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Tax Alert

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Tax Bill contains a number of remedial changes to help taxpayers
Page 2

Tax Bill contains a number of remedial changes to help taxpayers

By Robyn Walker

The biggest tax announcement in Budget 2023 was the increase in the trustee tax rate from 33% to 39% from the 2024/25 income year, and despite this being a Budget announcement and included in Budget Day legislation, the new trustee tax rate hasn't been fully legislated under Parliamentary urgency. Instead, the change in tax rate is one of a number of changes included in the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill ('the Bill').

The Bill is currently with the Finance and Expenditure Committee ('FEC') for consideration and submissions have been called for, with the public given a deadline of **30 June** to comment.

Aside from the trustee tax rate change (please refer to our separate article), what else is in the Bill?

Compared with Bills in recent history which have had well over 100 pages of legislation and long lists of policy changes, this Bill is refreshingly contained and on the whole taxpayer friendly, with the exception of the trustee tax rate change and the inclusion of complex legislation to introduce the OECD Pillar two global minimum tax.

OECD Pillar Two: Global Minimum Tax (GLoBE)

These rules will apply to multinationals with revenue in excess of €750million, so the number of businesses impacted is fairly small. New Zealand is adopting the OECD Model Rules via a reference rather than recasting the complex rules in the New Zealand legislation. This approach will save the Income Tax Act 2007 requiring a whole new volume but may make it harder for impacted businesses to understand their obligations. The OECD Model Rules run to 70 pages with another 220 pages of technical guidance notes. While adopting these rules, the Bill leaves some flexibility as to when they will apply, with the rules only coming into effect by Order in Council once the Government has determined that a critical mass of countries have adopted the GLoBE rules. The application date will be no earlier than 1 January 2024.

Taxpayers, both New Zealand headquartered or multinationals operating here, will need to register with Inland Revenue to advise they are within the scope of the rules, and file returns. Heavy penalties are being introduced to discourage non-compliance.

Taxation of backdated lump sum payments

Periodically a story pops up in the media about a Kiwi Battler who has had to fight the Accident Compensation Corporation (ACC) to obtain a payout and after years of not receiving compensation a large lump sum is awarded. The outcome of this process has been over-taxation, as the tax has been calculated based on the amount being received in a single year (i.e., it may be at least partially taxed at 39%), rather than reflecting that it may actually be the accumulation of modest amounts over an extended period. At long last, the Bill proposes to fix this anomaly with effect for payments made by ACC or the Ministry of Social Development after 1 April 2024. This is a very positive outcome for impacted taxpayers and rectifies an example of unfairness in the tax system.

Government KiwiSaver contributions for Paid Parental Leave recipients

Another Budget announcement, the Bill contains a change to facilitate the Government making matching 3% KiwiSaver contributions to recipients of paid parental leave (PPL) payments. While anyone can apply for PPL, the majority of these payments go to mothers, which is a small step forward to helping close the gap in average KiwiSaver balances, where currently men have balances, on average, 20 percent higher than women.

Taxation rollover relief

Businesses impacted by the North Island Flooding events may have had assets destroyed and may be anticipating receiving insurance proceeds to put right the damage. The standard tax rules can result in adverse outcomes for taxpayers, whereby a tax liability caused by depreciation recovery income impedes the ability of the business to then purchase replacement assets, or equally an extended insurance negotiation and recovery activity spanning years results in excessive tax compliance complications. As was done after the Canterbury and Kaikoura earthquakes, the Bill contains some time-limited optional rules including to:

- Ensure tax depreciation remains available during temporary access restrictions,
- Defer depreciation recovery income arising by rolling it into replacement assets,
- Recognise uneconomic to repair situations as triggering a disposal for tax purposes, and
- Temporarily defer disposal or repair tax events until both compensation and costs are known.

The exact mechanics for some of these concessions can be complicated, as can filtering compensation and recovery costs into the appropriate categories and treatments for tax purposes. Please contact your usual Deloitte advisor if you think you may be eligible.

Overseas donee status

Most taxation bills contain some adjustments to the list of donee organisations in schedule 32 of the Income Tax Act 2007. This Bill sees the following organisations added to the list: Butterfly Trust, Develop Together, Ekal Vidyalaya Foundation of New Zealand, the Limapela Foundation, Pasifika Safe Shelter Trust, and the Make My Name Count NZ Charitable Trust.

Extending the tax exemption for non-resident offshore oil rig and seismic vessel operators

This change extends a temporary exemption through to the end of 2029. This extension recognises that the time an oil rig or seismic vessel is required to be in New Zealand could extend beyond the 183 days they can be in New Zealand before tax starts arising under our Double Tax Agreements and mitigates the risk that the rigs will leave New Zealand before completing the relevant work.

Other remedial changes

The Bill contains a number of other remedial changes, which include:

- **Correcting extra pay inaccuracy -** It is proposed to change how tax on extra pay is calculated to make the calculation more accurate. The current calculation requires an employer to annualise earnings from the previous four weeks. This will change to require employers to look at the previous two paid pay periods. This change will apply from 1 April 2024 and is something that will likely require updates to payroll software.
- **Sharing death information with KiwiSaver scheme providers –** currently Inland Revenue is unable to notify KiwiSaver providers about deceased members. This will change from 1 April 2024.
- **Charities changes –** the Bill contains a number of minor changes to assist charities, including ensuring Charities are automatically exempt from RWT.
- **Double tax agreement source rule –** this is a positive change to remove an overreach of the DTA source rule in section YD 4(17D) that could see New Zealand taxing amounts that were not intended. This will apply retrospectively from 2018 when the rule was originally introduced.
- **Transitional residents holding domestic financial arrangements –** sometimes to obtain a visa a non-resident is required to make investments in New Zealand, including purchasing government bonds, before arriving in New Zealand which can result in unexpected tax outcomes. The Bill contains a technical change to ensure the tax rules apply correctly to new residents.
- **10% income interest test for access to the attributable FIF income method –** this is a taxpayer friendly change to allow more taxpayers to access this calculation method in the year an investment is acquired or disposed of.
- **Definition of 'building' –** a new definition of 'building' is being added to the Income Tax Act 2007 in order to ensure that an interest in a unit title will be depreciable. This change is retrospective to when depreciation was reinstated for commercial buildings from 1 April 2020.
- **Main home exclusion: construction period –** the current 10-year bright-line test allows the time for constructing a property to be disregarded when determining whether the main home exemption applies. This Bill is inserting a similar test within the 5-year bright-line test (which applies to properties acquired between 29 March 2018 and 27 March 2021).

For more information, please contact your usual Deloitte advisor.

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Implications of the 39% trustee tax rate

By Robyn Walker

The many New Zealanders who have a family trust were likely unhappy to learn that Budget 2023 has announced an increase in the trustee tax rate from 33% to 39% with effect from the 2024/25 tax year (generally 1 April 2024). For a Budget that was badged as having 'no major tax changes', this may feel like a major change for the 400,000 trusts registered in New Zealand. Trusts are commonly used for asset protection purposes, particularly for New Zealanders who are running some of New Zealand's over 500,000 small businesses.

The change to the trustee tax rate follows the increase of the top personal tax rate to 39% from 1 April 2021 and the introduction of significant trust disclosure requirements, which trustees will have recently grappled with in filing 2021/22 tax returns. Support for the change comes in the following comment in the Budget Press Release: "Ministers made clear … that if analysis indicated high-income earners were circumventing the rate through greater use of trusts, the Government would move to address this issue. New information from Inland Revenue has shown an almost 50 percent spike in income subject to the trustee rate, from $11.4 billion in the 2020 tax year to $17.1 billion in the 2021 tax year."

The Budget Press Release attempts to suggest that this change won't materially impact most trusts, with the comment "[o]nly a small proportion of trusts will pay most of the additional tax. The top five percent of trusts with some taxable income in the 2021 tax year accounted for 78 percent of all trustee income ($13.3 billion out of $17.1 billion). This is estimated to raise approximately $350 million per year."

The fact that the majority of trusts will not be paying "most of the tax" will be of little comfort to the significant number of trusts held by 'regular New Zealanders' with a marginal tax rate of 33% or lower.

Statistics provided by Inland Revenue indicate there are 120,000 trusts with trustee income between $1 and $180,000 (and 43,000 trusts with nil income), which had a mean level of trustee income of $21,000 in 2021. As an indication, the tax increase would be:

If the average trust will be paying an additional $1,260, collectively those 120,000 trusts face an extra tax burden of **$151,200,000**, all else being equal.

Trustee income	Tax at 33%	Tax at 39%	Difference
$5,000	$1,650	$1,950	$300
$10,000	$3,300	$3,900	$600
$15,000	$4,950	$5,850	$900
$20,000	$6,600	$7,800	$1,200
$21,000	$6,930	$8,190	$1,260
$30,000	$9,900	$11,700	$1,800
$50,000	$16,500	$19,500	$3,000
$70,000	$23,100	$27,300	$4,200
$100,000	$33,000	$39,000	$6,000
$150,000	$49,500	$58,500	$9,000
$180,000	$59,400	$70,200	$10,800

The details

The trustee tax rate change is included in the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill ('the Bill'). The Bill has had its first reading and is now with the Finance and Expenditure Committee ('FEC') for consideration. The FEC has called for submissions by **30 June 2023.**

In addition to changing the trustee tax rate to 39%, the Bill includes three additional trust changes:

1. A twelve-month exemption from the 39% rate for deceased estates. During the 12-month period the estate will be taxed at the personal tax rate of the deceased person.
2. Trusts settled for the care of a disabled person will be taxed at the disabled beneficiaries' personal tax rate.
3. Beneficiary income received by certain close company beneficiaries will not be taxed as beneficiary income in the company but will instead be treated as trustee income with tax paid at the trustee rate.

In an acknowledgement that the 39% tax rate may result in over-taxation when the beneficiaries of a trust have personal tax rates below 39%, the Commentary to the Bill notes there are options available for trustees, including allocating income to beneficiaries and for amounts to be held in a current account or resettled into the trust (we copy an example from the Commentary below). Despite the Inland Revenue example, we caution against trustees taking any actions which are circular in nature, or which are not genuine distributions in order to benefit from a lower tax rate – seek tax advice in these circumstances.

Example taken from Inland Revenue commentary to the Bill (note this example was changed by Inland Revenue on 31 May 2023):

Amy (an air traffic controller) and Anthony (a builder with his own company) have settled some income-generating assets on a discretionary family trust for the benefit of themselves, their children (both minors under the age of 16) and future grandchildren. Amy, Anthony and their accountant are the trustees.

2024–25 income year

Anthony has personal income of $70,000 and Amy has personal income of $180,000. Their trust has income of $40,000.

If the income is retained as trustee income, it will be taxed at the proposed 39% trustee tax rate. Any income allocated to their children as beneficiary income will also be taxed at 39% under the minor beneficiary rule.

However, by allocating the income to Anthony as beneficiary income, it can be taxed at his personal tax rate.

To meet the definition of beneficiary income, the trustees cannot change their mind about the allocation, so he has an absolute right to withdraw the funds. If Anthony does not want to withdraw the money, it can be credited to his current account, available to be called upon at any time.[1]

2025–26 income year

Bary, the older of Amy and Anthony's children, has turned 16, so he is no longer a minor. Bary has no personal income. Anthony again has personal income of $70,000, and Amy has personal income of $180,000, while the trust has income of $50,000.

Since Bary is no longer a minor, he is not subject to the minor beneficiary rule. Income can be allocated to Bary as beneficiary income and taxed at his personal tax rates (e.g., up to $14,000 at 10.5%, over $14,000 and up to $48,000 at 17.5%).

If Bary does not want to withdraw the money, it can be credited to his current account, available to be called upon at any time, or a sub-trust arrangement can be set up so that Bary's interest in a portion of the trust assets is recognised and protected.

[1]A previous version of this fact sheet included an example of Anthony settling the beneficiary income back on the trust. This has been removed as there is some uncertainty under existing law about the tax treatment of such a settlement. This matter will be subject to further consultation.

The proposed change for close companies is designed to prevent trusts from distributing income to a closely connected company in order to have that income taxed at 28% rather than 39%. This new rule is set out in the proposed section HC 38 and states:

HC 38 Beneficiary income of certain close companies

When this section applies

(1) This section applies when a close company that is not a Māori authority or tax charity derives an amount of beneficiary income from a trust in an income year and a person for whom a settlor of the trust has natural love and

Given there was no public consultation on the change in trustee tax rate before the Budget announcement, it's critical that trustees take the time now to consider what the impact of this change will be.

affection holds, under sections YC 2 to YC 4 (which relate to interests held in a company), a voting interest or a market value interest in the close company.

Treatment of amount derived

2. The amount is—

a. excluded income of the close company under section CX 58B (Amounts derived by certain close companies from trusts); and

b. treated as trustee income for the purposes of determining the rate of tax that applies, who pays the relevant tax, and who provides the return of income.

Relationship with other provisions

3. This section—

c. overrides sections HC 5, HC 18 to HC 20, HC 22, HC 23, and HC 32; and

d. is overridden by section CW 10 (Dividend within New Zealand wholly-owned group).

What next

Given there was no public consultation on the change in trustee tax rate before the Budget announcement, it's critical that trustees take the time now to consider what the impact of this change will be.

The Inland Revenue acknowledges that the inability to consult on this change before the Budget means that some exemptions which may be justified have not been included in the Bill – so now is the time to make a case to the FEC for any further carve-outs from the rules. The submission process also offers an opportunity to highlight any additional unintended consequences from the proposal.

It is our understanding that the Government intends for this Bill to follow a full FEC process and it is not intended that the Bill be rushed through in order for the legislation to be enacted before parliament dissolving for the election. As is standard in election years, when parliament dissolves for the election, all Bills technically lapse and need to be reinstated by the new Government. What happens on 14 October may determine the fate of this proposal.

Finally, its worth noting that this rate change applies only to trusts, which leaves companies and portfolio investment entities (PIEs) still taxed at a maximum rate of 28%. While company tax is arguably just an interim tax until profits are distributed to shareholders, investors in PIEs have a permanent tax benefit. Before considering immediately changing investment structures, taxpayers should be aware of the following comment from Inland Revenue: *"Ministers have decided to progress increasing the trustee tax rate to 39% for the 2024-25 and latest income years (beginning on 1 April for most trusts) while considering PIE and company/shareholder misalignment issues on a longer timeframe."*

For more information please contact your usual Deloitte advisor.

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What is purpose of the Tax Principles Reporting Bill?

By Robyn Walker

Tax has remained constantly in the news since the Inland Revenue released its High Wealth Report in April, and it seems certain to stay high in the consciousnesses of New Zealanders through until the 2023 Election, and beyond.

With many political parties already releasing election tax policies proposing new or increased taxes (particularly for those with wealth) in the name of fairness, the spotlight is clearly on the subjectiveness of "fairness" when it comes to taxes.

Perhaps in an attempt to bring all political parties on a journey toward more consistent thinking on tax and fairness, the Minister of Revenue ('the Minister') has been on a quest to have some principles about how the tax system should operate enshrined in legislation. The outcome of this is the Taxation Principles Reporting Bill ('the Bill') which was released as part of Budget 2023.

This Bill has been tabled in Parliament, had its first reading, and has been referred to the Finance and Expenditure Committee ('the FEC'). The FEC has in turn opened this to the public for submissions until **9 June 2023**. As drafted, the Bill is intended to come into force on 1 July 2023.

As its name suggests, the Bill is less about setting principles by which tax policies should be judged but is instead focused on requiring Inland Revenue to report, on an annual basis, how the tax system stacks up against seven stated tax principles.

The aim of the Bill can be summed up from this extract from the Minister's speech on the Bill: "*Enshrining these principles in legislation will mean that the fundamentals of a good tax system will clearly be set out for all to refer to. It will provide direction to officials on what information about the tax system should be reported on. This bill proposes that officials periodically report on the operation of the tax system, using the principles set out in the legislation as the basis for their reporting. It's not a straitjacket. Different Governments will want to focus on different aspects of the system at different times to deal with the challenges of the day. Political parties can quite properly have different views on how progressive the tax system should be, but it should be a fact-based discussion. The reports will build up a time series showing how the tax system is changing in relation to these core principles. And by providing information to the public, like that presented in the high-wealth individual report, we can have an informed debate on tax, using solid evidence."*

The Principles

So, what are the seven principles? The following table is taken from the Bill.

Bearing in mind that many existing laws don't satisfy all of the principles, and

Taxation principle	Description
Horizontal equity	People with similar levels of income should pay similar amounts of tax. The time value of money matters when considering horizontal equity. The tax system should generally recognise the economic effect of income, not its name, while acknowledging there are important areas where exemptions to taxing economic income are justified in the pursuit of wider societal outcomes (eg. not taxing the imputed rent or gains on an owner-occupied home).
Efficiency	Tax revenue should be raised in ways that minimise distortions to the economy and the use of resources.
Vertical equity	The tax system should be progressive. Tax is progressive if people with higher levels of economic income pay a higher proportion of that income in tax. A progressive tax system does not mean that every tax should be progressive (eg. GST is regressive) but the overall system ought to be. In practice, wealthy people should at the very least pay no lower a rate of tax on their economic income than middle income New Zealanders already do.
Revenue integrity	The revenue system should be sustainable over time and minimise opportunities for tax avoidance and tax evasion.
Compliance and administrative costs	Compliance and administrative costs for taxpayers and the Government should be reasonable, but this is not justification for substantial unfairness in the tax system.
Certainty and predictability	People should be able to determine their tax obligations before they are due.
Flexibility and adaptability	The tax system should keep pace with changes in society, in particular technological and commercial developments, and changes in inequality.

most policy decisions involve trade-offs, the principles themselves may seem relatively uncontroversial. However, it is the description of the principles which is likely to cause controversy by virtue of placing value judgements over what should otherwise be an objective principle.

Inland Revenue Officials have noted in the Regulatory Impact Statement which supports the Bill that the inclusion of some of the above descriptions "could present a risk to the integrity, independence and endurance of the reporting framework" and "pose a risk to the perceived independence of the reporting framework".

What are the reporting requirements?

The Commissioner of Inland Revenue ('the Commissioner') will be required to prepare two different reports for the Minister which will each be due before the end of each relevant calendar year:

- An annual interim report "for the tax year that ends in the calendar year, using the best information for that tax year that the Commissioner has on hand at that time"; i.e., the Commissioner will need to report by 31 December 2023 on the tax year 1 April 2022 - 31 March 2023, despite tax returns not being due until 31 March 2024 for any taxpayers with a tax agent.
- A triennial report, with the first report due by 31 December 2025, which analyses the three previous tax years that end in the relevant calendar year; i.e., the Commissioner must report about the three tax years which run from 1 April 2022 to 31 March 2025 by 31 December 2025.

The value of reporting on 'facts' based on incomplete data is questionable at best.

Following each annual report being provided to the Minister, the Commissioner will be required to publish a copy as soon as reasonably practicable. Each triennial report will be presented by the Minister to the House of Representatives and then published.

The precise nature of what will be reported is unclear, however, the Bill makes it clear that:

- the Commissioner can use any information held for any purpose but must ensure any data presented is anonymised and aggregated.
- information can be specifically gathered to help the Commissioner perform the obligations under the Bill.
- the reports could cover income distributions and income tax paid, distribution of exemptions from tax and of lower rates of tax, perceptions of the integrity of the tax system, and compliance with the law by taxpayers.

The commentary to the Bill indicates the Commissioner will be able to use judgement when selecting the most appropriate analytical techniques and this could include taxpayer surveys or focus groups.

It's anticipated by Inland Revenue that 2.5 full-time equivalents will be required to undertake this ongoing workstream.

Comment

The Minister spoke about the proposed Tax Principles Act during his 2022 speech on tax fairness where he said "[a]n important stage of the project will be wide public consultation on the proposed principles and reporting framework. We'll be going [sic] that around the middle of the year, and hope you will share your views."

It can only be described as disappointing that there was no public consultation on the seven tax principles, or the need to actually have this legislation, prior to this Bill being tabled, and the compressed time for public submissions and consideration of submissions by the FEC ultimately means it's highly unlikely there will be consensus on the principles.

As it stands, in addition to the questionable descriptions of the seven principles, the list doesn't include important concepts like following the Generic Tax Policy Process (GTPP) or considering how the tax system facilitates (or at least doesn't impede) productivity and investment (i.e., things which grow the tax base organically).

While all tax policy development ultimately involves trade-offs, the notion in the principles that compliance and administrative costs can be trumped by 'substantial unfairness' begs the question about whether there needs to be separate rules on what is or is not acceptable; for example, a tax which raises less tax than the cost of administering it does not make sense, and that is why gift duty was repealed in 2011, for example.

While ultimately the Bill is simply putting reporting requirements on Inland Revenue and its not mandating that tax policy development needs to consider the tax principles, it seems logical that the report conclusions should feed through to policy development or Inland Revenue operational practices. For example, if a report came back assessing that the compliance and administrative costs of certain tax rules were unreasonable and were consistently perceived as being 'unfair' then those rules ought to be reviewed – otherwise, the reporting itself is undermining the integrity of the tax system.

Overall, while the Bill may have an end goal of facilitating 'fact-based debates' about the tax system, the questionable description of the tax principles and the questionable reporting periods may mean this is not the outcome.

While all tax policy development ultimately involves trade-offs, the notion in the principles that compliance and administrative costs can be trumped by 'substantial unfairness' begs the question about whether there needs to be separate rules on what is or is not acceptable

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2023 Mileage reimbursement rates – what you need to know

By Amy Sexton and Andrea Scatchard

Inland Revenue has recently published the 2023 Kilometre Rates, so it's time to revisit one of our most popular article topics!

What do I need to remember?

The Commissioner of Inland Revenue is required to regularly set kilometre rates so that these can be used by self-employed business owners or close companies to determine available tax deductions for business use of a vehicle (if they chose to use that method). In practice, the same rates are often also used by businesses that reimburse employees who use their personal vehicles for work purposes. Provided reimbursements are made at or below the specified rates, they can be paid "tax-free".

Use of these rates is not compulsory. Business owners can instead claim deductions for actual costs incurred, and likewise, employers can reimburse employees at higher rates, but records would need to be kept substantiating that the rate of reimbursement is a reasonable approximation of actual costs.

Self-employed and close companies

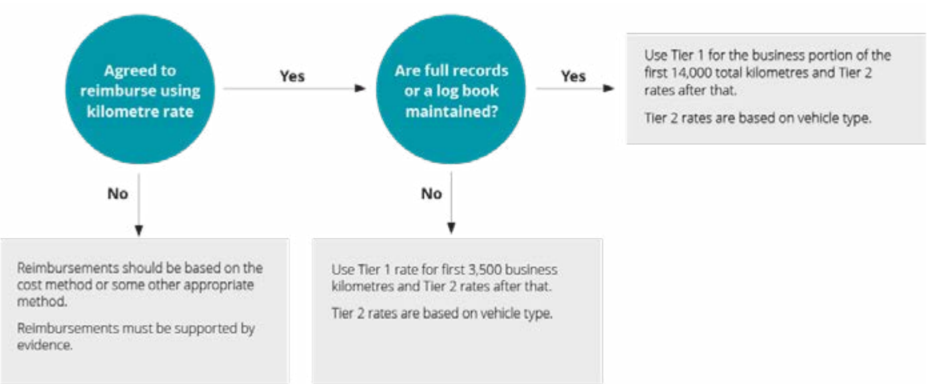
If you are a sole trader or qualifying close company and use the kilometre rate method to claim business vehicle costs, this new rate applies for the 2023 year, being the year 1 April 2022 - 31 March 2023 if you have a standard balance date. The increase in the rate will increase the amount of vehicle costs you can claim when you file your 2023 tax return. If you have already filed your 2023 income tax return, and relied on the 2022 kilometre rates, depending on the amount of the difference between the two amounts you may be able to self-correct the difference in your 2024 income return or, if the difference is material, file a Notice of Proposed Adjustment (which is only available within four months after the filing of an income tax return).

Employers

If you are an employer and are reimbursing employees for work-related travel, the increased rates apply to reimbursements made from the date that they were issued – 11 May 2023. If your reimbursement policy states that you will reimburse employees at the Inland Revenue rate, you will need to update the rate you pay as soon as practically possible. When rates are increased, a lag in updating rates paid to employees, while potentially disadvantageous to employees, does not cause a PAYE problem.

If your reimbursement policy states a set rate at which you will reimburse work-related mileage, and this is lower than the new rate, you do not need to do anything as the amount you pay will be tax-free, but you may get pressure from employees to increase the reimbursement rate.

	2023	
Vehicle Type	**Tier One Rate**	**Tier Two Rate**
Petrol or Diesel	95 cents	34 cents
Petrol Hybrid	95 cents	20 cents
Electric	95 cents	11 cents



The 2023 Rates

The new rates have increased from the 2022 rates for all vehicle types, particularly for petrol and diesel vehicles, which reflects the increases in running costs due to inflation.

What does Tier One and Tier Two mean?

The Tier One rates reflect the fixed and variable costs of running a vehicle and can be used for the first 3,500km of business travel, or the business portion of the first 14,000km of total travel in the vehicle. After these limits, the lower Tier Two rates apply (which only reflect variable costs). How to decide on which rate to use is summarised in the flow chart above.

As noted above, it is not compulsory to use the Inland Revenue rates, any reasonable amount can be reimbursed but documentation will need to exist to support any payments that exceed the Inland Revenue rates if you treat these as not taxable.

Practical problems

We have written several articles in the past on the practical problems with the two-tier kilometre rate method particularly for reimbursing employees and suffice to say these still exist where employees are reimbursed for high levels of work-related travel. If you'd like to refresh your memory on these issues, check out our August 2018 article, written when the two-tier system was introduced and our September 2019 article which looked at further modifications to the two-tier methodology.

For more information about applying the new kilometre rates or mileage reimbursement options please contact your usual Deloitte advisor.

As noted above, it is not compulsory to use the Inland Revenue rates, any reasonable amount can be reimbursed but documentation will need to exist to support any payments that exceed the Inland Revenue rates if you treat these as not taxable.

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Bright-line and interest limitation changes – what a (rollover) relief!

By Hiran Patel and Ben Smith

Over the past few years, we have seen many changes to the bright-line test for residential land. Usually, the changes have been around making the bright-line test longer, such as moving from two to five years, and then five to ten years. The latest changes which were enacted in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Act 2023 are more favourable, and the bright-line test has been given a spruce up, and now provides broader coverage of rollover relief for transfers of residential property. Some similar changes have also been made to the application of the interest limitation rules, in order to continue to allow interest deductions to be claimed during the phase out of deductions between 1 October 2021 and 31 March 2025.

These changes largely apply with effect from 27 April 2021 (the effective date of the last change in the bright-line test length and the introduction of the interest limitation rules), although some apply from 1 April 2022. The changes are intended to prevent taxpayers from being subject to the bright-line test and stung with a tax bill for transfers of residential property when there isn't a change in the economic ownership of the residential land; similarly they ensure that interest deductions are forfeited when a property is transferred in similar circumstances.

When the bright-line test was initially introduced in 2015, rollover relief only applied for relationship property, inherited land and company amalgamations, so it was difficult to change ownership of residential property without the bright-line test applying. It was crucial to get the ownership structure correct before the residential property was acquired. Therefore, the changes are a welcome addition.

The application of the bright-line test is also topical with the [new trustee tax rate of 39%] coming into effect on 1 April 2024. We recommend consulting your Deloitte advisor on how the bright-line rules could apply prior to making any transfers of residential property that involve trusts.

When Rollover relief will apply

For transfers of residential land on or after 1 April 2022, the changes extend the coverage of rollover relief for some transfers, provided certain conditions are met and there is no underlying change in economic ownership. Rollover relief is extended to the following structures:

- Family trusts
- Look-through companies
- Partnerships
- Transfers within wholly owned groups of companies
- Settlements under te Tiriti o Waitangi.

Rollover relief from the bright-line test (when applicable) means the original start date for the bright-line test is retained by the recipient of the residential property following the transfer. This is not an exemption to the bright-line test but merely a transfer of the original acquisition date from one entity to another in limited circumstances. If the recipient subsequently disposes of the residential property, the original acquisition date will be used to determine whether the bright-line test applies.

From an interest deductibility perspective, rollover relief ensures certain transfers do not preclude a person from applying the transitional phasing out of interest deductions. This is a reasonable approach, as prior to the rollover relief, a transfer would mean that interest deductions would be fully denied.

The extent of the rollover relief (when applicable) depends on the price paid for the residential property. In the event the bright-line test applies to an eventual sale of residential property, it is important to keep track of the original owner's acquisition cost, and the price paid on transfer (if any).

Family trust transfers

For transfers from family trusts (including Māori authority trusts) back to the settlor of the trust, rollover relief is generally available if the following conditions are met:

- The land is transferred on or after 1 April 2022;
- The transferee is a settlor of the trust and had originally transferred the land to the trustee or Māori trustee;
- If there is more than one transferee, the transferees acquire proportionally the same amount of land they originally transferred to the trust; and
- At the time the land is transferred from the trust to the transferee(s):
  - All transferees are beneficiaries of the trust;
  - At least one transferee is a principal settlor of the trust; and
  - The trust is a "rollover trust" or "Māori rollover trust".

The definition of a "rollover trust" requires the following at the time of transfer:

- All principal settlors are beneficiaries of the trust;
- All principal settlors are close family associates; and
- All beneficiaries are close family beneficiaries.

The definition of a "Māori rollover trust" requires the following at the time of transfer:

- All beneficiaries of the trust are either members of the same iwi or hapū, or descendants of the same tīpuna; and
- The land being transferred is subject to Te Ture Whenua Māori Act 1993.

In summary, rollover relief now applies where a settlor or settlors receive land back from a rollover trust or Māori rollover trust if they previously sold the land to the trust or settled the land on the trust. The settlor no longer has to be the original settlor of the trust and can include other settlors, provided the conditions above have been met (see Resettlement of family trusts below).

Principal settlor not original owner of the land

Rollover relief will also apply when land is transferred to a settlor or group of settlors, provided all settlors receiving the land are "principal settlors" at both the time the land is originally acquired by the trust and the time the land is transferred back to the settlors. Relief will not apply to transfers to settlors who are not principal settlors either at the time the land was acquired by the trust or the time the land is transferred back to the settlor. This ensures a beneficiary of the trust cannot become a principal settlor immediately before a transfer to them to avoid a bright-line test restart.

Relief in these circumstances will be quite limited and only applies in a situation where the transferee had not originally owned the land but was still a principal settlor of the trust.

Rollover relief from the bright-line test (when applicable) means the original start date for the bright-line test is retained by the recipient of the residential property following the transfer. This is not an exemption to the bright-line test but merely a transfer of the original acquisition date from one entity to another in limited circumstances.

Unlike other rollover relief amendments which apply retrospectively, this update only applies for transfers on or after 1 April 2023.

Transfers to self in different capacity and transfers involving multiple legal structures

Rollover relief is generally provided when a person transfers residential land or disallowed residential property ("DRP", which is property that is subject to the interest limitation rules) to themselves in different capacities. Common examples of these include:

- Transfers to a look-through company of which the person is the sole shareholder;
- Transfers from a rollover trust to a look-through company owned by the principal settlor of the trust; and
- Where the transferee is a settlor of the trust in their personal capacity and subsequent transfer back from the trust to them as a partner in a partnership.

Note the standard family trust transfer conditions (referred to above) must still be met for rollover relief to apply. However, this is a welcomed change as it avoids the need for two transactions to receive rollover relief.

Resettlement of family trusts

Rollover relief is now provided when residential land or DRP held by a rollover trust or a Māori rollover trust is resettled onto another related rollover trust or Māori rollover trust. Relief will apply if both trusts meet the definition of "rollover trusts" or "Māori rollover trust" and all beneficiaries are the same for each trust, or all natural person beneficiaries are either the same or close family associates of the principal settlor of the trust disposing of the land. Therefore, rollover relief is only available if both trusts meet the usual requirements for rollover relief referred to above.

As noted above, the general theme of rollover relief is that transfers that do not change the economic substance of land ownership will usually maintain the original acquisition date for the purpose of the bright-line test (i.e., rollover relief should apply). While the recent changes are positive and taxpayer-friendly, the actual legislative provisions are difficult to navigate to determine when you are eligible for rollover relief. Therefore, it is important that seek advice prior to transferring any residential land that might be subject to the bright-line test.

If you have any questions about rollover relief and how the bright-line test or interest limitation rules may apply to you, please contact your usual Deloitte advisor.

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Australian citizenship – be careful what you wish for!

By Andrea Scatchard, Ryan Beamish and Michael Ward

Very soon, Kiwis who have been living in Australia for 4 years will be able to apply for citizenship through the recently announced fast-track process. This will bring all the benefits of being an Australian citizen that has otherwise been unavailable for Kiwis, such as access to welfare support and student loans, and will be a very compelling proposition for many Kiwis living over the ditch and those considering the leap.

But as with most things in life, where there is a positive, there is often also a negative. Before rushing to apply for Australian citizenship, anyone eligible should ensure they consider the tax implications of doing so, especially if they have assets left behind in New Zealand.

How are Kiwis taxed in Australia?

Generally speaking, Kiwis living in Australia typically qualify for some concessionary income tax rules. Anyone tax resident in Australia is usually subject to Australian tax on their worldwide income. But Kiwis that are not permanent residents or Australian citizens often qualify to be "temporary" tax residents.

The key benefits of being a temporary tax resident are:

1. They can usually exclude their foreign investment income from their Australian tax returns, such as interest, dividend, or rental income from New Zealand (or anywhere else); and
2. Assets that are not Australian taxable property (which is largely limited to real estate in Australia or ownership of entities owning real estate in Australia) are generally not subject to Australia's capital gains tax (CGT).

What happens now when a temporary tax resident becomes an Australian permanent resident or citizen is that they lose the benefit of being a temporary tax resident. This means that their foreign income will become taxable in Australia, although they may get a foreign tax credit for tax paid in New Zealand or elsewhere on that income to help offset the Australian tax liability. But the biggie is CGT – if they have rental properties in New Zealand for example, or have kept their house or bach here, these could become subject to CGT on any gain in value from the date of losing their temporary tax resident status.

The tax consequences of the policy change, or indeed whether there might also be tax law changes, were not commented on when the policy was announced. At the time of writing this article our colleagues in Deloitte Australia were still to receive clarification from the ATO as to how the change will be implemented and in particular at what point they will lose the temporary resident concession.

Should New Zealanders Apply for Australian Citizenship?

Obviously, there is no single right answer here, as everybody's circumstances are different. But some of the factors to consider would include:

1. The level of non-Australian income - how much tax is paid on that income in New Zealand or elsewhere, and the relative difference between the tax rates in the two countries will be important considerations; and
2. The level of non-Australian assets - if a Kiwi has significant New Zealand assets that will become subject to Australian CGT, and which would not be taxed here, then becoming an Australian citizen could be quite costly in the long term.

A word about trusts

Australia taxes trusts and trust distributions very differently to New Zealand. The first key difference is that if a trustee of a New Zealand trust moves to Australia, that trust may become subject to tax in Australia even if it has no income from Australia. Any Kiwis with family trusts here should get advice about what to do before moving to Australia – they may want to change trustees or move assets out of the trust.

The second key difference is that a Kiwi in Australia may be taxed on distributions received from offshore trusts, even if these are capital distributions. It is really important to consider this before making any distributions from New Zealand trusts to beneficiaries in Australia.

Parting words

Applying for Australian citizenship really is a case of buyer beware. If this is something you are considering, we recommend you contact your usual Deloitte tax adviser for guidance.

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Unlocking Opportunities: Is your business ready for the NZ-UK Free Trade Agreement?

By Jeanne du Buisson and Mirei Yahagi

The New Zealand-United Kingdom Free Trade Agreement (NZ-UK FTA) presents an excellent opportunity for New Zealand businesses engaged in trade with, or looking to expand into, the UK market. This landmark agreement, effective from 31 May 2023, has resulted in the elimination of tariffs on 99.5% of goods traded between the two countries. Over time, the UK will completely remove all customs duties on New Zealand exports.

With the UK being our seventh-largest trading partner and a crucial market for key exports, the NZ-UK FTA offers significant advantages. Immediate savings of approximately $37 million per year can be expected for New Zealand exporters, solely due to the elimination of tariffs. Furthermore, this agreement is projected to boost New Zealand's goods exports to the UK by over 50%.

If your business already conducts trade with the UK, you can benefit from reduced costs and improved business efficiency between the two countries. For those currently not engaged in UK trade, now is a favourable time to consider incorporating the UK into your market or supply chain.

Snapshot of our goods trade with the UK

Our goods trade with the UK allows us to capitalise on different sector strengths. Notable New Zealand goods exports to the UK include wine, meat, fruit, machinery, eggs, honey, and wool, with a total value of NZ$1.5 billion. The UK, being a prominent global importer of food products, benefits greatly from New Zealand's counter-seasonal production of fresh produce and protein.

Conversely, New Zealand imports goods from the UK such as vehicles and parts, machinery, equipment, and pharmaceuticals, totalling NZ$1.8 billion. The UK serves as a leading supplier of vehicles, turbines and engines, and pharmaceutical products to New Zealand, further illustrating the mutually beneficial nature of the trade relationship.

Several key exports poised to thrive under the NZ-UK FTA from the reduced trade barriers and improved market access includes:

- Meat and dairy exports – removal of high tariffs and restricted quota access;
- Wine - removal of £10-26 per hectolitre tariff;
- Honey – removal of 16% tariff;
- Seafood products – removal of up to 20% tariffs; and
- Onions, kiwifruit and (at certain times of the year) apples – removal of 8% tariffs.

While the NZ-UK FTA offers immense potential, businesses need to take specific measures to fully capitalise on the advantages as the agreement does not automatically apply. Each consignment must comply with the FTA's requirements, and proper notification must be made to the relevant authorities.

Harnessing the benefits of the NZ-UK FTA

While the NZ-UK FTA offers immense potential, businesses need to take specific measures to fully capitalise on the advantages as the agreement does not automatically apply. Each consignment must comply with the FTA's requirements, and proper notification must be made to the relevant authorities. Here are some essential considerations for New Zealand businesses aiming to take advantage of the trade agreement:

- Accurately determine the appropriate tariff classification for goods to qualify for the preferential tariff treatment under the NZ-UK FTA.
- Satisfy the relevant rules of origin under the NZ-UKA FTA, which may involve complexities. For example, goods sourced from countries other than New Zealand, or the UK may still be eligible if they undergo production processes within either country. Conversely, goods sourced solely from New Zealand and/or the UK may not qualify if they transit through another nation with additional operations performed.
- Consider seeking advance rulings from the customs authority of the importing country to obtain certainty about the origin of specific goods or their tariff classification. These advance rulings remain effective for up to three years unless modified or revoked.
- Comply with the declaration of origin rules, either through self-declaration from the producer or exporter or by providing documentation supporting the importer's knowledge of the goods' origin.
- Evaluate the need to renegotiate contracts with UK counterparts to address relevant matters such as origin-related obligations and entitlements in case the authorities challenge the goods' origin.

The NZ-UK FTA offers a great opportunity for New Zealand businesses to grow and expand their operations. We can help in various ways to ensure that your business can leverage this agreement effectively, whatever the stage of your business. If you are interested in exploring how you can benefit from the NZ-UK FTA further, please don't hesitate to get in touch with us.

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Raising capital in the United States – to flip or not to flip

By Emma Marr and Lucy Scanlon

For growing Kiwi companies, the lucrative United States market can offer many opportunities, the most enticing of which are capital and customers. Each brings its own rewards and complications. A common question business owners have when planning a capital raise is whether they should consider flipping the ownership of their company to the United States. Some United States-based investors prefer to own shares in a United States-incorporated company, rather than a New Zealand-incorporated company, for a variety of reasons. Although a flip to the United States does mean more compliance (and more cost), it could also mean access to capital and expertise that takes your business to the next level.

Flipping the ownership of a company to the United States generally requires incorporating a new United States company (US Holdco), which then acquires the shares in the New Zealand company (unless the entire business is moving to the United States immediately, which is not usually the case). The shareholders now own shares in a United States company, which owns the New Zealand company.

Obviously, this raises a lot of new compliance obligations and issues to consider and manage. Early and detailed tax advice is highly recommended when considering flipping ownership to the United States. You'll need to engage with lawyers and tax advisors in both the United States and New Zealand and be aware that complying with legal and tax requirements isn't just something you need to do on set-up – it's for the life of your investment in this new group structure.

There are a number of issues to consider – residency, the method of exchanging shares in one company for another, how funding will move within the group after the flip, where the group intellectual property (IP) is located and how best to protect it as you enter more jurisdictions and engage with different types of customers, managing foreign exchange exposures, employing local people, and so on. We've focused below on some of the key tax issues you'll need to manage post-flip.

Tax residency

Running a group of companies across two countries means you will need to be aware of tax residence rules, and carefully manage tax compliance across both jurisdictions.

A United States-incorporated company is automatically a United States tax resident. But in a classic flip situation, where US Holdco simply raises capital and holds shares, while the New Zealand company keeps running everything in much the same way it always did, US Holdco is potentially a tax resident in New Zealand as well. New Zealand's tax residency rules are relatively broad and will capture a company being effectively run from New Zealand. This means US Holdco is likely a dual tax resident and has to register with both tax authorities (the IRS and Inland Revenue), file returns in both countries and work through the double tax treaties to ensure that it is not paying more tax than it should.

It is important to ensure that the functions of US Holdco and the New Zealand operating company are kept separate, to the extent possible, so that the revenue of the full group is not taxed in both places. Double tax treaties can help, but it's better to limit the circumstances in which you rely on one.

Bear in mind (or rather have front of mind) that it's easy to create tax obligations in many states in the United States, and double tax treaties don't apply to state taxes. Share with your advisor full information about the movement of people between countries, any property (including inventory) you have in the United States, and any leases, bank accounts or third party logistics (3PL) arrangements you have in place. Pay close attention to the shipping arrangements you have with customers, when title passes, and who is importing the goods and taking responsibility for customs duties and local taxes. This is all crucial information for understanding your tax obligations in both countries.

Transfer pricing

Transfer pricing rules are very useful in these circumstances (and will need to be considered from a tax compliance perspective). Transfer pricing rules look at which entity is doing what, where, with what assets, and assuming which risks, and then ensure each entity is appropriately rewarded on an arm's length basis. In other words, the transfer pricing rules make sure each entity is earning a return for what it is actually doing in line with the return that a third party would in similar circumstances.

Considering the transfer pricing position will help you be clear about where the profit should sit within the group and help support where the profit should be taxed. Getting the transfer pricing right early in your growth journey will make it much easier to comply as your business gets bigger and develops into new areas and opportunities. Compliance with transfer pricing rules will also be helpful should an eventual sale of the business be on the cards. While there is a level of documentation and analysis required to comply with the transfer pricing rules across jurisdictions (which inevitably increases as revenue grows), at the start of the journey taking a compliant and practical approach upfront and scaling up as necessary will prove efficient in the long term.

Tax position for investors

The investors in the group, who are likely to be a mix of New Zealand and United States residents (and possibly other countries as well) should all get personal tax advice on what it means to own shares in the new group structure. New Zealand investors should bear in mind that although they now own shares in a United States-incorporated entity, it may still be New Zealand tax resident. This means it is not a FIF or a CFC. This would change if the company ceased to be a New Zealand resident.

Migration

If your company's growth in the United States leads to changes in the way the group is managed and controlled, so that US Holdco ceases to be New Zealand tax resident, you'll need to re-evaluate how the tax rules apply in both countries. Emigrating from New Zealand can trigger a tax liability for a New Zealand tax resident company, so you should keep a close eye on this and make sure nothing happens without you planning for it.

Next steps

Flipping the ownership of your business to the United States is not something you should do without detailed planning and consideration of all the opportunities and risks that can arise. Where the rewards are big enough to fund the solutions for any complications, the decision to go ahead might be pretty straightforward. But don't forget to manage the tax and regulatory issues that inevitably follow.

As with all new ventures in business, if you know more about how to manage the process, you'll feel more confident in taking the next step. Get in touch with the authors or your usual Deloitte advisor if you'd like to consider this further.

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Carbon Import Tariffs: Shaping global trade in the fight against climate change

By Mirei Yahagi and Jeanne du Buisson

Climate change continues to be a pressing global issue. In addition to the political and ecological implications that it poses, it is now reshaping the international trade landscape. Governments worldwide have a range of tools to address climate change and are continuously exploring new measures to address climate change. The Carbon Border Adjustment Mechanism (CBAM) is one such tool that can be used by Governments. The CBAM aims to levy financial penalties on imported goods. It is hoped that these financial penalties will help stop companies from undermining emission reduction efforts by moving manufacturing or supply chains offshore. The recent signing of the CBAM Regulation by the European Union (EU) and the interest shown in this regime by other countries like Canada, the UK, the US, and Australia make this an important area of policy for New Zealand to watch closely.

What is happening in the EU?

The EU has set ambitious goals to reduce greenhouse gas emissions by at least 55% by 2030 and achieve climate neutrality by 2050. The CBAM is designed by the EU to impose a carbon tariff on selected imports, aiming to prevent carbon "leakage" and encourage emission reduction measures outside the EU. By ensuring that EU emission reductions contribute to a global decline in emissions, the CBAM aligns with the EU's climate mitigation objectives while seeking to adhere to World Trade Organization rules.

The EU signed the CBAM Regulation in May 2023, with its transitional phase set to commence on 1 October 2023. Initially, the CBAM will apply to specific goods and precursors associated with carbon-intensive production, being cement, iron and steel, aluminium, fertilisers, electricity, and hydrogen. However, this list will be subject to change as the CBAM progresses.

The CBAM's implementation will occur gradually, allowing for a careful transition for businesses within and outside the EU. During the transitional period, importers will be required to report greenhouse gas emissions embedded in their imports without making financial payments or adjustments. This phase aims to gather valuable information on embedded emissions and refine the methodology for calculating emissions during the definitive phase.

The reporting scope will expand to include indirect emissions after the transitional period for certain sectors, such as cement and fertilisers. From 1 January 2026, importers will need to declare the quantity of goods imported and their embedded greenhouse gas emissions annually, surrendering the corresponding number of CBAM certificates. The price of these certificates will be determined by the weekly average auction price of EU ETS allowances.

What about New Zealand?

While the New Zealand Government has not to date committed to a CBAM, it is crucial for industries that may be impacted to closely monitor developments in the EU and other countries, such as Australia (the Australian Federal Budget 2023-2024 released on 9 May 2023 outlined that the Government will allocate AU$3.9 million over two years for a review of policy options to reduce carbon leakage, including CBAM – refer here for Deloitte Australia's article released earlier this year for more information).

The adoption of a similar mechanism in New Zealand could also result in tariffs being imposed on carbon-intensive imported goods. New Zealand businesses should assess how such a mechanism might affect their supply chain and import profiles.

To prepare for potential changes, New Zealand businesses should proactively assess their reporting processes and explore digital solutions that align with a potential CBAM or similar mechanism in the future. Implementing a CBAM or similar measures requires an accurate calculation of carbon footprints throughout the supply chain, which demands technical expertise and robust data collection.

It is also important that New Zealand businesses trading in affected commodities closely review their tariff classifications and the origin of the goods. This evaluation will help determine whether the goods traded would fall under the CBAM regime.

Multinational corporations should also carefully examine their supply chains to understand the composition of their emissions. There may also be indirect impacts of CBAM as businesses trading in affected commodities either reduce emissions, absorb the carbon price, or pass it down the supply chain, ultimately impacting the business.

Looking Ahead

Although New Zealand does not have significant activity within the carbon-intensive industries, the implementation of the EU's CBAM still carries certain implications for New Zealand businesses. These include: Immediate impact on New Zealand exporters: Exporters in the carbon-intensive industries will need to meet reporting obligations under the EU's CBAM implementation when exporting to the EU.

- Price increase for New Zealand importers: Importers of carbon-intensive goods may face price hikes throughout their supply chains as suppliers try to pass on the costs associated with the EU's CBAM.
- Monitoring EU's CBAM and Australian mechanism: New Zealand businesses should closely monitor the progress of the EU's CBAM and the Australian mechanism. These developments can provide insights into future policies in New Zealand, allowing businesses to proactively prepare for potential CBAM-related initiatives in the country.

If you would like to receive more information about the impact of CBAM and how Deloitte can assist you, please reach out to one of our experts. Deloitte has also created a page dedicated to CBAM, which can be found here.

The adoption of a similar mechanism in New Zealand could also result in tariffs being imposed on carbon-intensive imported goods. New Zealand businesses should assess how such a mechanism might affect their supply chain and import profiles.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Customs and Excise (Severe Weather – Refunds and Remissions of Interest) Regulations

On 11 May 2023, the Customs and Excise Regulations were amended (SL 2023/71), declaring a 2023 Severe Weather Event to be an emergency event for the purpose of s 165(4) of the Customs and Excise Act 2018. The effect is that a person who is physically prevented from paying duty to Customs by the required time by the 2023 Severe Weather Event may apply to the CEO of Customs to remit or refund certain kinds of interest payable as a result. The CEO may grant the request if doing so would be equitable, and the duty payer applied for the remission or refund and paid the duty as soon as practicable. The regulations came into force on 11 May 2023 and are revoked on 11 November 2023.

Treasury: 2023 Tax Expenditure Statement

On 18 May 2023, the Treasury released the 2023 Tax Expenditure Statement which lists tax expenditure and appropriated cash payments made through the tax system as at 11 April 2023.

Customs and Excise (Arrival Information) Amendment Bill

On 19 May 2023, the Customs and Excise (Arrival Information) Amendment Bill received royal assent. The Bill amends the Customs and Excise Act 2018 to provide for clearer arrival information obligations to help with collection of revenue and detection of restricted or prohibited goods.

Energy Resources Levy Amendment Bill

On 19 May 2023, the Energy Resources Amendment Bill received royal assent. The Bill amends the Energy Resources Levy Act by inserting section 6(3), which provides that the levy exemption does not apply to natural gas produced on or after the commencement of that subsection from any land to which a licence relates if the licence was granted in relation to a discovery of natural gas that was made before 1 January 1986.

Energy (Fuels, Levies, and References) Amendment Bill

On 19 May 2023, the Energy (Fuels, Levies, and References) Amendment Bill received royal assent. The Bill adds the purpose of meeting the reasonable costs and expenses of the Crown in promoting resilience of engine fuel supplies in New Zealand as an additional purpose for which the petroleum or engine fuel monitoring levy can be applied. This will enable the Government to use the levy to cover the costs of fuel resilience measures.

Inland Revenue releases tax-related Regulatory Impact Statements

On 18 May 2023, inland Revenue released the following Regulatory Impact Statements about the tax changes announced in the Taxation (Annual Rates for 2023-24, Multinational Tax and Remedial Matters) Bill:

- A reporting framework informed by tax principles
- OECD's Pillar Two GloBE Tax Rules
- The Taxation of Trustee Income
- Taxation of backdated lump sum payments
- Extending tax exemption for non-resident oil rig and seismic vessel operators

Inland Revenue statements and guidance

Technical Decision Summary: Losses carried forward and debt remission income

On 26 April 2023, Inland Revenue issued TDS 23/04. A limited liability company Taxpayer was placed in interim liquidation and receivers were also appointed. The receivers returned debt remission income in the 2012 tax return. Shareholding changes took place in 2012, and allegedly in 2013. In 2013, the Taxpayer claimed an adjustment to reverse the debt remission income.

The Tax Counsel Office held that the Taxpayer breached the continuity requirements for 2012, but no adjustments were proposed for that year. It was held the debt remission income adjustment should be reversed because the Taxpayer had derived such income for 2012. Shortfall penalties were not imposed.

Interpretation Statement: GST – Section 58: Specified agents of incapacitated persons, and mortgagees in possession

On 27 April 2023, Inland Revenue issued IS 23/03 which replaces Inland Revenue's 1995 policy statement and reiterates that where a registered person dies or is in liquidation, receivership, or voluntary administration, then their personal representative, liquidator, receiver, or administrator will be a specified agent of an incapacitated person and liable to fulfil the GST obligations related to the taxable activity in question. However, where a person is bankrupt (so becoming an 'incapacitated person'), the Official Assignee is generally not a specified agent and not responsible for GST obligations, unless they carry on the bankrupt's business under the Insolvency Act 2006.

QWBA: Provisional tax – Impact on salary or wage earners who receive a one-off amount of income without tax deducted

On 28 April 2023, Inland Revenue issued QB 23/05 which applies to salary or wage earners who receive a one-off amount of income without tax deducted, which may trigger provisional tax obligations if it results in residual income tax (RIT) of more than $5,000.

A salary or wage earner who receives such an amount is a provisional taxpayer even if their previous year RIT was less than $5,000. If RIT is $60,000 or more, the person will be exposed to UOMI from the P3 date on any unpaid RIT. If RIT is less than $60,000, the person will not be exposed to UOMI provided they pay RIT on or before the terminal tax date.

Technical Decision Summary: In-specie distribution of assets upon winding-up of a unit trust

On 1 May 2023, Inland Revenue issued TDS 23/05 which summaries a binding ruling. The Applicant is a Unit Trust with assets consisting of New Zealand and overseas investments, funded by capital, realised gains, and unrealised gains. The issue was whether the in-specie distribution by the Unit Trust of its assets to the Unitholder is non-taxable.

The Tax Counsel Office held that any in-specie distribution by the Unit Trust of its assets to the Unitholder after the date the Unitholder provides written consent to the Trustee to terminate the Unit Trust will not be a dividend, to the extent the distribution consists of available subscribed capital or an available distribution amount.

Draft QWBA's: Renting to flatmates

On 2 May 2023, Inland Revenue issued two draft QWBA's on renting to flatmates.

- PUB00397-1 confirms that if a person lives in their home, rents a room to a flatmate, and then sells the land within the bright-line period, they can still qualify for the main home exclusion (which will apply differently depending on when the land was acquired).
- PUB00397-2 confirms that if a homeowner lives in their home and rents out a room, they can claim deductions for costs incurred in deriving rental income. In this case, expenditure must be reasonably apportioned between private use and income-earning use.

The consultation deadline for both items is 13 June 2023.

Operating Statement: When employee allowances for additional transport costs for home to work travel are exempt from income tax

On 3 May 2023, Inland Revenue issued OS 23/01 which covers when employee allowances for additional transport costs for home-to-work travel are exempt from income tax under section CW 18.

The general rule is that home-to-work travel is private expenditure, and if the employer provides the employee with an allowance for this travel, the starting point is that it is taxable, and the employer must deduct PAYE. However, under section CW 18 some allowances for 'additional transport costs' (i.e., more than would ordinarily be expected) are exempt from tax. OS 23/01 sets out the three main considerations of the Commissioner when determining if the exemption applies.

Technical Decision Summary: Deductibility of payment to settle legal proceedings

On 4 May 2023, Inland Revenue released TDS 23/06. A taxpayer was involved in several businesses, proceedings were initiated by the liquidators of one of these companies against the taxpayer as a director. This was settled out of court. The taxpayer proposed an adjustment to their income tax return to include a deduction for the settlement amount.

The Tax Counsel Office held that the taxpayer had incurred the settlement amount as they were under a legal obligation to pay. The settlement amount was not deductible because it was not sufficiently linked to satisfy the nexus test; it was also denied under the private and capital limitations.

Technical Decision Summary: Deductibility of expenditure to resolve weathertightness issues

On 5 May 2023, Inland Revenue released TDS 23/07. The facts concerned a taxpayer who owned a rental property which was part of a complex. The body corporate carried out remediation work to resolve weathertightness issues. The unit was untenanted during this time and the taxpayer independently organised for internal painting to be done while the property was untenanted.

The Tax Counsel Office held that the capital limitation applied to deny a deduction for the special levies claimed for the taxpayer's share of the cost of remediation. The capital limitation did not apply to the cost of the painting and a deduction was allowed for this expense.

Draft Interpretation Statement: GST – Unit title body corporates

On 8 May 2023, Inland Revenue issued PUB00389 which explains the consequences of registering for GST for a unit title body corporate (UTBC) and the GST treatment of transactions with its members and third parties. It notes that a UBTC is a separate legal person to its members and is subject to specific rules in the GST Act. UBTC's are treated as making supplied to its members for consideration and can generally choose whether to register for GST. The values of supplies it makes to members is not counted towards the $60,000 GST registration threshold. The statement sets out the GST treatment of registered UTBC's in further detail. The consultation deadline is 20 June 2023.

Draft Interpretation Statement: GST – Court awards and out-of-court settlements

On 9 May 2023, Inland Revenue issued PUB00423 which considers whether court awards and out of court settlements will be subject to GST. This may occur if the court award or settlement is consideration for a supply made by the person receiving the court award. The statement confirms that for a payment to be subject to GST, it must be consideration for a supply, have a sufficient connection with the supply, and involve reciprocity. The consultation deadline is 14 June 2023.

2023 CPI adjustments

On 11 May 2023, Inland Revenue issued the following determinations which showed the annual CPI adjustments, reflecting a 6.7% increase in the CPI in the twelve months to March 2023:

- 2023 CPI adjustment to DET 19/02: Short-stay accommodation

Daily standard cost (per guest)

  - Owned dwelling: $59.00
  - Rented dwelling: $53.00

- 2023 CPI adjustment to DET 19/01: Household boarding service providers
  - Weekly standard-cost (per boarder): $222.00
- 2023 CPI adjustment to DET 09/02: Standard-cost household service for childcare providers
  - Hourly standard cost (per child): $4.30
  - Annual fixed administration and record-keeping standard cost: $418.00

Tax Information Bulletin Vol 35 No 4

Inland Revenue published a Tax Information Bulletin for May 2023.

Public Rulings: Income tax – Cryptoassets and employees

On 15 May 2023, IR reissued four public rulings that expired on 1 December 2022. The new rulings apply from 2 December 2022 to 30 November 2027, and are as follows:

- BR Pub 23/04 Income tax – salary and wages paid in cryptoassets
- BR Pub 23/05 Income tax – bonuses paid in cryptoassets
- BR Pub 23/06 Income tax – employer-issued cryptoassets provided to an employee
- BR Pub 23/07 Income tax – application of the employee share scheme rules to employer-issued cryptoassets provided to an employee

A summary of these rulings can be found in the April 2023 Snapshot.

Product Ruling: Fonterra Co-operative Group Limited

On 15 May 2023, Inland Revenue issued the product ruling BR Prd 23/01 about the operation of the Fonterra Shareholders' Fund (FSF). The FSF is a NZ-resident unit trust through which non-milk-supplying investors and farmers supplying milk to Fonterra can invest in units. Units in the FSF give economic rights in Fonterra shares but do not give unit holders any legal interest in Fonterra shares.

The product ruling held that the FSF qualifies as a 'foreign investment variable-rate PIE' (as defined in section YA 1) and income attributed by the FSF to its investors is 'excluded income' (as defined in section BD 1(3)), provided that certain conditions, which are set out in the ruling, are met.

2023 Individual income tax assessment – End of year process

On 22 May 2023, Inland Revenue announced that they will be issuing automatic income tax assessments for most New Zealanders from the end of May through to the end of July.

All individual clients of tax agents (excluding IR3 filers and those with no reportable income) will receive an 'Income tax – more information request' letter. If a taxpayer's income tax mail is being redirected, their agent will receive it. The taxpayer (or their agent) must review and finalise this before 31 March 2024.

Inland Revenue: Instalment arrangements with future debt

On 22 May 2023, Inland Revenue announced that taxpayers can now choose to include future assessed debt when requesting an instalment arrangement. Taxpayers will need to include all overdue debt, including where Inland Revenue has assessed overdue provisional tax.

To do this on my IR, go to 'Access client' > 'I want to...' > 'Request an instalment arrangement'.

Alternatively, please contact your usual Deloitte advisor for advice.

Determination: National Average Market Values of Specified Livestock 2023

On 23 May 2023, Inland Revenue issued NAMV 2023 which establishes the National Average Market Values of specified livestock for 2023 for the purposes of section EC 15 of the Income Tax Act 2007.

QWBA: GST – goods purchased on deferred payment terms

On 23 May 2023, Inland Revenue issued QB 23/06 which explains when a person who is registered for GST on a payments basis can claim a full input tax deduction upfront for goods purchased on deferred payment terms.

Generally, a person who is registered for GST on a payments basis can claim input tax deductions only when and to the extent that payment has been made. This includes goods purchased under a standard sales agreement or goods purchased on a 'buy now, pay later' basis. However, if a person has entered into a hire purchase agreement for the purchase of goods, they can claim a full input tax deduction when they enter into the agreement.

For a layby sales agreement for the purchase of goods, a person can only claim an input tax deduction only when property in the goods is transferred, typically after the final payment has been made.

7-day payment processing for banks

On 23 May 2023, Inland Revenue confirmed their processes will not change following banks' shift to 7-day processing from 26 May 2023:

- Due dates for payments that fall on a weekend on public holiday will still move to the following business day.
- WfFTC payments will be paid early when they fall on a public holiday.
- IR will not send funds to banks for processing on weekend or public holidays.

Child support changes from 1 July 2023

On 29 May 2023, Inland Revenue announced that from July 2023, when a liable parent makes a child support payment, it will be passed on to receiving carers on a sole parent rate of benefit, instead of being used to pay the cost of providing the benefit. The first payment to receiving carers will be made on 22 August 2023.

Child support payments will be treated as income, and from July 2023, customers will also be able to set up a voluntary agreement if they can agree on the child support amount but would still like IR to manage payments.

Inland Revenue warns customers to be aware of scammers during 2023 'tax season'

Inland Revenue is warning customers to be wary of scammers during the 2023 'tax season' when 3.5 million individual income tax assessments will be issued (from late May to the end of July). The reminders are:

- Do not click on any links received in emails or text messages.
- Customers have until February 2024 to pay income tax bills (scammers often try to create urgency).
- Inland Revenue will always ask for bank details in a secure way, either by using myIR or via their call centre.
- Inland Revenue will only pay funds directly into the account they have on record.
- Inland Revenue will ask customers to login to their myIR account from their website.
- Inland Revenue will never put the dollar amount of a refund in an e-mail or text message and will never ask for credit or debit card details to pay a refund.
- Enable two-factor authentication on your myIR account.

Global tax news

Guernsey tax instrument with New Zealand enters into force

On 3 May 2023, it was announced the amended protocols to Guernsey's tax information exchange agreement with New Zealand entered into force.

OECD Updates

Taxing Wages 2023 Report

On 25 April 2023, the OECD published its annual Taxing Wages report. The publication details the taxes paid on wages in OECD countries. This year's edition focuses on the impact of recent inflation on labour taxation on the OECD and how countries adjust their tax systems in response.

Tax Transparency in Asia 2023: Asia Initiative Progress Report

On 27 April 2023, a report was published acknowledging the progress achieved in Asia between 2009 and 2022 in implementing transparency and exchange of information for tax purposes.

Joining Forces for Gender Equality

On 9 May 2023, the OECD published Joining Forces for Gender Equality which details how tax policy needs to be considered by governments in tackling gender equality.

OECD and IGF invite public comments on draft toolkit for developing countries addressing BEPS risks when pricing minerals

On 10 May 2023, the OECD/IGF partnership sought public comment on two toolkits providing a framework to support developing countries in addressing mineral-related transfer pricing challenges and applying this framework to a specific mineral. Interested parties are invited to send their comments by 14 July 2023.

Tax Cooperation for the 21st Century: 2023 Progress Report

On 11 May 2023, the OECD published the 2023 Progress Report on Tax Cooperation for the 21st Century which analyses the incorporation of the BEPS Inclusive Framework and Two Pillar Solution, focusing on Amount A and the GLOBE Rules.

Vietnam ratifies Multilateral Convention to prevent base erosion and profit shifting

On 23 May 2023, Vietnam deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting which now covers around 1850 bilateral tax treaties. The Convention will enter into force for Vietnam on 1 September 2023.

Net Effective Carbon Rates working paper

On 25 May 2023, the OECD released a paper estimating the effective carbon rates net of pre-tax fossil fuel support and exploring potential uses of this new indicator, including how it can be used to calculate fossil fuel support against external carbon pricing benchmarks, and comparisons over time.

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

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