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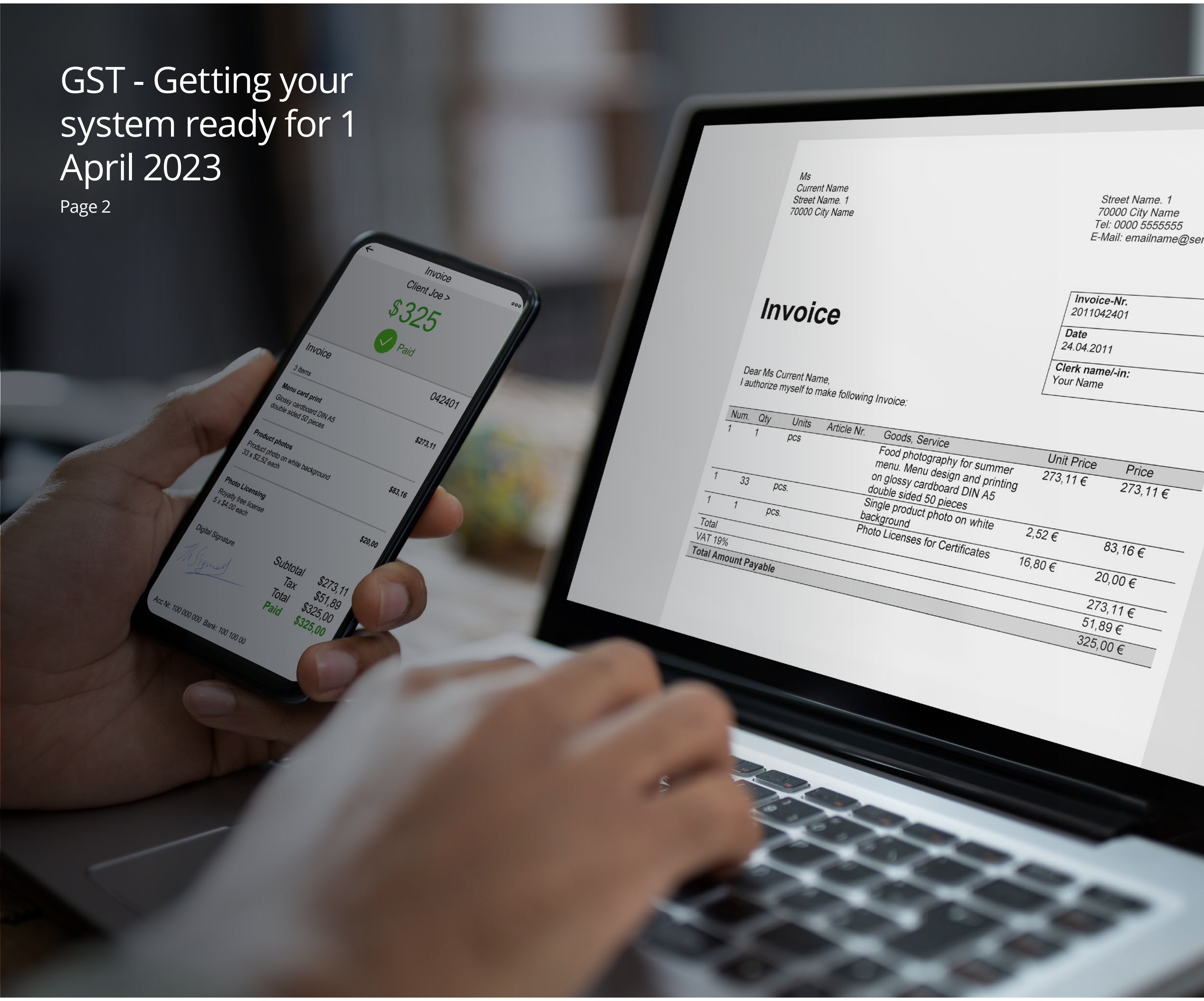
Tax Alert

July 2022



GST - Getting your system ready for 1 April 2023

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GST - Getting your system ready for 1 April 2023

By Jeanne du Buisson and Haidee Watkin

Organisations have less than a year to adapt and change finance systems to comply with some fundamental GST changes in respect of how (and what) supply information should be shared and retained. These changes are the first step in modernising some arguably outdated GST rules and proposes to change the approach to 'tax invoices' and moves the GST system into the 21st century. Although these changes are built on existing requirements, and organisations can choose to maintain the 'status quo' in issuance and receipt of something similar to a traditional tax invoice post 1 April 2023, key stakeholders may move with the legislation and organisations need to be ready to deal with receiving and issuing different types of 'taxable supply information'.

These changes may have been designed to provide organisations a greater degree of flexibility with interactions with suppliers and customers, but at the outset can provide additional complexity within finance systems, especially systems that were built around the issuance and collection of 'valid tax invoices'.

So, what are the key invoicing changes?

- Terminology is changing. 'Tax invoices' become 'taxable supply information'; 'debit notes' and 'credit notes' become 'supply correction information', and 'buyer-created tax invoices' become 'buyer created taxable supply information'.
- The current requirements to 'issue and hold' a physical tax invoice, debit note and credit note have been maintained but are now no longer mandatory. The 'tax invoice' provisions have been extended to allow provision of information in relation to the supply (taxable supply information) or amendment to the supply (supply correction information). We summarise the current tax invoice and future taxable supply information (TSI) requirements in the table below.
- The 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.
- The requirement to hold records of specified information in relation to taxable supplies is extended to both suppliers and customers.
- The low-value threshold is increasing from $50 to $200, where limited taxable supply information is needed.
- The change in buyer-created tax invoices (buyer-created taxable supply information), with the removal of the requirement to obtain Inland Revenue approval to issue these documents; and this being replaced with an agreement in writing between the parties to evidence the use of self-billing.

A good portion of the above changes have been delayed to 1 April 2023 to give organisations time to ensure systems and processes are ready to deal with changes.

Requirement	**Current rules**		**From 1 April 2023**		
	Tax Invoice < $1,000	Tax Invoice > $1,000	TSI < $200	TSI > $200 and < $1,000	TSI > $1,000
Words “tax invoice” in a prominent place	✓	✓			
Name and registration number of supplier	✓	✓	✓	✓	✓
Name and address of recipient		✓			✓ (name)
Date the invoice is issued	✓	✓			
Description of the good and services supplied	✓	✓	✓	✓	✓
Quantity or volume of the goods and services supplied		✓			
Amount of consideration for the supply	✓	✓	✓	✓	✓
Statement that consideration includes GST or amount of GST charged	✓	✓		✓	✓
One or more of: Physical address, phone number, email, trading name, NZBN, website of recipient					✓
Address of physical location of recipient (if available)					✓
Date of the supply			✓	✓	✓

Are your systems ready?

These changes can have wide ranging effects on organisations' systems, and it is a good time to review system capabilities to ensure your system is able to send/receive taxable supply information in ‘non-standard format’ and hold new information requirements. Some key system considerations are:

- Consideration to adjunct systems such as invoice scanning software. Generally, these systems check parameters to accept/reject invoices i.e., must say ‘tax invoice’ – which will no longer be a requirement.
- Consideration to employee reimbursement, credit card reconciliation and wider finance system abilities to process non standard ‘taxable supply information’ and increases to the low-value threshold.
- Capabilities of supplier and customer master databases to hold key information such as IRD number and address, that may no longer be supplied on the data feed (taxable supply information).
- Capturing the approval from other parties to issue buyer-created taxable supply information, which is readily accessible should the entity be asked by Inland Revenue. When issuing buyer-created taxable supply information, systems should ensure that only one ‘tax invoice’ (taxable supply information) per transaction is in circulation.
- System readiness for future movement towards e-invoicing.

Beyond being systems ready, organisations also need to consider the other impacts of changes in the GST legislation. Now is a good time to ensure finance staff are trained on the new taxable supply requirements and review internal policies, procedures, process notes and general frequently asked questions, along with general terms of trade to ensure they are consistent with GST changes. Doing a GST review now can assist with preparedness for 1 April 2023. Contact your usual Deloitte advisor to organise a GST review or discuss any queries you may have about the GST changes.

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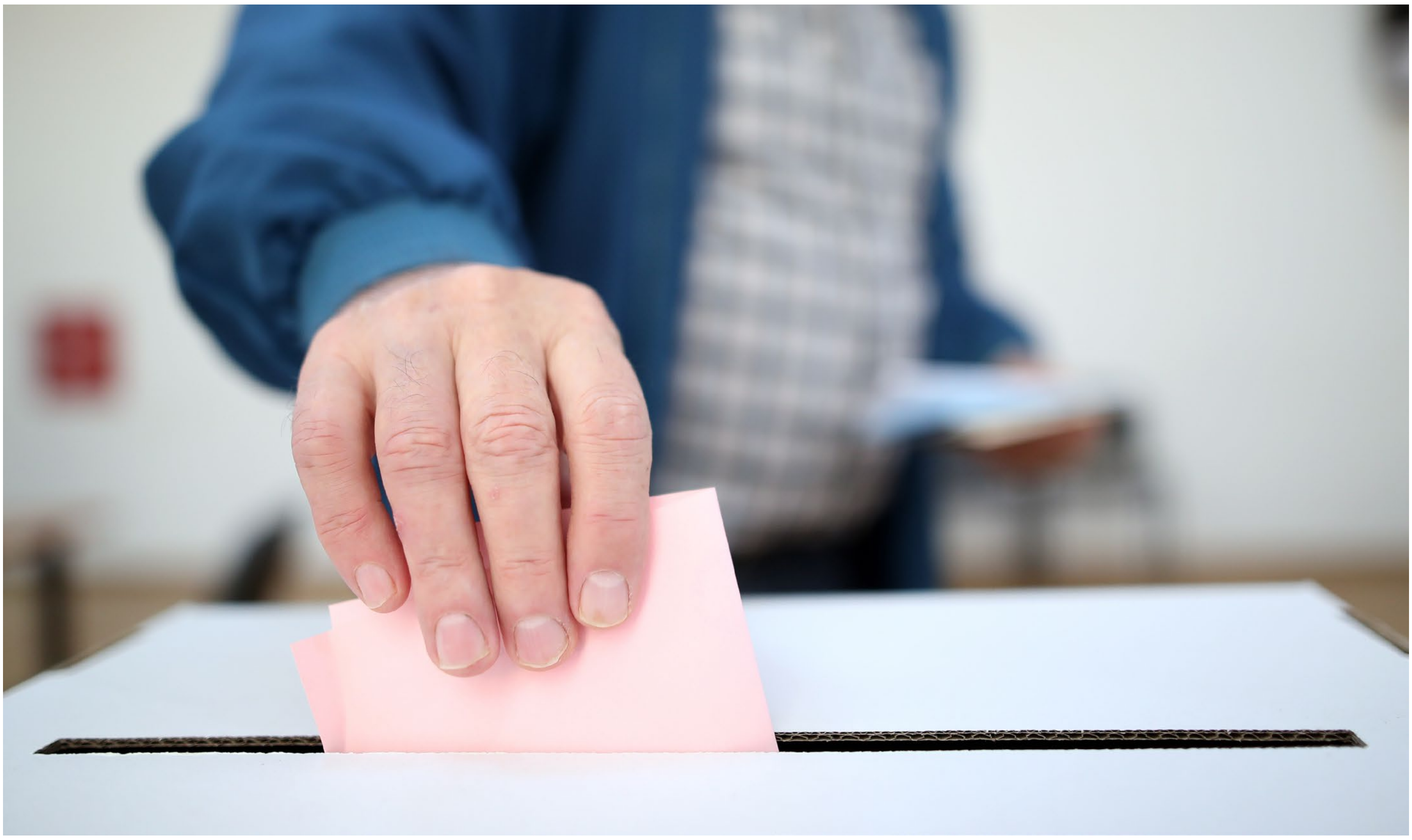
What tax reform to expect through to Election 2023

By Robyn Walker



Tax reform has a history of influencing election outcomes and as we're over halfway through the currently parliamentary term, with a lot of tax reform still on the cards in the next 12 months, it seems likely that Election 2023 could have taxes featuring heavily on the minds of voters.

With that in mind, we summarise some key tax developments expected over the next year.

Dividend Integrity and Personal Services Income Attribution Rules

In March the Government released a discussion document with some extensive proposals to tax share sales and to extend the ambit of the existing personal services income attribution rules. The discussion document proposed that legislation would be introduced in the second half of 2022 and the resulting tax rules would take effect from 1 April 2023.

The feedback received from the public on the proposals raised a number of complex issues requiring resolution; including whether the rules were sufficiently targeted at taxpayers who were deliberately seeking to avoid the application of the 39% tax rate. As such, rather than rushing through legislation, it is now expected that there will be an additional round of consultation on more targeted proposals later this year. The Government still intends to have legislation before Parliament prior to Election 2023.

Tax Principles Act

In a speech earlier this year, the Minister of Revenue signalled a desire to improve the tax system and has proposed introducing a "Tax Principles Act" to help have an apolitical framework for future tax reform. The Minister has highlighted the prior reviews of the New Zealand tax system have generally endorsed four taxation principles:

1. Horizontal equity, so that those in equivalent economic positions should pay the same amount of tax;
2. Vertical equity, including some degree of overall progressivity in the rate of tax paid;
3. Administrative efficiency, for both taxpayers and Inland Revenue; and
4. The minimisation of tax induced distortions to investment and the economy.

It is proposed that there will be consultation on the proposed Tax Principles Act in "mid-2022". This consultation will be in relation to not just what the tax principles should be, but how Inland Revenue will analyse and report on compliance with the tax principles. It's expected that following consultation, legislation will be introduced into Parliament and enacted prior to Election 2023.

High Wealth Research Project

When the 39% tax rate was legislated in December 2020, the Government also introduced a new power for Inland Revenue to collect information to assist with the development of tax policy. The first high-profile use of this power has been to collect extensive information about some of New Zealand's wealthiest New Zealanders. Inland Revenue describes the project as follows:

"The project seeks to fill a gap in our knowledge of effective tax rates in relation to economic measures of income, particularly for high-wealth individuals. Gaining this information will help us assess the fairness of our tax system, and allow us to provide more robust advice on future tax policy. The project will not make policy recommendations, but may feed into future policy advice. … The effective tax rates calculated will compare the amount of tax paid by an individual with different measures of income – including a measure of economic income. Using different income measures allows as to assess what is fair through different lenses. Economic income is a broader concept than taxable income – it seeks to measure the increase in an individual's ability to consume goods and services in a period."

Information is currently being collated and it's expected that a report will be made publicly available in June 2023.

August Tax Bill

Each year we see at least one taxation bill before Parliament, it generally sets annual rates of tax and then makes some major and remedial tax changes. This year, we're expecting a tax bill to be introduced to Parliament in late August or September. While the contents of the Bill are not publicly known, it could contain changes resulting from recent tax policy consultation items, including:

- Improvements to the taxation of cross-border workers
- Reform of GST apportionment rules
- The introduction of reporting rules and potential GST obligations for certain 'gig economy' digital platforms
- Changes to how distribution networks are depreciated
- Remedial changes to the foreign trust rules
- Remedial changes to ensure the recent residential land changes work as intended

International Tax reform

The OECD continues to seek international tax consensus on some major tax reforms. Assuming it's possible to reach a global consensus, New Zealand is expected to introduce tax legislation later this year or early 2023 to facilitate New Zealand's implementation of the GloBE rules. Consultation was undertaken last month on "Pillar Two" proposals.

New Zealand Income Insurance Scheme

Earlier this year the Government consulted on the introduction of a New Zealand income insurance scheme. While no details have been released on the final design of the scheme, there were signals in Budget 2022 that the scheme will be proceeding, with Budget forecasts including expected revenue and expenses from the scheme. While the imposition of insurance levies on both employees, employers, and the self-employed is not technically a tax, when the scheme is introduced it is likely to require some changes to tax laws, with the levies likely to be collected by Inland Revenue.

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Allowances for additional transport costs

By Jess Wheeler and Liam Conaghan

Do you pay your employees a travel allowance or are considering paying one as a retention tool in this hot labour market? If so, make sure you read on to see whether this can be paid tax-free.

Inland Revenue generally regards any travel an employee makes between home and work as private travel, which means any cash payment to cover this expense is treated as being subject to PAYE. However, there are some limited exemptions to this rule and Inland Revenue has recently published a draft operational statement setting out when employee allowances for additional transport costs are exempt from tax.

The draft statement outlines a three-step approach to determining whether a transport allowance can be treated as exempt, as well as some handy examples throughout the statement. These steps are:

1. Are one or more of the factors listed below present? If none of the factors are present, then the additional transport costs tax exemption cannot apply.

a. the additional transport costs are due to the day or time of day when the work duties are performed. For example, where a staff member starts their shift in the late afternoon and finishes after public transport has stopped running for the day.

b. the need to transport any goods or material for use or disposal in the course of the employee's work. For example, where an employee normally bikes into work and the employer needs them to pick up an item that requires a trailer.

c. the requirement to fulfil a statutory obligation. For example, where an employee is required to get a COVID-19 test at a drive-through station when the employee normally uses public transport.

d. a temporary change in the employee's place of work while in the same employment. For example, providing an

None of the new guidance provided by Inland Revenue is ground-breaking. Rather, Inland Revenue has summarised already known information and repackaged it into a single guidance document. We think there is a missed opportunity by Inland Revenue to provide both employers and tax professionals with strong guidance.

employee with a transport allowance while they are on a short term-secondment. Inland Revenue refers to a period of two years or less when referring to "short-term".

e. any other condition of the employee's work for the benefit of the employer. The "condition" would need to increase the employee's cost of travelling between an employee's home and their workplace by more than would ordinarily be expected.

f. the absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee's place of work. The Commissioner considers that where the public transport services available do not neatly fit with an employee's hours of work, that does not in itself mean the public transport service is inadequate. This factor will only apply when a workplace has no public transport service or no close stop from public transport, if the service doesn't work for shift workers or the public transport can't accommodate a large number of employees starting work at one time.

2. Did the employee incur the transport costs in connection with their employment and for the employer's benefit or convenience?

   The Commissioner accepts that when the employee incurs additional transport costs because of one of the factors under step one, then those costs are incurred in connection with their employment (i.e., no longer considered a private cost of getting to work). It's important that at this step we consider if the factors in step one arise from the nature of the employment, or a need/requirement of the employer and not as a benefit of convenience of the employee.

3. How much of a travel allowance is exempt under the additional transport costs exemption?

You will need to calculate the additional transport costs and compare them with the allowance paid. In terms of paying your staff a transport allowance, you will also need to be aware you can only exempt payments that are over and above what the employee would ordinarily incur for their travel, anything above this level will be taxable and subject to PAYE.

For example: Robyn works in the Wellington CBD. She is seconded to work in her employer's Lower Hutt branch office for 12 months. Normally Robyn's cost in getting to work involved a single bus trip each way with a weekly cost of $30. But this temporary change in work location requires her to take the train at the cost of an additional $43 a week. Her total temporary travel costs are $74 per week. The additional transport cost that can be paid tax free per week is $43.

It is worth noting that you can make a reasonable estimate of the additional transport costs an employee or group of employees is likely to incur, which will save you quizzing employees on their actual costs and ensures you can pay a standard estimate across a group to ensure it is kept fair amongst employees.

Where employees incur additional transport costs because of the lack of public transport services, the additional transport costs are the amount by which the costs are more than $5 for each day on which the employee attends work.

For example: There is no public transport service to Rosie's workplace so factor (f) under step one applies. Rosie incurs transport costs of $60 a week getting to work for a five-day working week. In this example, the additional transport costs that can be paid tax free are $35 ($60 – (5 x $5)). Remember, if you are estimating additional transport costs involving the use of a motor vehicle, refer to the approach in OS 19/04b: *Commissioner's statement on using a kilometre rate for employee reimbursement of a motor vehicle to make a reasonable estimate of costs.*

You are also prevented from taking into account the costs of travelling more than 70km per day in calculating the additional transport costs, except in special circumstances. The Commissioner states this covers exceptional, abnormal or unusual – but not extraordinary or unique cases. The special circumstances must arise from the location of the workplace rather than where the employee chooses to live.

For example: Barry works in a national park where there is no accommodation anywhere except the closest town, which is 50km away, gives a round trip of 100km. This is considered a special circumstance as no one (including Barry) could live any closer to his workplace.

Missed Opportunity

None of the new guidance provided by Inland Revenue is ground-breaking. Rather, Inland Revenue has summarised already known information and repackaged it into a single guidance document. We think there is a missed opportunity by Inland Revenue to provide both employers and tax professionals with strong guidance. This is especially true given the hot labour market and retention policies we are seeing employers implement. Within this document, Inland Revenue could have provided:

- Guidance on working from home and transport costs. For example, where an employee normally works from home but is required to come in for meetings or activities on an ad hoc basis.
- Guidance on the interaction between FBT and PAYE where employers provide transport rather than an allowance (e.g. having a work bus to a remote worksite).
- An increase to the 70km travel limit, given more and more employees are living further away from the workplace.
- Addressing the policy concern regarding the requirement the first $5 of additional public transport costs be treated as taxable for each day the employee attends work. The compliance costs of doing this are onerous compared to the $5 threshold.
- Incorporating tables, pictures and diagrams into the document for ease of understanding.

Summary

If you pay or are considering paying your employees a travel allowance you should consider reaching out to your Deloitte advisor to ensure you are meeting your tax obligations. As Inland Revenue is collecting submissions on their guidance document until 22 July 2022, we would like to hear your thoughts on what practical matters Inland Revenue could include.

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FBT: Common errors and how to prevent them

By Jess Wheeler, Aaron Mitchell and Jonny Reid

Now that all the 2022 Quarter 4 (March 2022) returns have been filed, it's time to start thinking about the 2023 Quarter 1 (June 2022) returns which are due on 20 July 2022.

With this being the first quarter of the new FBT year, it is an opportune time to reflect on the common errors and pitfalls we have observed so that employers can avoid them and save themselves a lot of pain (and maybe some cash too) when it comes to preparing their 2023 FBT returns.

Paying FBT at the incorrect flat rate across Q1 – Q3

As we explained in our April 2021 article the top FBT rate increased to 63.93% (up from 49.25%), in conjunction with the top marginal tax rate increasing to 39%. The pooling rate also increased from 42.86% to 49.25% at the same time. Prior to these changes, many employers used the single rate option to pay FBT on all benefits at the flat rate of 49.25%. This increased rate has prompted many employers to look at calculating FBT at the alternate rate of 49.25% across Q1 – Q3, and then performing an attribution calculation in Q4. Under the short form attribution, employers pay FBT on attributable benefits at the 63.93% rate and pool any other benefits at the 49.25% rate. The full attribution calculation is complicated, but broadly aligns the FBT rate that applies to benefits provided to each employee with the employee's marginal tax rate.

A common issue we have encountered is employers paying FBT across Q1 – Q3 at the 49.25% rate (not 63.93%), believing that they were still paying at the flat rate, when in fact this was not the case. Where FBT has been paid across Q1 – Q3 at the 63.93% flat rate employers are able to elect to pay again at 63.93% in Q4 or perform an attribution calculation. Where FBT is paid at the 49.25% rate across Q1 – Q3, employers are locked into performing an attribution calculation in Q4, intentionally or not.

Given the change in FBT rates, and with the Q1 returns due on 20 July 2022, employers should be considering now if they want to perform an attribution calculation in Q4. The old rule of thumb used to be that unless you had a high number of employees earning less than $70,000 per annum or a high turn-over of staff, the associated compliance costs of an attribution calculation would likely exceed any potential tax savings. This is no longer the case because of the new top tax rate. Employers can significantly reduce their FBT bills in most cases by doing an attribution calculation in Q4. We have seen an increase in clients approaching us asking for help with their attribution calculations.

It's also worth noting that there is a new option to perform a concessionary short form attribution in Q4 for employees who are close to the top tax bracket (further information on this can be found in our April 2022 Tax Alert).

With Inland Revenue's Tax Governance campaign now in full swing, it is a good time to consider undertaking an external review of FBT compliance. Having an external review of indirect taxes, like FBT, is viewed positively by Inland Revenue and demonstrates good tax governance.

Unclassified benefits and the de minimis threshold

Unclassified benefits are benefits provided by employers that aren't specified in legislation. They often include employment-related gifts, prizes, and free, subsidised, or discounted goods. These benefits are exempt from FBT where the taxable value of the benefit provided to each employee is $300 or less per quarter per employee and the total taxable value of all unclassified benefits provided by the employer over the past four quarters is $22,500 or less. This is a rolling calculation which includes the prior three quarters in conjunction with the current quarter.

In addition, associated employers must be grouped to determine if the thresholds are exceeded (i.e. if two companies within a group together exceed the $22,500 threshold, then both companies are unable to make use of this exemption, even if one or both of them are under the threshold in isolation).

Incorrectly tracking this threshold is a common issue we see. Although unclassified benefits provided in the year ending 31 March may not have breached the $22,500 threshold they often breach the threshold when measured on a rolling quarter basis. As such, it is essential that businesses continue to monitor the de minimis exemption on a rolling basis to ensure unclassified benefits are correctly returned. Not doing so could result in a shortfall penalty and/or use of money interest.

FBT implications of a change in business structure

A change in business structure during the year will also have FBT implications, a fact which is often overlooked. For example, an amalgamated company must file a final FBT return with Inland Revenue in the quarter in which the amalgamation occurs. If the employer has been paying FBT at the alternate rate of 49.25% then an attribution calculation must be performed as part of the final return. Employers cannot treat the final return as though it is just another Q1-Q3 return and calculate their FBT liability using the alternate rate. Taking this approach is technically incorrect and has the potential to result in unintended FBT consequences.

In addition to this, where there has been a change in business structure employers should also be aware of how the unclassified benefit de minimis threshold across entities is impacted and to what extent employees' cash pay is carried across. These issues can be quite complex, so if you are considering or have undergone a change in business structure, we recommend reaching out to your Deloitte tax advisor to discuss the FBT implications.

Correcting errors in the Q4 return

Employers often try to wash errors in prior FBT returns through the final quarter FBT return using section 113A of the Tax Administration Act 1994. These errors can stem from a variety of different sources, and some that we have seen which resulted in employers over or under returning FBT include incorrect motor vehicle day counts, incorrect tracking of the de minimis threshold, incorrectly including prezzy cards when calculating GST on the value of taxable benefits provided, and having incorrect health insurance premium data for employees.

When correcting errors in prior quarters, it is crucial employers ensure the total FBT value of the adjustments do not exceed the lower of either $10,000 or 2% of annual gross income. We note that this applies on an assessment-by-assessment basis, and so long as the period-by-period impact is less than the relevant threshold, the correction can be made in the next FBT return.

Inland Revenue have been clamping down on this practice in recent years and therefore when preparing FBT returns it is important to ensure that the FBT value of any errors corrected are below this threshold. Anything above the relevant threshold should be corrected through a voluntary disclosure.

Full attribution calculation – applying incorrect rates

Another common error we have seen is where employers carry out a full attribution calculation but apply the individual marginal tax rates rather than the specific FBT marginal tax rates. It is essential the correct rates are used when calculating an employee's tax on cash pay and their tax on all-inclusive pay. At a high level, under a full attribution calculation an employee's tax on cash pay is compared with the tax on their all-inclusive pay and the difference is the employer's FBT liability for the individual employee. Cash pay includes salary & wages, dividends, and interest paid either by an employer or a related employer but excludes employee share scheme income. All-inclusive pay is an employee's cash pay, less the tax on cash pay, plus the taxable value of all fringes benefits that the employee receives. As noted above, the Q4 attribution calculation is complicated but broadly aligns the FBT rate that applies to benefits provided to each employee with the employee's marginal tax rate.

Tax on all inclusive pay also has its own separate rates under the FBT rules. It is important to note that these apply on a marginal basis. We have seen instances where employers have taken the rate which relates to the employee's cash pay or all-inclusive pay band and then applied it as a flat rate. Although simple, this approach is not technically correct and can result in large discrepancies, particularly where employees are close to the thresholds for another bracket.

Motor vehicle exempt day calculations

We regularly see employers returning FBT based on 90 private use days every quarter without considering whether there were any days during the quarter where the motor vehicle was not available for private use. We also see employers claiming exempt days without the necessary support for the exemption being held.

Employers should ensure that all available exempt days for motor vehicles provided are claimed and that there is sufficient supporting documentation to support any exempt days claimed. Motor vehicle policies should be reviewed regularly to determine whether there is an option to reduce the availability for private use, for example by changing the FBT day or issuing letters restricting private use.

Manufactured goods provided to employees

Employers often gift or provide employees with goods or services they manufacture. It is important that the provision of these goods or services are treated as unclassified benefits for FBT purposes. Often many employers believe these are simply business expenses and that the FBT regime doesn't apply. This is not the case.

Where an employer gifts either goods or services that it manufactures, produces, or processes to an employee, the fringe benefit is valued at the market value (including GST). Market value is the lowest price for which identical goods were sold by the same person to an arm's length buyer, whether wholesaler, retailer, or the public in the New Zealand open market in a sale freely offered and made on ordinary trade terms.

Q4 FBT return preparation

We have also noticed many employers use Excel workbooks to prepare their Q4 full attribution calculations. Although this offers greater flexibility, we find that some of these workbooks are not fit for purpose and in some cases use old or incorrect FBT rates, thresholds, and formulas which do not work or link correctly.

Now is the perfect opportunity for employers to consider the use of "off the shelf" FBT software. Software solutions can streamline the FBT process, reduce errors, and ultimately save valuable time. Please get in touch with your Deloitte tax advisor you would like to know more about how these can benefit your business.

FBT compliance reviews

With Inland Revenue's Tax Governance campaign now in full swing, it is a good time to consider undertaking an external review of FBT compliance. Having an external review of indirect taxes, like FBT, is viewed positively by Inland Revenue and demonstrates good tax governance.

When engaging with Inland Revenue on behalf of clients in a risk review or audit situation, we find that where we have completed an FBT review and can provide a copy of our report it has given Inland Revenue a level of comfort around a taxpayer's level of compliance, especially where issues identified in the report have been amended and rectified. If you are concerned about your FBT compliance, or are looking to improve your FBT governance, you may wish to consider undertaking a review of FBT. We can offer a range of cost-effective review options which we would be more than happy to talk through.

If you have any questions about any of the issues listed above, please get in touch with your usual Deloitte tax advisor to find out more.

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Plan some overseas travel – but plan for tax as well

By Emma Marr and Jayesh Dahya

Opening the borders has released a wave of Kiwi entrepreneurs who have been champing at the bit to get overseas for two long years. Our LinkedIn feeds are full of happy business owners touring the world meeting their customers, drumming up sales, and connecting with employees and business partners they've never met before, or haven't seen for a long time. As you tuck your boarding pass into your carry-on, (or farewell your employees as they head for the door), you might want to think about giving your accountant a call when you get back – or better still, before you leave home – to make sure you've got any tax issues sorted as well.

Travel costs

When a business owner or its employees travel for work, they'll incur a range of costs including airfares, taxis and rental cars, hotels, meals, and incidental expenses. They might also decide to add on a holiday during a work trip or take their partner or family with them.

When it comes to working out which costs are deductible to the business, and which are not, you'll need to be clear about what the costs relate to, and check that you're treating them correctly. Inland Revenue has recently released a draft Questions We've Been Asked, [Deductibility of overseas expenses], which sets out some guidelines on what is deductible and what isn't. This is intended to replace a previous policy statement that date back to 1995.

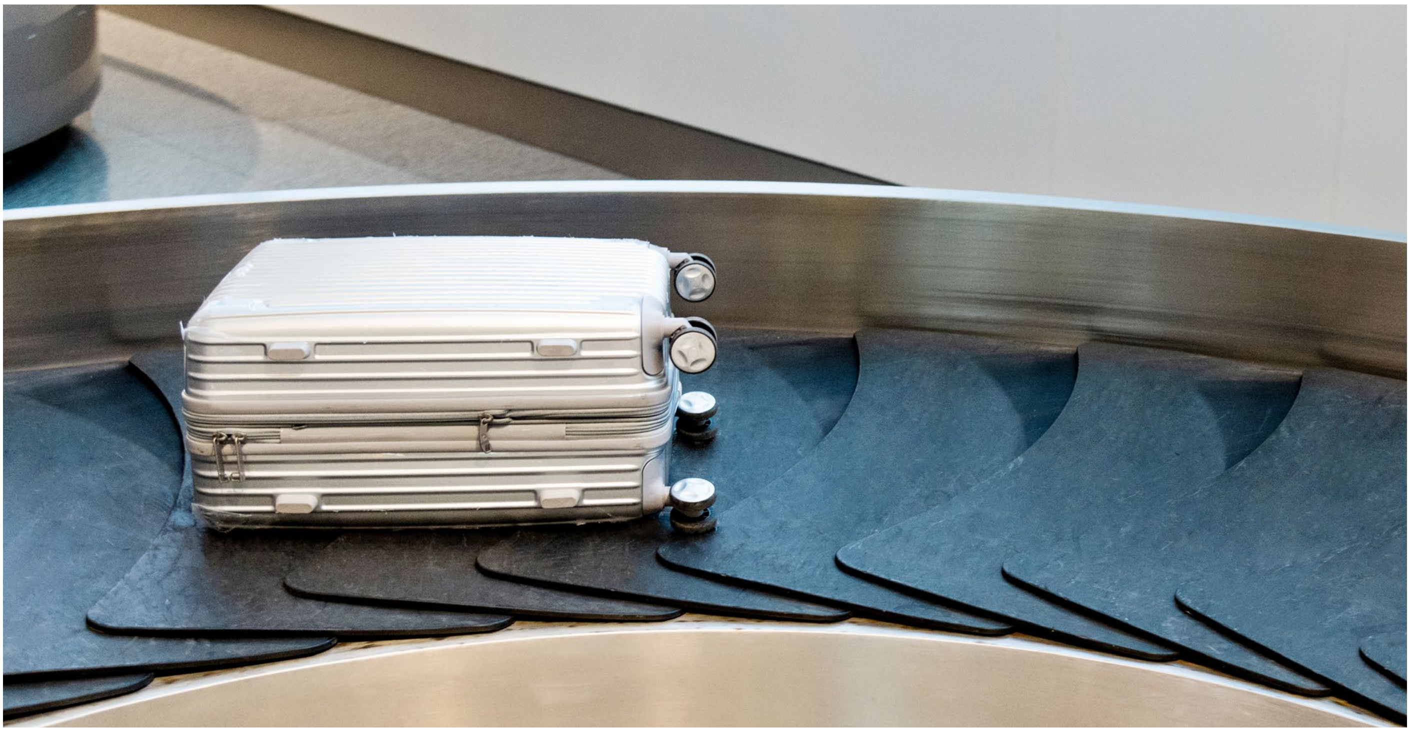
Travel costs: Income tax deductions can be claimed for overseas travel costs to the extent that they have a connection with deriving assessable income or carrying on a business. A business can't deduct any part of the travel costs that are of a private or domestic nature, of a capital nature, or incurred in deriving exempt income or income from employment.

If the costs relate to both a business and a private expense (for example an employee adds a holiday to the business trip), you'll need to apportion the costs between deductible and non-deductible amounts and keep a record showing that you've done this on a reasonable basis.

As a company isn't a person, the private/domestic limitation doesn't apply, but a company will need to be careful if it covers an employee's private costs (for example, adding a holiday to the end of the trip or covering the costs of an employee's partner or family). If an employer does pay costs that are not related to the business, the employer would need to consider if the payment is subject to PAYE or fringe benefit tax.

The draft statement does not apply to meal costs as Inland Revenue have extensive other guidance on meal expenses; that guidance does confirm meal expenses paid by an employer are deductible to the employer, but different rules apply for self-employed travellers (which we comment on below).

Companion expenses: If you take your partner or another travel companion with you, their costs won't be deductible unless



they are making a substantial contribution to the business purpose of the trip. Inland Revenue has released guidance on this in an earlier QWBA, Income Tax – Deductibility Of A Companion's Travel Expenses.

Meals for self-employed travellers:
The rules are more complex when you're self-employed. Meal costs are only deductible if they are over and above what you would normally spend on meals at home. For more information, you can check out an earlier Interpretation Statement, Income tax and GST – Treatment of meal expenses.

Accommodation costs

The statement does not discuss accommodation costs that may also be met by a business when an employee is travelling overseas. If you pay for accommodation, this is treated as a taxable allowance (subject to PAYE, not FBT) unless an exemption applies. An exemption would usually apply where an employee is travelling for work to attend meetings, conferences or training but would not extend to accommodation paid if the employee chooses to add a holiday on to the trip.

Creating a taxable presence for your business overseas

Travelling to another country and running your New Zealand business while you are there can easily create a taxable presence in that country for your business. The rules are different in every jurisdiction, so don't assume that the rules for one country apply anywhere else. If you're planning more than short visits to any country, check in with your tax advisor to make sure you're not creating a tax liability overseas.

Creating tax liability for you or your employees in another country

As well as creating a taxable presence for their business, when business owners or employees travel the world this can create other tax issues, both for the business and for its people. The business might have to register for payroll taxes in other countries, make contributions to local pension or social security schemes, and the owners or employees might have a personal tax liability if they spend long enough in another country. If a business's employees find they have a tax liability in another country, they will turn to their employer to help them navigate the rules and reimburse them if they end up out of pocket. There are international treaties that can prevent double taxation, but you need to check whether the business meets the criteria, and then correctly claim the benefits. As soon as a person lands in another country, that country's day-count rules may kick in and with many employers looking to accommodate flexible work arrangements that may allow employees to work overseas it's better to know that in advance and plan ahead for what that means.

For more tips on how to manage your overseas business, check out our May Tax Alert article, Top 10 mistakes when expanding overseas

If you need any help navigating the tax rules that might apply when you're travelling overseas, contact Emma Marr or Jayesh Dahya, or your usual Deloitte advisor.

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Overseas Investments - Offshore is not off-limits

By Jayesh Dahya and Mila Robertson

You've probably heard the old investment saying, "don't put all of your eggs in one basket". If you have, this may mean you have made some overseas investments but have you given thought to what this means when it comes to paying tax?

It goes without saying that managing your international tax obligations can be tricky. Our rules that tax foreign assets such as overseas bank accounts, shares, pension schemes, rental properties are a minefield of complex rules.

This makes it difficult for individuals to understand their tax obligations and often requires the assistance of a good accountant.

New Zealand tax residents are required to pay tax on their worldwide income, regardless of whether taxes are paid overseas and whether the income has been brought back to New Zealand. It does not matter that the income may be exempt in the overseas country and these are facts Inland Revenue have noted are commonly misunderstood, especially by those who are new to New Zealand.

The days of thinking Inland Revenue have bigger fish to fry are long gone and in June 2022, Inland Revenue released their offshore tax transparency package with a compliance focus targeted at reminding individual taxpayers of their tax obligations.

Increased sharing of information

The offshore tax transparency publication highlights that over the years, there has been an increase in the sharing of taxpayer information between countries. This has provided Inland Revenue greater oversight of the offshore investments New Zealand tax residents hold in their portfolios.

Inland Revenue have emphasised that they now collect a wealth of information through their extensive exchange of information programmes that includes:

- Exchanging information on request from treaty partners;
- The annual exchange of land data with treaty partners;
- Proactively sharing information that may be considered relevant to share with treaty partners;
- Sharing information under the Foreign Account Tax Compliance Act (FATCA);
- Sharing information with over 100 countries under the Common Reporting Standard (CRS); and
- Sharing of information on New Zealand foreign trusts.

In the future, information sharing for cryptocurrency holdings is likely, with work being undertaken by the OECD to develop framework to share details of crypto transactions across jurisdictions.

New tools to match data

Armed with the financial data received from information sharing (details on interest from bank accounts/deposits, credit card listings, dividends, pension payments as well as land sale data), Inland Revenue is ramping up its focus on international tax compliance for individuals to ensure that worldwide income is being declared.

Analytical tools have been developed by Inland Revenue to work through the volume of data received and match this with information reported in New Zealand income tax returns to check that income is being returned in New Zealand and where this is not the case, don't be surprised if Inland Revenue follow up with questions to taxpayers to clarify the reasons for any omissions.

Getting it "Right from the Start"

As a result of recent campaigns targeting those considered to be highly mobile individuals or those with investments in low or no tax jurisdictions, Inland Revenue have seen a significant number of voluntary disclosures in relation to undisclosed income.

They continue to encourage taxpayers to come forward to try and front foot any omissions as part of their "Right from the Start" campaign and as part of this strategy have released a series of documents to remind and educate taxpayers on their obligations:

- An updated Foreign Income Guide (replacing publication IR1069) that covers a range of topics relevant to those with foreign assets. This guide now includes worked examples of how the foreign investment fund and financial arrangement regime can apply to taxpayers;
- A Foreign Income Checklist (designed for tax agents to collect information from their clients in relation to overseas investments); and
- The Transitional Residency Flowchart designed to help taxpayers determine if they are transitional residents and thereby providing taxpayers with temporary relief from New Zealand tax on overseas assets.

Inland Revenue's "Top 10 facts about international tax"

As part of the educating taxpayers, particularly those new to New Zealand, Inland Revenue have noted the following:

1. *Your tax residency status in New Zealand is different from your immigration status.*
2. *In general, New Zealand tax residents pay income tax on their worldwide income while-non-residents pay on income from New Zealand.*
3. *Your worldwide income can include foreign income even if you have not repatriated it to New Zealand or you have paid tax on it in the other country or the income is exempt in the other country.*
4. *Some rules in New Zealand may tax capital gains and may do so even though the gain has not been realised. Examples include the foreign investment fund and financial arrangement rules.*
5. *New tax residents and former tax residents returning after 10 years may qualify for a temporary tax exemption on most, but not all, forms of foreign income.*
6. *New Zealand will usually give a credit for tax paid to another country, capped at the amount of tax payable here on the foreign income.*
7. *[Inland Revenue] advise you to consult a tax agent knowledgeable in international tax if you're not sure how the law applies to your situation as some of the rules can be complex.*
8. *If New Zealand has a double tax agreement with another country, it may affect how your income is taxed.*
9. *There are shortfall penalties for not declaring income but they can be reduced by up to 100% if you make a voluntary disclosure.*
10. *Inland Revenue exchanges financial information about taxpayers annually with many other countries and matches it to tax returns.*

Our observations

A lot can go wrong when dealing with the taxes on overseas investments.

We recommend reading the foreign income guide if you have overseas investments, as it provides a good summary of the New Zealand rules.

If you have overseas income that may not have been included in your New Zealand returns, don't wait, as it will only be a matter of time before Inland Revenue will come asking you questions.

If you find yourself in this situation, the best course of action is to calculate what is due, lodge a voluntary disclosure, pay the taxes (if any), and get your position right going forward. Take the advice of Inland Revenue and "consult a tax agent knowledgeable in international tax" as "some of the rules can be complex."

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

If you have overseas income that may not have been included in your New Zealand returns, don't wait, as it will only be a matter of time before Inland Revenue will come asking you questions.

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Property tax trap – a cautionary tale for co-ownership

By Robyn Walker and Susan Wynne

The tax rules affecting property ownership have become increasingly complex in recent years, particularly for those in the residential property space.

The latest Inland Revenue commentary to be finalised on the land sale rules is Interpretation Statement IS 22/03 "Income tax – Application of the land sale rules to co-ownership changes and changes of trustees". IS 22/03 considers how the land sale rules in the Income Tax Act 2007 (ITA07) apply to changes to co-ownership and changes of trustees of a trust.

The focus of IS 22/03 is on situations where ownership of property is shared and if a disposal of property for tax purposes occurs that could trigger the taxing provisions in the ITA07. For example, the bright-line test which can apply if you sell residential land within a certain period or if you acquired land with the intention of selling it.

Broadly IS 22/03 confirms that where the proportional or notional share in the property (e.g. 50:50) doesn't change, regardless if there is a change in the type of co-ownership, there shouldn't be a disposal under the land sale rules. In contrast if the ownership share in a property does change (e.g. from 50:50 to 25:75) there is a disposal under the land sale rules for the owner reducing their ownership interest.

Generally, the commentary in IS 22/03 is helpful but doesn't go as far as fixing difficulties that arise when you overlay land taxing provisions, particularly in the common scenario where parents help their adult children to buy a house. For example:

- The "bright-line test" taxes residential land sales when a property is sold within the bright-line period and no other land sale rules apply to tax the property. The relevant bright-line period depends on when the property was acquired as follows:
  - Acquisitions between 28 March 2018 and 26 March 2021 are subject to a 5-year bright-line period;
  - Acquisitions from 27 March 2021 are subject to a 10-year bright-line (unless the property is a 'new build', in which case a 5-year period applies).
- If an adult child is progressively buying out a parent's ownership interest in a property, each change in ownership share would be a disposal for the parents and could re-set the bright-line test

With recent reports putting the "Bank of Mum and Dad" as New Zealand's 5th biggest home loan lender it is important for all parties to consider their options and structures before entering any lending or ownership arrangements. Especially if the Bank of Mum and Dad takes an ownership interest in a residential property.

applying and the bright-line start date. Specific provisions came into effect on 27 March 2021 to ensure that the bright line clock only restarts to the extent that an owner's interest has increased and not for any share already owned. However, clarification around which bright-line test will apply in a situation where a share of residential land was acquired before 27 March 2021 (subject to the 5-year bright-line test) and subsequently an additional share is acquired on or after 27 March 2021 (subject to the 10-year bright-line test) is still required.

- There is an exemption from the bright-line test when the property has predominantly been used as the main home of the person who is disposing of the property. This exemption will not apply to co-owners who do not live in the property, such as parents helping children onto the property ladder.
- If land is sold (or gifted) at an amount below its market value when it would otherwise be subject to tax (e.g. it is sold within the bright-line period), then the transaction will be deemed to take place at the market value of the property at the time of disposal. If an adult child is progressively buying out a parent's ownership interest in the property, each payment could technically trigger a tax obligation depending on the transfer price.

In summary the land rules have become increasingly complex and difficult to apply, particularly for residential properties. With recent reports putting the "Bank of Mum and Dad" as New Zealand's 5th biggest home loan lender it is important for all parties to consider their options and structures before entering any lending or ownership arrangements. Especially if the Bank of Mum and Dad takes an ownership interest in a residential property.

It will also be interesting to see if comments made in the June 2021 discussion document that the Government is interested in undertaking more work around family arrangements impacted by the bright-line test will result in any action in the near future.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Deemed rate of return on FIF attributing interests

On 26 May 2022, The Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2021–22 Income Year) Order 2022 (SL 2022/151) was notified in the New Zealand Gazette.

The Order sets the deemed rate of return used to calculate foreign investment fund income for the 2021–22 income year under the deemed rate of return calculation method set out in schedule EX 55 of the Income Tax Act 2007. The Order also sets the deemed rate of return for the 2021–22 income year at 6.01%. The deemed rate of return set for the 2020–21 income year was 4.43%.

Inland Revenue statements and guidance

Determination - National Average Market Values of Specified Livestock Determination 2022

On 27 May 2022, Inland Revenue published NAMV 2022 - National Average Market Values of Specified Livestock Determination 2022. Section EC 15 of the Income Tax Act 2007 requires the Commissioner of Inland Revenue to make a determination declaring the national average market values (NAMV) for an income year for each class of specified livestock set out in schedule 17 of the ITA 2007. The determination published in May each year is now available providing a chart of the average market value per head of every type and class of livestock.

Public Ruling - Charitable and Other Donee Organisations and FBT

On 31 May 2022, Inland Revenue published BR PUB 22/06 - Fringe Benefit Tax – Charitable and Other Donee Organisations and Fringe Benefit Tax. This Ruling considers when benefits provided by charitable organisations to their employees may be excluded from being treated as fringe benefits. Accompanying diagrams in this fact sheet summarises how the FBT exclusion applies to qualifying organisations.

Public Ruling – GST – Importers and input tax deductions

On 8 June 2022, Inland Revenue published BR Pub 22/07- Goods and Services Tax – Importers and input tax deductions. This Public Ruling explains when an importer who accounts for GST on an invoice basis can claim an input tax deduction on GST collected by the New Zealand Customs Service (Customs). It also explains what documentation importers can use as an invoice to support the input tax deduction and associated record-keeping requirements.

The Commissioner of Inland Revenue considers that an electronic import entry is an invoice once the entry has been passed. Further, the following documents are invoices when issued:

- Deferred Payment Statements issued to an importer;
- Cash statements;
- And manual invoices/statements.

A registered person who claims an input tax deduction based on one of the above types of invoices must keep the invoice as well as evidence of the imported goods to meet their record-keeping obligations.

This ruling replaces BR Pub 06/03 and applies to input tax deductions for GST collected by Customs on goods imported on and following 9 July 2022 for an indefinite period.

QWBA – GST – Customs brokers and GST levied by Customs

On 8 June 2022, Inland Revenue published QB 22/03 - GST – Customs brokers and GST levied by Customs. The question considered was whether customs brokers can treat GST they pay to the New Zealand Customs Service (Customs) on behalf of their importer clients as part of their taxable activity. The short answer is no.

The GST a customs broker pays to Customs on behalf of an importer client relates to the importer's taxable activity, not the customs broker's taxable activity. First, the customs broker cannot claim an input tax deduction for GST they pay to Customs on behalf of the importer client. This is because the customs broker did not acquire the imported goods for use in their own taxable activity. Second, the customs broker also cannot issue any documentation (e.g. a tax invoice) claiming to charge GST when they ask the importer to reimburse them for the GST they have paid to Customs. This is because the request for reimbursement is not a request for payment for a taxable supply the customs broker has made.

QWBA – GST – Importers and recalculated GST

On 8 June 2022, Inland Revenue published QB 22/04 - GST – Importers and recalculated GST. The question considered was whether an importer who overpays GST to the New Zealand Customs Service (Customs) can claim an input tax deduction for the whole of the GST paid. The short answer is yes.

Customs are prevented from refunding overpaid GST where the importer is a registered person who can claim an input tax deduction. Therefore, the proper mechanism for obtaining a refund of overpaid GST where the importer is a registered person is to claim an input tax deduction for the whole of the GST paid to Customs.

Question We've Been Asked - GST – Does zero-rating apply to certain services that airport operators supply to international airline operators?

On 16 June 2022, the Inland Revenue published QB 22/05 - GST – Does zero-rating apply to certain services that airport operators supply to international airline operators? The QWBA discusses the GST treatment of garbage disposal, lighting and security, aircraft parking and terminal services that airport operators supply to international airline operators. The QWBA concludes that the services are standard-rated, not zero-rated.

Draft Interpretation Statement– Cash basis persons under the financial arrangements rules

On 2 March 2022, the Inland Revenue (IR) published a draft interpretation statement. Due to submissions on that draft, on 20 June 2022, the IR republished PUB00396- Cash basis persons under the financial arrangements rules and Fact Sheet IS 22/XX FS Cash basis persons under the financial arrangements rules for public consultation. The major differences between the original draft IS and the new draft IS are:

- IR have now calculated the income and expenditure threshold on an accrual basis.
- IR have corrected minor errors in Examples 5, 6 and 7.
- IR have incorporated calculations directly into the statement and will not publish a worksheet.
- IR have revised the presentation of Examples 5, 6 and 7.

This draft IS answers a specific question that arose from IS 12/07 Income tax – Application of the financial arrangements rules to foreign currency loans used to finance foreign residential rental property. While IS 20/07 explains who qualifies as a cash basis person, the details of the cash basis adjustment calculation was beyond its scope. This IS revisits the meaning of a cash basis person, covers how to do a cash basis adjustment and provides worded examples. The deadline for comment on this republished statement is 15 July 2022.

COVID-19 Variation: R&D loss tax credits

On 27 June 2022, the Inland Revenue published COV 22/18 COVID-19 Variation – Variation in relation to s 70C of the Tax Administration Act 1994 to extend deadline for filing statements in relation to R&D loss tax credits. For a statement in relation to R&D loss tax credits and R&D repayment tax for the 2021 tax year under section 70C of the TAA94, the date by which that statement must be filed is extended to include a statement filed with the Commissioner of Inland Revenue on or before 31 August 2022. The variation only applies to persons that has had difficulty filing the statements on time because of circumstances arising either from the imposition of COVID-19 response measures or because of COVID-19. The variation also applies where a person has filed their statement late in reliance on the Commissioner's advice that, due to the likely impact of COVID-19, no penalties will apply to the late filing of income tax returns that are furnished by 31 March 2022.

Draft QWBA – Interest deductibility where amount not determined at balance date

On 28 June 2022, IR published PUB00415 - Can a close company deduct interest on a shareholder advance where the amount is not known until after balance date? The proposed answer to this QWBA is yes. In this QWBA, it is proposed that a close company can make such deductions if it has a legal obligation to pay the interest on the shareholder advance based on a previously agreed formula or method. The company must have the legal obligation, including a method of calculating the liability, before its balance date, which is usually 31 March. Companies need to keep records of the method they used to determine the amount of interest owing and of the legal obligation to pay the interest. Deadline for comment is on **9 August 2022.**

Discussion Document – Income Tax – Government payments to businesses (grants and subsidies)

On 30 June 2022, IR published IRRUIP16 - Income Tax – Government payments to businesses (grants and subsidies). This Issues Paper considers when and how the government grant provisions in the Income Tax Act 2007 may apply to grants and subsidies received by businesses. Where the government grant provisions apply, a grant or subsidy paid by a local or public authority to a business is excluded income and the expense funded by the grant is non-deductible. The deadline for comment is on **11 August 2022.**

Draft QWBA – GST and directors' fees and board members' fees

On 1 July 2022, IR published PUB00424 - Goods and Services Tax – Directors' Fees. This draft ruling considers the application of GST in relation to the payment of fees to a director of a company. This applies to the engagement, occupation, or employment of a person as a director (the Director) of a company (the Company). The engagement may be by direct contract between the

Director and the Company. Alternatively, the Director may be engaged as a director of the Company under an agreement between the Company and:

- a third party (the Third Party);
- the Director's employer (the Employer); or
- a partnership of which the Director is a partner (the Partnership)

The flowchart found in this fact sheet summarises when a director or a board member is required to return GST on their fees. The deadline for comment is on **17 August 2022.**

OECD Updates

OECD: Transfer Pricing Country Profiles

On 9 June 2022, the OECD updated the transfer pricing country profiles. These profiles focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours, and other implementation measures. The information contained in these profiles is intended to reflect the current state of countries' legislation and to indicate to what extent their rules follow the OECD Transfer Pricing Guidelines.

Deloitte Global News and Resources

Changes to MNE debt deduction rules in Australia

This Tax Insights article explores the new Labor Government's multinational tax measures announced during the election campaign (Labor's Plan To Ensure Multinationals Pay Their Fair Share Of Tax, 27 April 20221). The issues considered include:

- Supporting the OECD Two Pillar solution
- Limiting debt-related deductions by multinationals in line with the OECD EBITDA approach
- Limiting the ability for multinationals to abuse Australia's tax treaties when holding intellectual property in tax havens
- Introducing various transparency and disclosure measures.
- Proposing an extension and boosting of existing ATO programs (Tax Avoidance Taskforce, Black Economy Taskforce) resulting in additional forecast net revenue of $3 billion over 2022-23 to 2025-26.

Multilateral Convention (MLI) – Spain publishes Spanish Synthesized Text of New Zealand-Spain Treaty

On 2 June 2022 the Spanish government published the Spanish synthesized text of the New Zealand – Spain Income Tax Treaty (2005) displaying modifications made to the treaty by the MLI. The MLI entered into force for Spain on 1 January 2022 and New Zealand on 1 October 2018.

Unless stated otherwise in the synthesized text, the provisions of the MLI will have effect with respect to the NZ-Spain Income Tax Treaty (2005):

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the next taxable period that begins on or after 1 January 2023; and
- with respect to all other taxes levied by each contracting state, for taxes levied with respect to taxable periods beginning on or after 1 January 2023.

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

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