they continue to benefit multiple generations of a family for a long period of time.
- **Charitable giving:** to provide long-lasting benefits to a specific cause.

Despite the likely increase in the trustee tax rate, trusts will in most cases remain an effective vehicle for their original purpose.

### Trustee obligations

There are two types of trustee obligations under the Trusts Act. Mandatory duties apply to all trustees and cannot be opted out of, while the default duties can be modified or excluded by expressing this in the trust deed. The trustee’s role has always been underscored by the principle of good faith to the beneficiaries, taking into account their interests and the purpose of the trust.

### Mandatory duties

The mandatory duties require trustees to:

1. Know the terms of the trust
2. Act in accordance with the terms of the trust
3. Act honestly and in good faith
4. Act for the benefit of the beneficiaries or to further the permitted purpose of the trust
5. Exercise powers for a proper purpose

### Other obligations of trustees

Trustees are also required to maintain core documents relating to the trust, including the trust deed and any variations, records of trust property and assets, accounting records and financial statements, and trustee decision-making.

There is also a specific presumption in the Trusts Act that trustees must notify basic trust information to every beneficiary. This basic trust information includes the terms of the trust, how the trust is administered, and information about the trust property, as well as any information that is reasonably necessary for the beneficiary to have to enable the trust to be enforced. There is a second presumption for trustees to provide certain trust information if requested by beneficiaries. Trustees do not need to disclose reasons for their decisions.

Trustees decide whether the above presumptions apply, and must have regard to (non-exhaustive):

- The nature of the interest held by the beneficiary,
- Confidentiality concerns,
- The intentions of the settlor,
- The ages and circumstance of the beneficiaries, and
- The effects and practicality of providing the information.

### Taxation of trusts and the 39% rate

An [increase to the trust tax rate to 39%](#) looks likely from 1 April 2024, with both major parties committing to this change.

The Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill introduces the rate increase but has



been paused due to the election and it will be the next Parliament who has responsibility for analysing this proposed law change.

### **Inland Revenue interpretation statement consultation**

Inland Revenue is currently updating its Taxation of Trusts Interpretation Statement. Consultation is currently open and comments are invited on the [draft statement](#) before **13 October 2023**.

The new drafted guidance includes changes to, among other updates:

- Updated definitions to account for the new trust disclosure requirements,
- Discussion around who is a “settlor”,
- Confirmation that trustees generally shall act in their capacity solely as trustee, and that joint trustees are treated as a notional single person,
- Clarification on certain types of income and distributions, and
- Trust compliance and administration.

### **I have a trust...so, what?**

Trusts remain a genuine and appropriate choice for many people looking to protect their assets, and provide for themselves or others, despite the proposed increase in the trust tax rate. There is often no black or white answer as to whether assets should be retained in a trust, or if there is another more appropriate structure. It will depend on your intended purpose and specific circumstances.

However, due to the many changes that have gone on in the trust world it is always worth seeking advice to ensure your trusts remain fit for purpose, are operating in line with their intended purpose and trustees' obligations under the Trusts Act are being met.

If you need assistance or would like specific advice, please contact your usual Deloitte advisor.

Trusts remain a genuine and appropriate choice for many people looking to protect their assets, and provide for themselves or others, despite the proposed increase in the trust tax rate.

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# Will the Business Payment Practices Regulations affect you?

By Viola Trnski and Robyn Walker



If your business has revenue exceeding \$33 million then you may be subject to [new reporting rules](#) around your business's payment practices from 2024.

The [Business Payment Practices Act 2023](#) (the Act) and [Business Payment Practices Regulations 2023](#) (the Regulations) intend to improve transparency around business-to-business payment practices by creating a publicly available information register for large businesses. If an entity's revenue exceeds \$33 million in the last two financial years, and the operating expenditure is \$10 million or greater (excluding wages and salaries, and related-party payments) then the entity will be required to report certain information under the Act.

The requirement to report under the Act is phased in, with the rules initially only applying to businesses with total revenue in excess of \$100 million in the two preceding financial years, before expanding out to capture all large businesses. The first six-month disclosure period will run from 1 July 2024 to 31 December 2024 and the second disclosure period will run from 1 January 2025, and from this point onwards the \$33 million revenue threshold will apply.

The accompanying Regulations, issued on 28 August 2023, define exactly what needs to be reported on and when. The Ministry of Business, Innovation and Employment (MBIE), the administering body, has also released some [guidance](#).

## Payment practices information

The Act requires "payment practices information" to be disclosed by reporting entities. The Regulations specify what is included within payment practices information, being:

- The **average payment time**, being the aggregate payment time for the total number of invoices paid in full during the disclosure period divided by the total number of invoices paid in full during the disclosure period.
- The percentage of the **total number of invoices paid in full** within the following bands: 0-15, 16-30, 31-60, 61-90, 91-120, and more than 120 days.
- The percentage of the **total value of invoices paid in full** within the following bands: 0-15, 16-30, 31-60, 61-90, 91-120, and more than 120 days.
- Whether the entity allows e-invoicing as

an option for suppliers (this is a yes/no response).

- Any standard payment terms set by the entity.

Entities will also be able to include details of any preferential payment terms available to small businesses and further contextual information if they wish to do so.

Payment times are measured in calendar days, starting from the date of receipt of the invoice until the date it is paid in full. Reported values are rounded to one decimal place, in New Zealand dollars, and GST inclusive.

An invoice is considered to be received as soon as it has been provided to the entity in accordance with the invoicing requirements of the relevant contract. If an entity is unsure of the date of receipt of an invoice the date on the invoice may be used. However, in MBIE guidance they note this should not be standard practice. Entities are expected to have systems that accurately capture invoice details.

### What is an invoice?

An “invoice” is a written or electronic document issued to the entity that:

- relates to the supply of goods or services *before* they are paid for, and
- notifies an obligation to pay the amount set out in the document.

This definition differs from what businesses may be used to from a GST perspective, where an invoice is defined as ‘a document notifying an obligation to make payment’. Businesses needing to apply the rules might need to consider how they can identify what invoices relate to goods and services that have already been supplied, versus invoices to prepay for goods and services which have not yet been received.

### Exclusions to reporting requirements

Under the Regulations certain payments do not have to be disclosed:

- Credit card payments
- Foreign currency transactions
- Transactions within a corporate group
- Royalty payments to the Crown
- Invoices where a credit note has been given

Under the Act, the following payment types also do not need to be reported:

- Salary or wages to employees or office holders
- Tax payments
- Rent and lease payments
- Charges related to electricity, gas, telecommunications or other utilities
- Local body rates and charges

Guidance from MBIE states that while the above items do not need to be reported, businesses are able to report some or all of the transactions, provided they do so consistently. This flexible approach will help businesses who would incur compliance costs in isolating and removing these amounts from calculations.

### Two percent variation for errors or omissions

If an entity becomes aware of an error or omission in a disclosure that results in a substantial departure from the reporting requirements, they must notify the Registrar of Business Payment Practices and correct the error.

The Regulations allow for a “permitted departure” if the resulting difference between the reported and actual amount, whether a figure or percentage, is 2% or less. If the difference is within this permitted departure, notifying the Registrar is not required.

### Fines and infringement fees

The Act allows non-compliance to be penalised through either an infringement fee, a fine imposed by a court or a pecuniary penalty. The Regulations specify that infringement fees can range between \$1,000 and \$3,000. The maximum fine that can be imposed is \$9,000. The Regulations set out a standard form for infringement and reminder notices.

This is separate from the pecuniary penalties that can be issued under the Act, which can be up to \$50,000 for an individual, and up to \$500,000 for an entity.

### What happens now?

While the Act has been passed, regulations issued and a start date is in place, during the Act’s Parliamentary processes National Party and ACT MPs indicated they would repeal the legislation if they formed the next Government. However, neither party has specifically singled out these rules as an immediate priority as part of the election campaign, therefore if these parties do form the next Government it’s still not yet clear that these rules will actually be repealed prior to the first reporting period. It would therefore be prudent for in-scope large businesses to start considering the health and hygiene of their accounts payable processes and whether the data required to be reported can be easily obtained and accurate calculations performed.

A Regulatory Impact Statement prepared by MBIE indicated that through the consultation process they had received feedback that implementation costs for reporting entities could be high, particularly for businesses needing to change processes to start collecting invoice receipt dates, and those running multiple accounts payable systems across a corporate group.

In developing the Regulations, MBIE was informed by reporting requirements in Australia, and where possible they have tried to harmonise requirements with the

Australian regime. The Australian regime has been running for a few years and businesses faced significant compliance costs in preparing for the first disclosure period. As a result, Deloitte Australia developed innovative analytic tools to assist with reporting, as well as obtaining insights to improve payment performance. Once there is greater certainty that these rules will become a feature of the New Zealand landscape, these tools will be adapted for use here.

While we wait for certainty, it is worth reviewing your current payment systems and whether you can optimise and consolidate any divergent payment processes. This might look like mapping your accounts receivable and accounts payable systems, policies, and processes, as well as identifying key risks, controls, and gaps that would enable you to meet the reporting requirements (for further detail, [see this article](#)).

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

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# Deloitte wins big in the 2023 ITR Asia-Pacific Tax Awards



The winners of the International Tax Review (ITR) Asia-Pacific Tax Awards 2023 were announced in late September and Deloitte is extremely proud to announce that we have been awarded both the New Zealand Tax Firm of the Year and the New Zealand Transfer Pricing Firm of the Year.

In the wider Asia-Pacific region, Deloitte was also the winner of:

- Tax Firm of the Year
- Global Executive Mobility Tax Firm of the Year
- Indirect Tax Firm of the Year
- Tax Litigation and Disputes Firm of the Year
- Tax Technology Provider of the Year
- Transfer Pricing Firm of the Year
- Withholding Tax Firm of the Year

#### 2024 ITR World Tax firm rankings

On the global stage Deloitte continues to be recognised by International Tax Revenue World Tax with more tier-one rankings than any other organisation. World Tax ranks firms in tiers for each country, with tier-one

being the highest ranking. Deloitte New Zealand is ranked as a tier-one firm for general corporate tax and transfer pricing. Across the globe Deloitte received 90 tier-one rankings for general corporate tax and 51 tier-one rankings in World Transfer Pricing.

#### 2024 ITR World Tax Leaders

International Tax Revenue undertakes market research on who are leading tax advisors. When it comes to the Big 4, Deloitte remains at the forefront, with 660 leaders listed in the guide for their Tax and Transfer Pricing leadership, including nine in New Zealand.

Deloitte New Zealand specifically has a number of world-leading tax practitioners, with the following partners receiving ITR rankings for the 2024 year:



**Allan Bullof**  
Indirect Tax

2024 ITR World Tax Highly  
Regarded Practitioner



**Campbell Rose**  
Tax Controversy

2024 ITR World Tax Highly  
Regard Practitioner



**Jeanne du Buisson**  
Indirect Tax

2024 ITR World Tax Highly  
Regarded Practitioner



**Greg Haddon**  
Tax

2024 ITR World Tax  
Notable Practitioner



**Bart de Gouw**  
Transfer Pricing

2024 ITR World TP Highly  
Regard Practitioner



**Bruce Wallace**  
Tax

2024 ITR World Tax  
Notable Practitioner



**Melanie Meyer**  
Transfer Pricing

2024 ITR World Tax Highly  
Regard Practitioner

2024 ITR World Tax  
Women In Tax Leader



**Thomas Pippas**  
Tax

2024 ITR World Tax  
Notable Practitioner



**Patrick McCalman**  
Tax Controversy

2024 ITR World Tax High  
Regarded Practitioner



ITR World  
Tax Rankings

# Snapshot of recent developments



## Tax legislation and policy announcements

### Game Development Sector Rebate scheme finalised

On 1 September 2023, the Hon Ginny Anderson [announced](#) that the Government has finalised the design, and is undertaking a pilot, of the Game Development Sector Rebate (GDSR) scheme which was announced as part of Budget 2023. The GDSR is a rebate on eligible expenditure of eligible businesses of 20%, capped at \$3m per annum, with a minimum qualifying expenditure of \$250,000.

### Changes proposed for Fonterra and cyclone-affected properties

On 6 September 2023, the secondary legislation [SOP No 423](#) was referred to the Finance and Expenditure Committee for consideration.

The SOP contains proposals to ensure the main home exclusion is not affected by people needing to vacate flood-affected homes, ensure the bright-line test is not triggered for Government buy out

properties, and fix a double taxation issue to allow Fonterra to deduct certain distributions to its shareholders (consistent with its previous constitution).

[Commentary](#), an [RIS on co-operative dividends](#), and the [Minister's media statement](#) are available.

### Pre-Election Economic and Fiscal Update 2023

On 12 September 2023, the Treasury released the [PREFU](#) for 2023. The PREFU outlines what the Treasury observes in the current economic and fiscal climate, what may happen in the future, and what risks we may face over the forecast period.

[More information](#), including a summary, relevant charts, and data relied on, and the Minister of Finance's [press release](#), are also available.

### Submissions and Cabinet paper: Policy framework for debt to government

On 12 September 2023, Inland Revenue released [submissions](#) received from targeted external consultation, [and a cabinet paper](#), on the [Policy framework](#)

[for debt to government](#). On 26 July 2023, Cabinet agreed to adopt the framework as a Cabinet policy tool. The framework proposes an all-of-government approach to personal debt owed by low-income households to the government.

### Regulatory stewardship review of donation tax credit regime

On 15 September 2023, Inland Revenue's Tax Policy team [announced](#) they are [reviewing](#) the rules relating to the Donation Tax Credit regime. The review is expected to be completed by mid-2024.

### Review of Customs' secondary legislation

Customs has [commenced](#) a review of their secondary legislation, which includes nearly 200 regulations, as well as orders, rules, notices, directions, and tariff concessions. The review has started with high priority matters, and as the review progresses, Customs will reach out to stakeholders.

## Inland Revenue statements and guidance

### Tax Information Bulletin, September 2023, Vol 35, No 8

On 31 August 2023, Inland Revenue released the [Tax Information Bulletin](#) for September 2023.

#### OP 23/02: Commissioner’s operational position on professional directors and board members incorrectly registered for GST – Withdrawal of OP 23/01

On 4 September 2023, Inland Revenue [updated](#) their operational position on GST registered professional directors, by issuing OP 23/02, which added a paragraph to and replaces the previously issued OP 23/01.

The new paragraph in OP 23/02 adds:

*“Also, directors and board members operating through personal services companies (therefore not in their capacity) will often be able to register the personal service company as long as the personal service company’s level of activity is sufficient to be a taxable activity as defined in section 6(1) of the Goods and Services Tax Act 1985. This is because the supply of directorship services is distinct from the supply of personally being a director.”*

OP 23/02 is effective from 15 February 2023.

#### PUB00434: Income tax – Forfeited deposits from cancelled land sale agreements

On 5 September, Inland Revenue issued the draft QWBA [Income tax – Forfeited deposits from cancelled land sale agreements](#).

The draft QWBA asks: Is a forfeited deposit from a cancelled land sale agreement income to the seller? The answer given is that a forfeited deposit is not income to the seller under the land sale rules because there is no “disposal” of land if the agreement is cancelled, and settlement and registration do not take place. However, if the proceeds from the sale would have been taxable under the land sale rules had the sale gone ahead, then it is likely the forfeited deposit will be income to the seller, that is, if:

- The sale of the land was part of the current operations of the business or an ordinary incident of the business (section CB 1).

- The seller is carrying on a profit-making scheme (section CB 3).
- It has the character of income (section CA 1(2)) i.e., the proceeds of the sale would have been taxable (e.g., under sections CB 6A to CB 23B, CZ 39, and CZ 40) had the sale gone ahead.’

Inland Revenue has set out guidance to determine whether sellers fall into the above categories.

The deadline for comment is **16 October 2023**.

#### DEP110: Tax Depreciation Rate for Gaming Machines (Electronic)

On 8 September 2023, Inland Revenue issued a determination updating the depreciation rates for gaming machines (electronic). The new rates will apply for the 2023/24 and subsequent income years.

Asset class	Estimated useful life (years)	DV rate (%)	SL rate (%)
Gaming machines	6.6	30	21

#### Technical Decision Summary: GST – Input tax deduction and taxable activity

On 11 September 2023, Inland Revenue published [TDS 23/11](#).

The Taxpayer was a GST registered company that used the payments basis and claimed input tax deductions for the periods under dispute. Inland Revenue sought a reassessment as the Taxpayer did not provide the required records and documentations, nor sufficient evidence a taxable activity was being carried on.

The Tax Counsel Office held that the Taxpayer did not meet the requirements to claim the input tax deductions, the Taxpayer was not carrying on a taxable activity continuously and regularly and should retrospectively be deregistered.

#### Technical Decision Summary: Amalgamation and liquidation

On 12 September 2023, IR issued [TDS 23/12](#).

The Taxpayer was a company with several subsidiaries who sought a binding ruling. The ruling related to winding up a

group of these subsidiaries in two steps: amalgamation and liquidation. There were ten issues to be decided, including the cancellation of shares, intercompany loans, taxable dividends, capital gains, amounts from share disposals, and tax avoidance implications. The Tax Counsel Office held that:

- the amalgamation was a ‘resident’s restricted amalgamation’
- shares in each group company are treated as disposed of immediately before amalgamation
- intercompany loans between subsidiaries are treated as repaid in full on the date of the amalgamation
- amounts derived by the amalgamated company from acquiring property of the other group subsidiaries are not dividends
- the “available capital distribution amount” calculated by the amalgamated company would be treated as deriving a capital gain amount
- the amount distributed would be treated as a capital gain amount (to the extent it is excluded from being a dividend)
- the amount derived from the disposal of shares would not be income
- section BG 1 does not apply to negate or vary the above points

#### IG 23/01: Deductibility of software as a service (SaaS) configuration and customisation costs

On 13 September 2023, Inland Revenue issued [IG 23/01](#) which clarifies the Commissioner’s position on the deductibility of costs incurred in configuring or customising a supplier’s application SaaS arrangement. Depending on the circumstances, the costs may be deductible under the general permission (section DA 1), as development expenditure (section DB 34), or as relating to depreciable intangible property.

## Global tax news

### Public Trust in Tax: Building Trust in Tax for a Sustainable Future

On 15 September 2023, the joint report [Public Trust in Tax](#) by CAANZ, ACCA, and IFAC was released. This is the fourth joint report detailing a survey of public opinion on tax issues. The survey canvassed

members of the public across G20 countries with more than 7,700 individual respondents.

In relation to the tax system, respondents had the highest level of overall trust in professional tax accountants (59% trust/highly trust) and professional tax lawyers (54% trust/highly trust). The overall trust in government tax authorities remains the same as 2021 (43% trust/highly trust).

#### **Protocol to Austria–New Zealand Tax Treaty Available**

On 19 September 2023, the [English text of the protocol](#) signed on 12 September in Vienna that amends the Austria–New Zealand income and capital tax treaty was [obtained](#).

#### **OECD updates**

##### **Taxation of labour vs capital income**

On 28 August 2023, the OECD published the working paper [The taxation of labour vs capital income: A focus on high earners](#)

which presents novel analysis comparing in a consistent way the tax treatment of labour and capital income across OECD countries, through stylised effective tax rates (ETRs).

The paper shows that dividend income and capital gains are generally subject to lower ETRs than wage income at the personal level and highlights that differential tax treatment of labour and capital income can affect the efficiency and equity of tax systems.

##### **Papua New Guinea BEPS ratification instrument**

On 7 September 2023, the OECD [reported](#) that Papua New Guinea deposited its instrument of ratification for the BEPS Convention, which will be effected for exchanges from 1 January 2024.

##### **Report: Tax policy reforms 2023**

On 13 September 2023, the OECD released [Tax Policy Reforms 2023](#) which describes how tax policy has played a central role as governments sought to shield households and businesses from the impact of decade-high inflation levels. The report covers 75 jurisdictions, including all OECD countries.

##### **Public comments on Pillar One, Amount B released**

On 20 September 2023, the OECD [released](#) the public comments received on Amount B under Pillar One. Amount B provides for a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity



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