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Tax Alert

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Can I register for GST when I provide director services through a company?

By Robyn Walker and Amy Sexton

Earlier this year the Inland Revenue issued [three public rulings and an operational position] on the GST treatment of fees paid to directors and board members (referred to collectively as directors).

It's worth noting at the outset that the Goods and Services Tax Act 1985 ("GST Act") has some very prescriptive rules around when any engagement as a director can form part of a "taxable activity" (a taxable activity is required before being able to register for GST).

One of the Commissioner's conclusions in the Commentary to those rulings was that a professional director (a person holding multiple directorships) without any other associated taxable activity (such as a legal, accounting or consulting practice) does not carry on a taxable activity just by virtue of holding multiple offices. While the rulings released in February 2023 summarised the legislation, what was not crystal clear in these publications was the GST treatment for professional fees for directors who provide their services through a personal services company (PSC). This caused some concern for a number of directors due to Inland Revenue's [operational position] which required directors who were incorrectly GST registered to deregister by 30 June 2023. Having an action and deadline got people's attention.

In response, the Inland Revenue has now helpfully issued a draft [Questions We've Been Asked] (QWBA) "GST: Directors and board members providing their services through a personal services company" to clarify matters.

What is the question?

The QWBA focuses on the following:

If a director provides their services through a personal services company (PSC), will the PSC be able to register for GST when the director would not be able to register if they were providing their services in their capacity as a natural person?

In analysing this question Inland Revenue defines a PSC as follows: "means a company that has been set up by a person to provide services to clients. The person is often the only employee, shareholder, and directors of the company."

What is the Inland Revenue's position?

There are two factual variations to consider, depending on whether the contractual agreements are between a company that requires a director and the PSC, or if they are between the company that requires the director and the individual who is appointed the director.

1. PSC contracts to provide director's services

The Inland Revenue has now taken the position that if a PSC contracts with the company that requires a director and supplies the service under that contract, those supplies of directorship services fall within the definition of "taxable activity", as the supply of the services is distinct from the supply of personally being a director. If the PSC's level of activity is sufficient to meet the definition of taxable activity in section 6 of the GST Act, the PSC can register for GST. The QWBA also provides the following example to help explain:

> Rupert Barre is an independent director of Nutwood Forest Limited (NFL), a position that was entered into via his PSC, Rupert Barre Limited (RBL). Rupert Barre is a well-respected public figure and proves to be an excellent director and subsequently RBL receives numerous requests for Rupert to join the board of other companies. RBL enters into contracts with several other companies to provide Rupert Barre as a director. NFL and the other companies agree to pay RBL for the provision of directorship services upon the issue of an invoice by RBL.
>
> Rupert now sits on the board of several companies and those companies have board meetings at least every two months. RBL has been regularly entering into contracts with companies, invoicing for Rupert's services, dealing with enquiries from other companies interested in appointing Rupert as a director, paying Rupert a monthly salary, and also dealing with all tax and other regulatory matters. RBL's activity would be sufficient to amount to a taxable activity and hence RBL may register for GST (and if RBL's level of supplies is over $60,000 per annum it must register for GST).
>
> Section 6(3)(b) does not exclude RBL's activity from being a taxable activity; it only applies to exclude the activity of Rupert Barre himself from the definition of "taxable activity".

2. Director contracts to provide their services to companies but is obliged to account for their fees to their PSC

The answer is less clear when a director contracts their services directly to a company but is obliged to account for these fees to their PSC, as the PSC is their employer. This is due to some technicalities of the GST legislation, however on balance Inland Revenue concludes that provided the activities otherwise meet the definition of a taxable activity (i.e., it is an activity which is carried on continuously or regularly and involves the supply of goods and services) the Commissioner will be satisfied that the PSC can be registered for GST.

If you are a director or board member and have any questions about GST, please contact your usual Deloitte advisor.

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A cautionary tale of why it's important to have correct GST documentation

By Sarah Kennedy and Elyse Shane

Inland Revenue recently published a Technical Decision Summary (TDS 23/08) looking at the GST returns of a Taxpayer providing tax advisory and accounting services. A Technical Decision Summary (or TDS) is a summary of adjudication or private ruling decisions made by the Tax Counsel Office (TCO). They are intended to provide a little more guidance as to Inland Revenue's legal interpretation process. More about TDSs can be found in our December 2021 Tax Alert article.

In the facts covered by TDS 23/08, the Taxpayer claimed GST input tax deductions relating to goods and services provided to it in connection with a client that had been removed from the Companies Register when the Taxpayer worked on the client matters. The Taxpayer also claimed input tax deductions relating to goods and services for which the Taxpayer did not hold tax invoices and for goods and services provided to it in relation to leased property. Inland Revenue's Customer and Compliance Services (CCS) team disallowed the claimed input tax deductions as well as an additional claim for an amount the Taxpayer had received as consideration for a taxable supply of which the Taxpayer was accountable for output tax.

TCO found that some of the input tax deductions were not allowed and the Taxpayer was liable to return the output tax. Much of the decision to deny the deductions rested on the Taxpayer having insufficient supporting documentation. The decision acts as a cautionary tale that Inland Revenue can and does check whether taxpayers hold the relevant tax invoices (or from 1 April 2023 taxable supply information), to support their GST returns.

GST Input Tax

GST input tax can be claimed where goods and services are acquired and have been used in or are available to be used in the making of taxable supplies. Tax invoice requirements applied up to 31 March 2023. From 1 April 2023, the rules changed to allow taxpayers to hold 'taxable supply information'. This change relaxes the rules somewhat, allowing information to be aggregated across systems. This change does not reduce the importance of holding relevant information or change Inland Revenue's powers to check that taxpayers do so.

Keeping appropriate records to support positions taken is vital for both defending those positions and showing that care has been taken in determining them.

The TCO found that the Taxpayer was entitled to some of the input tax deductions claimed in connection with their taxable activity. These were where the Taxpayer either held valid tax invoices or where they were not required to, due to the supplies being for $50 or less (this threshold has now increased to $200 for taxable supply information). Deductions were denied by CCS and upheld by the TCO where the taxpayer did not hold tax invoices or where the taxpayer was not identified on the invoice as the recipient of the supply (a requirement for tax invoices up to 31 March 2023).

Deductions were also denied for some goods and goods and services in connection with the Taxpayer's clients where the Taxpayer had no evidence that they were acting as an agent on behalf of the clients. Agents may claim an input credit where they have sufficient documentation to demonstrate the agency relationship or where it is obvious from the relationship that they are acting as an agent on behalf of the recipient of the supply. The TCO also found that the agency relationship could not be demonstrated, and these expenses were insufficiently connected to the making of taxable supplies since the companies the Taxpayer was supplying had been removed from the Companies Register so did not exist at the time of supply.

Finally, the Taxpayer had claimed input credits in relation to a property that they leased. TCO found that the Taxpayer used a portion of the leased property to make taxable supplies and that they were required to acquire the goods and services under the lease. However, as the Taxpayer was also using the property for activities other than making taxable supplies, they were only entitled to claim a portion of the GST on these invoices and should have held documentary evidence to substantiate the apportionment used.

GST Output Tax

GST output tax must be charged and paid on supplies made by a person in the course of undertaking a taxable activity. CCS claimed the Taxpayer had to return output tax on an amount the Taxpayer received. The Taxpayer claimed the amount was exempt from GST as it was repayment of a loan. TCO supported CCS's decision on the grounds that the Taxpayer had no documentation demonstrating that a loan had been extended to the payer. This is a further example of the need for documentation to substantiate positions taken.

Penalties

The taxpayer's lack of tax invoices and other documentation was also considered when penalties were imposed. Gross carelessness penalties were applied as the TCO considered that a reasonable person would have known that evidence was required to support the GST positions. Keeping appropriate records to support positions taken is vital for both defending those positions and showing that care has been taken in determining them.

If you have any queries regarding your GST, please contact your usual Deloitte adviser.

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Australian GST: Does your New Zealand business need to register?

By Di Williamson and Robyn Walker

In Budget 2023, the Australian Tax Office (ATO) were given AU$588.8million over four years to pursue a range of activities to promote GST compliance. With ATO's funding boost, it's more important than ever that New Zealanders carrying on a business or other form of enterprise that involves supplies being made to recipients in Australia need to keep the requirement to register for GST in Australia front of mind.

This could include, for example, selling goods or digital products, leasing or renting out real or non-real property located in Australia, providing advice or information, providing services, or granting or transferring rights.

Australian GST is 'similar but different' to GST in New Zealand, so in this article we provide an overview of some key matters to consider when determining if your business may have Australian GST obligations.

It's important to note that the guidance provided in this article is general in nature, and the specific circumstances and nature of an enterprise, the supplies being made, and the recipients, may all impact the application of the registration requirements.

Australia's GST

Australia's GST is a broad-based tax of 10% on most goods, services, and other things sold or consumed in Australia. If a New Zealand entity is required to register for Australian GST, or voluntarily chooses to do so, the entity needs to lodge periodic GST returns and remit to the Australian Taxation Office (ATO), one-eleventh of the price for any supplies that are taxable.

The requirement for a New Zealand entity to register can arise in cases where supplies are made by the entity through an enterprise the entity carries on (through a fixed or other place) in Australia, or where supplies are made through an enterprise the entity carries on through a place in New Zealand (or anywhere else outside Australia).

GST registration turnover threshold

A New Zealand entity carrying on an enterprise would be required to register for GST in Australia if its 'GST turnover', meets or exceeds AUD 75,000 in a 12-month period (considered on a current and future basis). Broadly, GST turnover includes income from supplies that are 'connected with' Australia, other than:

- Supplies that are 'input taxed' (e.g., financial supplies, lease of residential premises);
- Any 'GST-free' supplies (e.g., Basic foods, medical aids/appliances, health goods, etc.) which are **not** made by the entity through an enterprise that the entity carries on in Australia;
- Supplies made for no consideration; and
- Supplies that are made other than in connection with the entity's enterprise.

Additionally, an entity carrying on an enterprise can register for GST voluntarily if its annual GST turnover is below AUD 75,000.

When are supplies 'connected with' Australia?

A supply is 'connected with' Australia if:

- In the case of **goods** being supplied, the goods are delivered or made available to the recipient in Australia, the goods are removed from Australia, or the supply involves the goods[i] being brought to Australia and the supplier imports them into Australia;
- In the case of low value imported goods[i] (LVGs), the LVGs are supplied from offshore to a 'consumer'[ii] in Australia;

- In the case of **real property** being supplied, the real property, or the land to which it relates, is in Australia; and
- In the case of **anything else** being supplied:
  a) The thing is done in Australia;
  b) The supplier makes the supply through an enterprise that the supplier carries on in Australia;
  c) Neither a) or b) applies, the thing is a right/option to acquire another thing, and the supply of the other thing would be connected with Australia (e.g., a travel package for a trip to Tasmania that is supplied by a travel operator in New Zealand); or
  d) The recipient is an 'Australian consumer'[iii].

Working out if you meet or exceed the GST registration turnover threshold

The following table provides a summary of the treatment generally applicable to various forms of supply that New Zealand entities may make to customers in Australia. The table is indicative only and is not comprehensive.

Type of supply made by New Zealand entity	GST treatment[iv]	Include supply's value in your GST registration turnover?
Offshore supply of LVGs to a consumer in Australia	Taxable supply	**Yes**
Offshore supply of LVGs to a consumer in Australia made via an electronic distribution platform/ marketplace (EDP)	Taxable supply by the EDP	No
Offshore supply of LVGs to a GST-registered business customer in Australia, whether via EDP or not	Out of scope [The 'taxable importation' rules may require the importer to pay GST at the Australian border.]	No
Offshore supply of imported goods, or consignment of multiple goods, with a value over AUD 1,000	Out of scope [The 'taxable importation' rules may require the importer to pay GST at the Australian border.]	No
Cross-border digital supply of services, rights or products to an 'Australian consumer'	Taxable supply	**Yes**
Cross-border digital supply of services, rights or products to an 'Australian consumer' made via an EDP	Taxable supply by the EDP	No
Other cross-border digital supplies of services, rights or products (e.g., supply to a GST-registered business customer in Australia acquiring the thing for a business purpose), whether via EDP or not	Out of scope	No
A Business to Consumer (B2C) supply of services or other intangible thing, that involves the supply being: • Done in Australia, and/or • Supplied through an enterprise the New Zealand entity carries on in Australia.	Taxable supply	**Yes**
A Business to Business (B2B) supply of services or other intangible thing, that involves the supply being done in Australia, but is not supplied through an enterprise the New Zealand entity carries on in Australia	Out of scope (i.e., deemed not 'connected with' Australia) – provided the recipient is GST registered, has an enterprise being carried on in Australia and the acquisition is for a business purpose. Taxable supply if the rules of disconnection do not apply	No **Yes**
Supply of short stay accommodation in residential premises located in Australia, or leasing out of residential premises to residential tenants in Australia	Input taxed supply	No
Supply of non-residential land or premises located in Australia by way of lease	Taxable supply	**Yes**

Australian GST registration

New Zealand entities generally need to register for Australian GST on the standard basis, unless they are eligible to register under the simplified GST registration arrangements. This choice is available to entities making offshore supplies of LVGs to 'consumers' in Australia or supplies of digital products, services, etc. to 'Australian consumers'. However, simplified GST registration is not available for non-resident businesses that import goods and store them in Australia before selling them online, directly, or through an EDP.

Standard registration involves specific requirements and obligations including in relation to proving identity but permits GST input tax credits to be claimed. Simplified registration is more straightforward but does not allow claiming of input tax credits.

It is important to note that failure to register when required or other non-compliance with GST obligations can result in penalties being applied by the ATO.

Understand your Australian GST obligations

Understanding the GST requirements for a New Zealand entity operating in Australia is essential to effectively managing compliance with the Australian GST law.

The requirement to register for GST is determined by factors such as turnover from relevant supplies, the nature of business activities undertaken, and supplies being 'connected with' Australia. Additionally, different rules apply to the supply of goods, services, and other things, so it's important to assess whether supplies being made to Australian customers are subject to GST or qualify for exemptions.

Seeking professional advice tailored to your specific circumstances is highly recommended - to help navigate the complexities of the GST rules and meet GST reporting and payment obligations. Adherence to the Australian GST law, and effective management of GST responsibilities, will assist New Zealand entities to maintain smooth operations in the Australian market.

For more information, please contact your usual Deloitte advisor.

[i]Goods with a customs value of AUD 1,000 or less

[ii]A customer who is not registered for GST or, if registered, the recipient's acquisition is not for the purpose of an enterprise the recipient carries on

[iii]An Australian resident who is either unregistered or, if registered, the entity's acquisition is not acquired for the purpose of an enterprise the entity carries on

[iv]The GST treatment specified for each of the categories in the table is subject to any exception that may apply to a specific supply that is made, such that a different GST treatment may apply to that thing. For example, while most goods supplied in the 'Offshore supply of LVGs to a consumer in Australia' category will be taxable supplies, an offshore supply of a LVG that is a GST-free health good (e.g., sunscreen with an SPF of 15 or more), or a medical aid or appliance (e.g., a walking frame) will be a GST-free supply. Where such exceptions apply, there may be an impact on whether such supplies count towards the supplier's GST registration turnover.

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ATO issues new ruling on tax resident tests for individuals

By Michael Ward, Andrea Scatchard and Amy Sexton

On 6 October 2022 the ATO issued a draft ruling for public consultation, dealing with its view of the four tests for an individual to be a tax resident of Australia. On 7 June 2023, the Australian Taxation Office (ATO) issued Taxation Ruling [TR 2023/1](), updating its public views on the application of the tests for determining whether an individual is a resident of Australia for income tax purposes. The ruling seeks to consolidate and replace some older rulings on this issue and incorporate recent court decisions referred to in the draft ruling, in particular:

- Harding [2019] FCAFC 29 and Pike [2020] FCAFC 158 (which dealt with the "resides" and "domicile" tests from the perspective of an individual working overseas); and
- Addy [2020] FCAFC 135 (which dealt with an individual visiting Australia).

Any New Zealanders who are spending time in Australia should ensure they understand when Australian tax residency may be triggered and seek advice to understand the consequences.

Four tests for individual tax residency

There are four statutory tests for determining whether an individual is a resident of Australia for income tax purposes:

1. The "ordinary concepts" test (an individual is resident if they reside in Australia under the "ordinary meaning" of the word reside);
2. The domicile test (an individual is resident if their domicile is in Australia, unless they can satisfy the Commissioner of Taxation that their "permanent place of abode" is outside Australia);
3. The so-called "183-day" test (an individual is resident if they are physically present in Australia for more than one-half of the Australian tax year, unless they can satisfy the Commissioner of Taxation that their "usual place of abode" is outside Australia and that they do not intend to become a resident of Australia); and
4. The commonwealth superannuation fund test (an individual is resident if they, or their spouse or dependent child under 16 years, is either: (i) a member of the superannuation scheme established by deed under the Superannuation Act 1990 or (ii) an eligible employee for the purposes of the Superannuation Act 1976).

If an individual meets any of those tests, they are considered tax resident in Australia, and subject to Australian income tax on income and capital gains from Australia and overseas, unless they qualify for tax relief:

- As a "temporary resident;" and/or
- Under the terms of a double taxation agreement between Australia and another jurisdiction.

What's in the ruling

TR 2023/1 is broadly consistent with the earlier rulings while adding examples which reflect the recent court decisions.

The ruling notes that tax residence is often a question of fact, and similar facts do not always result in the same outcome. However, the ruling suggests:

- For an individual visiting Australia, it likely requires at least six months presence in Australia (actual presence or intention to treat Australia as their home) to determine whether their actions support their being resident under the ordinary concepts test. This can occur even though the individual may have connections to, or be resident in, another country. Shorter periods than six months may be sufficient if other circumstances support the necessary connection and objective intention to reside in Australia (e.g. if the individual has spent longer periods in Australia in prior or later years).
- For an individual moving away from Australia,
    - The domicile test likely requires an intention to remain overseas in the same location for at least two years to:
        - Establish the necessary "permanence" of their abode in that overseas location; and
        - Show they have "abandoned" their Australian residence.
    - The resides test could still apply even where they spend more time overseas than in Australia, if for example, they return to Australia at intervals to an established family and social life, and where the oversea employment or business activities could be (and are) undertaken in Australia or overseas.
- For an individual visiting Australia, the 183-day test does not require that the taxpayer maintain a foreign home to have a usual place of abode in an overseas location—an intention to return to that locality would likely be sufficient to show their usual place of abode is at that overseas location.

Tax residence is a key determinant of whether Australia taxes worldwide income and capital gains or only Australian income and gains from selling "taxable Australian property" such as Australian real estate. Ambiguity creates significant uncertainty for those travelling to and from Australia in a time when cross-border arrangements have grown.

The ATO also confirms its general position that short-term temporary workers (such as seasonal workers and working holidaymakers) are more likely to remain non-residents, even if they are in Australia for more than 183 days. This is because a seasonal or working holiday visa suggests the holder is intending to visit Australia for a specific purpose and period. This may have less significance where they can show an intention to remain in Australia more permanently (for example, by seeking a sponsored temporary work visa).

The ruling explicitly states that it does not address or discuss in detail the fourth test (the commonwealth superannuation fund test). It also does not deal with the interpretation of the tie-breaker article in Australia's double taxation agreements.

Deloitte Australia comments

Tax residence is a key determinant of whether Australia taxes worldwide income and capital gains or only Australian income and gains from selling "taxable Australian property" such as Australian real estate. Ambiguity creates significant uncertainty for those travelling to and from Australia in a time when cross-border arrangements have grown.

The additional clarification provided by the ruling is welcome, given the previous rulings had been issued more than 20 years ago and did not reflect recent case law. That said, there is still significant ambiguity around the application of these tests (even though, in the case of the first three tests, they have applied for more than 80 years).

Further, we are awaiting a decision from the Australian government on whether they will legislate new tax rules to replace these four tests, following on the announcement by the previous government in the 2021-22 Federal Budget in May 2021. The announced measures essentially lapsed with the change of government in May 2022, and comments from the assistant treasurer in 2022 suggested the new government could seek to continue to pursue reforms in this area.

It is to be hoped such reforms will provide clarity and certainty for taxpayers, important in keeping Australia competitive from a workforce perspective while being fit for purpose in a post-COVID-19 business environment.

Deloitte New Zealand comments

As discussed in our June Tax Alert article on the potential Australian tax issues for New Zealanders considering Australian citizenship, this ATO ruling reminds us that the tax residency rules in Australia are not the same as the New Zealand rules.

The New Zealand primary tax residency test is the “permanent place of abode (PPOA)” test. This test measures if there is “a place where a taxpayer habitually resides from time to time even if they spend periods of time overseas”.

Deciding if a person has a PPOA in New Zealand requires an overall assessment of the person’s circumstances and the nature and quality of the use the person habitually makes of the place of abode. It is necessary to consider the continuity and duration of the person’s presence in New Zealand and the durability of the person’s association with their dwelling here and how close their connection with it is.

If residency is not met under the PPOA test we then turn to the secondary tax residency test, the “days test” or the “183-day rule”. If a person is present in New Zealand for more than 183 days in total in any 12-month period, they will be a New Zealand tax resident. The days of presence do not need to be consecutive.

Losing New Zealand tax resident status requires a person to both no longer have a PPOA in New Zealand and to be absent from New Zealand for more than 325 days in a 12-month period. People leaving New Zealand who are reluctant to sell their family home, or who make return visits for personal or business reasons exceeding 6 weeks a year, may find that they do not cease being New Zealand tax residents even if they have moved their family life to Australia (or elsewhere). While the tiebreaker test in the double tax agreement will provide relief from double tax, being a tax resident under both countries’ tax rules can result in some complications and unexpected outcomes when filing tax returns.

So, if a move to Australia, or Australian citizenship, is something you are considering we recommend you contact your usual Deloitte tax advisor for guidance first.

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GloBE rules: One step at a time

By Annamaria Maclean, Benjamin Walker and Viola Trnski

In May 2023 the Government introduced draft legislation to adopt the OECD's Global Anti-Base Erosion model rules (referred to as "the Applied GloBE rules", being the OECD rules as introduced in New Zealand). The Applied GloBE rules are proposed to be adopted by reference to the OECD model rules, commentary and administrative guidance. The exact application date has not been set, instead, they are proposed to be triggered once a critical mass of countries have adopted them.

While there are still some uncertainties as to how the Applied GloBE rules will function in New Zealand, the proposed legislation outlines how the rules will be administered, and how they may interact with New Zealand's existing tax laws.

What are the GloBE rules?

The GloBE rules were developed by the OECD to ensure large multinational groups (MNEs) pay a minimum effective tax rate of 15% on their global profits. The rules form Pillar Two of the "Two Pillar Solution" that aims to prevent MNEs from shifting profits to low or zero-tax jurisdictions.

The Applied GloBE rules that New Zealand has adopted will apply to MNEs with consolidated accounting revenue of more than EU€750 million in two of the four preceding income years. The rules do not apply to certain entities, such as government entities, international organisations, non-profit entities and certain pension, investment, and real estate funds. Inland Revenue expects between 20 and 25 New Zealand-headquartered MNEs to fall within the rules' scope.

Taxing mechanisms

The Applied GloBE rules adopt an Income Inclusion Rule (IIR), an Under Taxed Profits Rule (UTPR), and a Domestic Income Inclusion Rule (DIIR).

The IIR is the primary mechanism that applies on a top-down basis, giving the ultimate parent entity country, or an intermediate parent entity country, the right to collect GloBE top-up tax for underlying foreign operations, unless the tax is collected in the foreign country under a Qualified Domestic Minimum Top-Up Tax.

The GloBE top-up tax is the difference between the 15% GloBE tax rate and the Effective Tax Rate (ETR) calculated for each country an MNE operates in. The ETR is calculated by dividing the "Adjusted Covered Taxes" of all entities in a jurisdiction by the GloBE Income. The calculation entails complex adjustments that combine both accounting and tax concepts.

The UTPR is a "back-stop" rule that applies when no parent is subject to the IIR. It allocates top-up tax to countries in proportion to the group's payroll costs and tangible asset values in each country that adopts the GloBE rules. This ensures that if the country where an MNE has its headquarters does not implement GloBE rules, the MNE will still have to pay a top-up tax.

New Zealand is proposing to implement a DIIR that would apply to New Zealand-headquartered in-scope MNEs. A DIIR is intended to avoid New Zealand-headquartered MNEs having to pay any part of the GloBE top-up tax on undertaxed New Zealand income to other countries under the UTPR. There would also be no additional tax cost for these taxpayers, just a change in the country they paid the tax to.

When will the Applied GloBE rules come into force?

An exact application date has not been confirmed. Instead, an empowering provision allows the application date to be set by an Order in Council, on the recommendation of the Minister of Revenue.

The Bill commentary notes that this date will be "once the Government determines that a critical mass of countries has adopted the GloBE rules". It will not be before 1 January 2024 for the IIR, and not before 1 January 2025 for the UTPR. The "critical mass" test will likely be met in the next few years, as the EU, Japan, Canada, Australia, and the UK have committed to adopting the OECD GloBE rules.

Interaction between the Applied GloBE rules and New Zealand's domestic tax laws

There have been several amendments proposed to New Zealand's domestic laws in the Taxation (Annual Rates for 2023/24, Multinational Tax, and Remedial Matters) Bill to incorporate the Applied GloBE rules. The legislation, as proposed, makes imputation credits unavailable for taxes paid under the IIR or UTPR. Imputation credits are generated for taxes paid under the DIIR. Foreign tax credits will not be available for taxes paid under the IIR or UTPR to another country but would be available for Qualified Domestic Top Up Tax paid in another country.

Notably, the Applied GloBE rules are proposed to override double tax treaties unless a treaty explicitly refers to them.

Safe harbour rules

The OECD has developed three transitional safe harbours tests which may provide that in-scope entities do not need to prepare full calculations for income years beginning on or before December 2026. The De Minimis Test, Simplified Test and Routine Profits Test aim to reduce the compliance burden for MNE Groups. If the transitional safe harbour regime is not applied in a jurisdiction in the first fiscal year, it cannot be applied for subsequent years. It is therefore critical that MNE Groups carefully consider the three applicable tests in the first fiscal year the rules apply.

Financial accounting disclosures: IAS 12 developments

In May 2023, the International Accounting Standards Board (IASB) issued amendments to IAS 12 Income Taxes to clarify the accounting treatment of deferred taxes following the implementation of the OECD GloBE rules.

If the transitional safe harbour regime is not applied in a jurisdiction in the first fiscal year, it cannot be applied for subsequent years. It is therefore critical that MNE Groups carefully consider the three applicable tests in the first fiscal year the rules apply.

The amendments introduce a mandatory temporary exception to the accounting for deferred taxes for jurisdictions implementing the OECD GloBE rules. This has not yet been incorporated into New Zealand accounting standards.

In addition, effective for annual periods beginning on or after 1 January 2023, in periods in which Pillar Two legislation is enacted or substantively enacted, but not yet in effect, an entity preparing IFRS accounts is required to disclose known or reasonably estimable information that helps users of financial statements understand the entity's exposure to Pillar Two income taxes.

Administration and compliance

All in-scope MNEs must register with Inland Revenue within six months of the end of the first income year they are in-scope of the Applied GloBE rules. If they cease to be in scope, they must also notify Inland Revenue within six months from the end of the income year the Applied GloBE rules cease to apply.

New Zealand in-scope MNEs must file a GloBE information return (GIR) with Inland Revenue electronically within 15 months of the end of the relevant income year (18 months for the first reporting year).

All in-scope MNEs must file a separate annual top-up tax return with Inland Revenue stating the amount of top-up tax payable. This return is due one month after the GIR is due (or would be due, if the MNE does not need to file a GIR). This is extended to two months after the GIR is due for the first reporting year. Top-up tax is due on the same date as this return.

New penalties of up to $100,000 have also been introduced for failing to:

- register for GloBE tax,
- submit a GloBE information return on time, and
- submit a CbC report on time.

The CbC and GloBE regimes are closely linked because MNEs that are in scope of the GloBE rules will also fall under the CbC reporting requirements.

Concluding comments

The Applied GloBE rules are complex and there will be a significant compliance burden for in-scope MNEs. Despite many countries committing to the OECD GloBE rules, some uncertainty remains on how they will operate, as few countries have legislated them yet.

It is essential that tax teams of MNEs begin formulating a framework to effectively comply with the Applied GloBE rules. In the first few years, the transitional safe harbours may apply, and tax teams should currently be considering whether these apply.

From there, the next steps are firstly understanding the complex operation of the Applied GloBE rules and calculating any possible top-up taxes. Secondly, developing a solution within existing reporting systems that can incorporate the Applied GloBE rules, as they effectively represent an additional reporting obligation. Thirdly, implementing the solution effectively and monitoring any ongoing developments and possible improvements over time. Tax teams will need to engage with other areas of the business to get the right information and data.

All in-scope MNEs should be considering and communicating any material ramifications to their management team/executive, most notably any top-up taxes, the compliance burden and disclosure requirements. Connected to the disclosure requirements, statutory auditors will likely request information regarding this impact.

Submissions on the Taxation (Annual Rates for 2023/24, Multinational Tax, and Remedial Matters) Bill close on Friday 14 July 2023 and Inland Revenue is expected to release further guidance before the Applied GloBE rules are implemented in New Zealand.

While this article provides a high-level overview of some practical implications, we suggest getting in touch with your usual Deloitte advisor if these rules might affect you.

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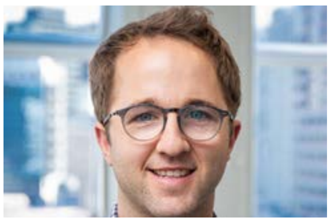

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Income Tax (Accommodation Expenditure – North Island Flooding Events) Order 2023

On 8 June 2023, the Income Tax (Accommodation Expenditure – North Island Flooding Events) Order 2023 was made, extending the time limit for section CZ 29B to 1 April 2024. This section provides that accommodation expenditure relating to an employee working on a project of limited duration for rebuilding and recovery efforts in an area affected by the North Island flooding events will be exempt income (provided certain conditions are met).

Child Support (Pass on) Acts Amendment Act passed

On 13 June 2023, the Child Support (Pass On) Acts Amendment Bill received Royal assent. The most significant feature of the Act is that, from 1 July, Inland Revenue will pass child support payments on to receiving carers on a sole parent rate of benefit.

Deemed rate of return on FIF attributing interests

On 16 June 2023, the Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investments Funds, 2022-23 Income Year) Order 2023 was passed.

The Order sets the deemed rate of return used to calculate foreign investment fund income for the 2022–23 income year at **8.15%**. The rate for the 2021–22 income year was 6.01%.

Inland Revenue has also released the special report DRR for attributing interest on FIF for the 2022-23 Income Tax Year.

The Order comes into force on 16 June 2023.

Special report: Marketplace rules for listed services

On 19 June 2023, Inland Revenue released a special report on the platform economy amendments in the Annual Rates Act 2023 which will require operators of electronic marketplaces to collect GST on supplies of listed services from 1 April 2024. This item joins other recent reports on new legislation.

Inland Revenue statements and guidance

Square metre rate for home office calculations for 2023

On 29 May 2023, Inland Revenue announced that the square metre rate for home office calculations has been set at **$51.05** for the 2023 income year (1 April 2022 to 31 March 2023).

Inland Revenue: Incorrect reporting of Covid-19 subsidies – penalties and interest remission

On 30 May 2023, Inland Revenue announced they are receiving penalty and interest remission requests for income tax returns in which Wage Subsidy figures have been reported incorrectly and returns have been amended.

Inland Revenue amends trust income example and confirms guidance will be released

On 31 May 2023, Inland Revenue revised commentary on the proposed amendment to increase the trust rate to 39%, following comments that the original example may be considered tax avoidance.

Inland Revenue notes in the commentary that 'there is some uncertainty under existing law about the tax treatment of such a settlement. This matter will be subject to further consultation'.

On 1 June 2023, Inland Revenue updated their website confirming guidance will be released on the trust rate increase, if needed, once the empowering legislation is enacted.

Interpretation Statement: The interest limitation rules and short-stay accommodation

On 2 June 2023, Inland Revenue issued IS 23/04 (and accompanying fact sheet) which explains how the interest limitation rules apply to natural persons and trustees providing short-stay accommodation, and what other rules may be relevant to any interest that is deductible.

The rules in subpart DH of the Income Tax Act 2007 deny all interest deductions for disallowed residential property (DRP) acquired on or after 27 March 2021, and progressively deny deductions for grand-parented residential interest.

DRP does not include land to the extent that it is 'excepted residential land' i.e., a person's main home, the main home of a beneficiary or trust (if the owner is a trustee and the principal settlor has a different main home), or farmland (including dwellings on the land).

The new build land exemption may also apply, in which case the interest limitation rules do not apply. The rules may apply to one part of a piece of land, in which case land must be apportioned. The rules override all other deduction rules.

Public ruling: GST – Payments made by parents to state and state integrated schools

On 12 June 2023, Inland Revenue issued BR Pub 23/08 (which is a reissue of the expired BR Pub 18/06). The ruling is substantially the same as BR Pub 18/06 and applies from 21 June 2023.

GST is not chargeable if the student has a statutory entitlement to receive services free of charge. GST is chargeable on payments made for supplies of other goods or services that are not integral to the supply of education to which the student has a statutory entitlement, where that supply is conditional on the payment being made.

Inland Revenue: Public Guidance Work Programme Updated

On 12 June 2023, Inland Revenue updated the Public Guidance Work Programme for 2022-23.

Draft Determination: Tax Depreciation Rate for gaming machines (electronic)

On 15 June 2023, Inland Revenue issued the draft determination ED00248 which proposes to change the depreciation rates and estimated useful life for electronic gaming machines, as follows:

- decrease the straight-line depreciation rate to 21% (from 30%),
- decrease the diminishing value depreciation rate to 30% (from 40%), and
- increase the estimated useful life for electronic gaming machines to 6.66 years (from 5 years).

These changes are intended to reflect technological advancements and industry practices from when the rates were set 30 years ago. The determination will not extend to electronic gambling machines.

The deadline for comment is 27 July 2023.

Technical Decision Summary: Deductibility of expenditure

On 20 June 2023, Inland Revenue issued TDS 23/09 on a binding ruling sought by a manufacturer subject to overseas regulatory requirements in markets it exports to. The issue was whether expenses incurred to renew these regulatory registrations are deductible.

The Tax Counsel Office confirmed that the registration costs satisfy the general permission if the costs have a direct link to the work required to register the products with the overseas regulator. The capital limitation does not apply because the registration costs allow the Applicant to distribute the products in that overseas market for its customers and is a necessary part of making that supply.

Inland Revenue: First time provisional tax liabilities satisfied by tax pooling credits and the early payment discount for the 2018 and 2019 tax years

On 21 June 2023, Inland Revenue provided an update on the Income Tax Act 2007 amendment that allows the use of tax pooling credits to qualify for the early payment discount. The change initially applied from the 2020 income tax year, and now also applies to the 2018- and 2019-income years.

For eligible taxpayers whose 2018- or 2019-income tax returns were received prior to the transfer to Inland Revenue's new system, the returns will require manual intervention by Inland Revenue. If an early payment discount has not been granted, please send a web message in myIR.

Tax Information Bulletin Vol 35 No 5

Inland Revenue has published a Tax Information Bulletin for June 2023.

Global tax news

New Zealand corrects list of reservations and notifications to Multilateral Instrument

On 20 June 2023, New Zealand deposited a corrected list of reservations and notification to the OECD Multilateral Instrument under articles 2 and 8. The corrected version amends the list of covered tax agreements under article 2 of the tax agreement with Hong Kong and adds a provision of the treaty with South Africa to the notification of existing provisions in listed agreements under article 8.

Australia: Treasury Laws Amendment (Making Multinationals Pay Their Fair Share — Integrity and Transparency) Bill 2023

On 22 June 2023, the Australian Parliament introduced a new tax bill regarding thin capitalisation and disclosure of subsidiaries. The Bill limits the amount of interest expenses that entities can deduct for tax purposes, and introduces new reporting requirements, both from 1 July 2023. A Deloitte Australia summary is available here.

OECD Updates

Global Forum Secretariat assists members to ensure the effective implementation of automatic exchange of financial account information

On 31 May 2023, the OECD announced that the Global Forum Secretariat has developed a Model Administrative Compliance Strategy to assist jurisdictions to improve and implement their own tax information exchange strategy. The tool and its user guide are available to all interested jurisdictions.

Decarbonisation and intergovernmental fiscal relations

On 6 June 2023, the OECD released a paper which explores the nexus between decarbonisation and intergovernmental fiscal relations focusing on related challenges and reform options.

Crypto-Asset Reporting Framework and 2023 Common Reporting Standard update

On 8 June 2023, the OECD released a publication which includes the Crypto-Asset Reporting Framework, amendments to the CRS, and commentaries on the exchange of information framework.

Global Forum Secretariat launches guidance on implementing secure systems for automatic information exchange

On 9 June 2023, the OECD released *Guidance for implementation of a secure perimeter for automatic exchange of information purposes – a tactical approach on confidentiality and data safeguards for developing counties.*

Uzbekistan joins Inclusive Framework on BEPS thereby commits to the two-pillar plan

On 9 June 2023, Uzbekistan joined the Inclusive Framework on BEPS which commits the country to joining the two-pillar plan.

Tax Administration Forum launches peer-to-peer support for developing countries to implement the Two-Pillar Solution

On 13 June 2023, the OECD announced that the Forum on Tax Administration Pillar Knowledge Sharing Network held its first meeting of what will be a series of peer-to-peer knowledge-sharing events where experts from tax administrations in 'early implementer' jurisdictions will offer high-level practical advice and share lessons learned on aspects of the Two-Pillar Solution.

Continued progress on countering harmful tax practices as international standards are followed

On 21 June 2023, the OECD announced that jurisdictions continue making progress on implementing the international standard under BEPS Action 5 to address harmful tax practices, as the OECD/G20 Inclusive Framework on BEPS releases new results on preferential tax regimes.

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

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