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Tax Alert

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What to expect and when to expect it: The 2024 Tax Policy Guide

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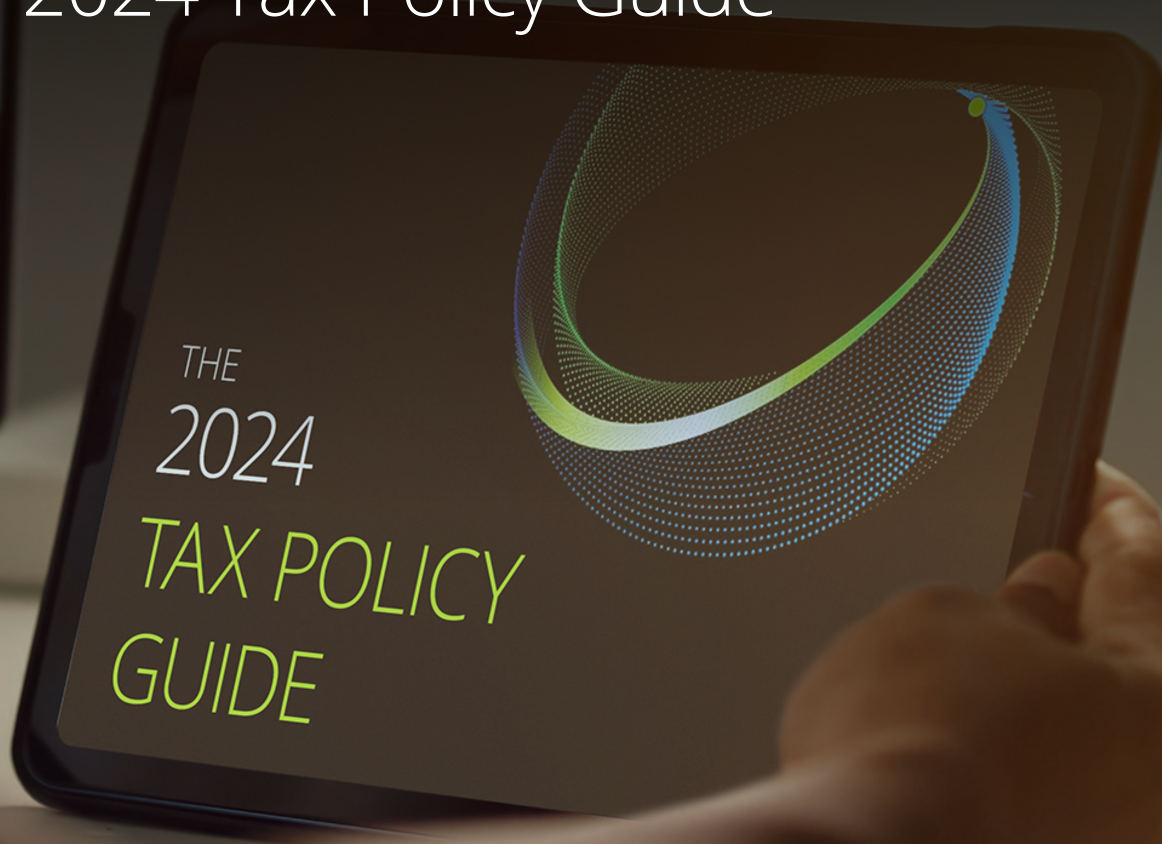

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What to expect and when to expect it: The 2024 Tax Policy Guide

By Joe Sothcott, Amy Sexton and Robyn Walker

With the new year well and truly underway, it's time to have another look at the tax changes to expect in 2024. A new government means a slate of tax changes to keep track of. But with various possibilities and commencement dates, you could be forgiven for having missed a few.

So first of all, what's the current state of play?

Currently, two tax bills are passing through the House. The Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (the Annual Rates Bill), is still in the Select Committee stage with the final report from the Finance and Expenditure Committee (the FEC) due back in March. Two notable items in the Bill are the increase of the trustee tax rate to 39% and the introduction of the OECD Pillar Two Global Minimum Tax Rules (which only applies to multinationals with revenue over €750million).

The other is the Digital Services Tax Bill which, at the time of writing, was still awaiting its first reading. The Bill is an alternative to the OECD's Pillar One solution to the tax challenges that arise from the digitisation of the economy. Pillar One is intended to help countries tax large multinationals with no "taxable presence" in a country, but who still generate revenue from that country, by reallocating taxing rights. However, Pillar One has not yet been implemented and the timetable has been extended, with the proposed signing ceremony now pushed out to June 2024.

The proposed Digital Services Tax (DST) exists to provide an alternative for New Zealand if Pillar One does not progress in a timely fashion. The DST Bill was tabled in the last days of the previous Government, and while it has been reinstated by the new Government, it is unclear what the position is of the new Government.

Other notable tax-adjacent changes from the Government are the discontinuation of the Clean Car Discount on 31 December 2023 and the announcement that the Government will repeal the Business Payment Practices Act 2023 before many of its provisions come into force on 1 May 2024.

So that's the current state of play, but these are by no means the only items in the works. Here's what else to expect and when to expect it.

Income Tax rates

Finance Minister Hon Nicola Willis has reiterated the Government's intention to adjust the individual income tax thresholds to reduce the effects of bracket creep. These are expected to come into force from 1 July 2024. National proposed the following brackets during the election:

TAX RATE	EXISTING TAX THRESHOLDS	POSSIBLE TAX THRESHOLDS
10.5%	Up to $14,000	Up to $15,600
17.5%	14,001 - $48,000	$15,601 - $53,500
30%	$48,001 - $70,000	$53,501 - $78,100
33%	$70,001 - $180,000	$78,101 - $180,000
39%	Over $180,000	Over $180,000

But these changes are by no means a certainty. The National/ACT Coalition Agreement also states: "Ensure the concepts of ACT's income tax policy are considered as a pathway to delivering National's promised tax relief, subject to no earner being worse off than they would be under National's plan."

The ACT income tax policy includes removing the 10.5% rate and instead having the 17.5% rate apply from $0 - $60,000, a 30% rate from $60,001 - $70,000, and the existing 33% and 39% rates left unchanged and applying from $70,001 and $180,001 respectively. The ACT party also proposed a low and middle-income tax credit to compensate those who previously were taxed at a lower marginal rate.

Because any bracket change is likely to only be confirmed when the Budget is announced on **30 May 2024**, clarity on what these new brackets will look like is probably still a while away. A change in tax rates with effect from 1 July, while likely to be welcomed by workers, will result in employers, payroll software developers (and Inland Revenue) having to make changes to payroll systems in a very short timeframe. Having a 'composite' tax year will bring a sizeable number of complications for calculating tax across the whole income year.

Finally, a sneaky change to be aware of is the impact that changes to income tax rate thresholds have on other taxes. These include fringe benefit tax (FBT), employer superannuation contribution tax (ESCT), resident withholding tax (RWT) and prescribed investor rates (PIR). Any change to the income tax thresholds will also result in corresponding changes to the thresholds for these taxes.

Trustee Tax rate increase

One of the big announcements out of Budget 2023 was the then Labour Government's proposal to align the trustee tax rate with the top personal tax rate of 39% from the 2024/25 income year. The National Government had stated they would be progressing with the trustee tax rate increase during the election, albeit this was not an overtly highlighted part of their election tax policy.

End of story? Not quite.

In late February, the Finance Minister was reported as saying the Government was considering "carve-outs" and a "de minimis rate."

The suspicion is that a two-rate system may be in the works. This would see high-income earning trusts paying a 39% rate, while low-income earning trusts continue to pay a 33% rate.

Interest Deductibility

The Trustee Tax rate is not the only area facing uncertainty.

Under the National/ACT Coalition Agreement, there is a commitment to restore residential rental property interest deductibility, starting at 60% in the 2023/24 tax year, 80% in 2024/25, and 100% in 2025/26. But the problem is that the proposed change to the 60% deduction amount would start in the current tax year, meaning retrospective tax cuts could be on the cards for many taxpayers (depending on their balance date). Retrospective law changes are generally considered poor law-making. In a release during the December 2023 'mini-budget' it was stated that interest deductibility would change from 1 April 2024 – indicating that potentially there won't be the retrospective change included in the National/ACT Coalition Agreement.

Building Depreciation

The ability to claim commercial building depreciation deductions is to be removed, likely from the start of the 2024/25 income year (1 April 2024 for standard balance date taxpayers). While the exact details of the removal are still uncertain, that doesn't mean you should ignore it. When the previous removal of building depreciation occurred in 2010, the cost to businesses was huge, especially in the initial stages. We can likely expect similar teething issues while the finer details of this policy are ironed out. In the meantime, check out this Tax Alert article from September 2023 which includes a handy questionnaire to help prepare for the change.

Bright-line test

Late last year the Finance Minister confirmed that the residential property bright-line test is to be reduced from ten years to two years on all properties from 1 July 2024. There is uncertainty on the specifics of this change, for example, if it will apply to all disposals post-1 July 2024.

"The App Tax"

Despite National and ACT arguing against its introduction while in opposition, the so-called "App Tax" is now here to stay and will be introduced from 1 April 2024. The effect of the change is that online platforms that offer ridesharing, food delivery or short-term accommodation services will now need to charge GST, even if the underlying owner/driver is not GST registered and makes under $60,000 per year. An overview of the changes can be found in the December 2023 edition of Tax Alert.

Budget 2024

Budget day in 2024 has been set down as 30 May. As highlighted above, this is likely to be the day that we find out new personal tax rate thresholds. It will also be the day when we understand the direction the new Government wants to tax taxes. Each Budget includes a "revenue statement" which sets out the intended approach to tax. We'd also expect that shortly after the release of the revenue strategy we'll see the release of the tax and social policy work programme. The work programme will set the scene for what tax policy development will focus on over this Parliamentary term.

It's understood that Inland Revenue has received direction to focus on enforcement of tax laws and reducing compliance costs.

Please contact your usual Deloitte advisor if you have any questions.

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The rates they are a-changing…

By Viola Trnski and Robyn Walker

Are you a trustee, settlor, or beneficiary of a trust? If so, you are probably aware that the trustee tax rate is proposed to increase to align it with the top personal tax rate of 39%.

When the top personal tax rate was increased to 39%, Inland Revenue raised concerns that trusts may be used as a vehicle to avoid paying tax if the rates were misaligned. Essentially, this would involve people diverting their income to a trust to be taxed at the 33% trustee tax rate instead of the 39% personal tax rate.

Is this really happening?

The tax rate change is not yet law, it is still in Bill form and is with the Finance and Expenditure Committee (FEC) as part of the Taxation (Annual Rates for 2023/24, Multinational, Tax and Remedial Matters) Bill (the Bill). The FEC is expected to report back the Bill this month, with the legislation enacted by the end of the month (as the Bill contains the "annual rates" of tax, which must be enacted by 31 March).

The Bill was introduced by the previous Labour Government as part of Budget 2023, and accordingly, the expected revenue from the change has already been incorporated within the Government finances. As such it is not entirely clear what the position of the new Government is on this law change as the National Party election policies made no allowance for not progressing this change.

When the Bill went through its first reading in May 2023, the National and ACT parties both voted against the Bill. Speaking as a Member of Parliament rather than as the Minister of Revenue, Hon Simon Watts said in respect of the Bill: "So trustee tax rate—the issue with this: the unintended consequences of this change have not been thought through. What consultation has been taken in regards to increasing the trustee tax rate? Any idea? No? Not much—not much. But that's not out of sync. The elements around the lack of consultation will mean that these proposals around the increasing of the trustee tax rate are going to cause unintended consequences, and that is going to have a significant implication."

Submissions to the FEC have consistently raised examples of unintended consequences and examples of unfairness from the proposed rule change. So, what can we expect?

In response to questioning, Finance Minister, Hon Nicola Willis, stated that the Government is working on "carve-outs" and a "de minimis rule" to address concerns. While the Minister has not confirmed what this might look like, they could be adopting the Chartered Accountants Australia and New Zealand (CAANZ)'s suggested "two -tier" rate (discussed below).

Given the timeframes on the Bill, we expect to see details of any carveouts sometime in March.

Questions around "fairness"

While the tax system is always grappling with what is "fair", in this case, one disparity is potentially leading to another. As drafted, the legislation taxes all trustee income at 39% for almost all trusts, whether that income is $1, $100,000, or $1 million. On the other hand, personal income is taxed progressively, with only dollars earned above $180,000 taxed at the 39% rate. Only 11% of trusts earn income over $180,000, meaning 89% of trusts will potentially be overtaxed if the rules are applied as proposed.

Submitters highlighted this at the FEC hearing on the current tax bill. CAANZ proposed a two-tier rate to mitigate the impact of taxation overreach:

1. For trusts with income (before allocations) of $100,000 or less, the 33% rate applies; and
2. For trusts with income exceeding $100,000, the 39% rate applies.

What do I need to consider now?

If you have a trust – or are having thoughts about whether a trust is right for you – then it is important to consider different purposes that a trust can serve from a broader point of view, rather than focusing only on the tax implications. Despite the tax rate increase, trusts are still the most appropriate choice in many circumstances. Trusts serve a range of functions, from setting aside assets for future generations, creditor protection, protecting assets from relationship property issues, and charitable giving.

Inland Revenue has recently updated its general guidance on taxing trusts, as well as an publishing an article outlining behaviours that will raise an alarm in response to the increase in the trustee tax rate.

The article notes that Inland Revenue will be "gathering and analysing information" (certainly assisted by the new reporting disclosure requirements) to assess whether trust-related activities indicate tax avoidance. This includes where income is not actually distributed to the beneficiary (in other words, whether the beneficiary themselves, in reality, benefits from the distribution) or otherwise contrived or artificial arrangements that result in a tax advantage being obtained.

In light of the upcoming change, it's important to ensure distributions are genuine, structuring is for a good commercial reason, and that decisions are documented.

Our April 2024 edition of Tax Alert will provide a summary of any changes made to the Bill, including any changes to the proposed 39% trustee tax rate.

If you are thinking about making changes to your trust, or have any questions in light of this article please get in touch with your usual Deloitte advisor.

OVERVIEW OF SITUATIONS COVERED IN INLAND REVENUE GUIDANCE GA 24/01

UNLIKELY TO BE TAX AVOIDANCE (UNLESS ADDITIONAL FACTORS E.G. ARTIFICIALITY)	LIKELY TAX AVOIDANCE; WILL RAISE CONCERNS WITH INLAND REVENUE
A company is owned by a trust and pays out retained earnings before 1 April 2024.	Trust income allocated to beneficiary taxed at a lower rate but amount is resettled on the trust.
Trustee distributes income to a beneficiary taxed at the beneficiary's (lower) tax rate.	Trust income credited to beneficiary's current account, but beneficiary has no knowledge or expectation of receiving that income.
Trustee adopts company structure and transfers trust income-earning assets to the company.	Dividend income is replaced with loans in an artificial or non-commercial manner.
Trustee chooses to wind up the trust.	Timing of taxable or deductible payments is artificially altered.
Trustee chooses to invest in a PIE instead of bonds or term deposits.	Creating or increasing income/ expenditure that does not reflect the reality of the arrangement.

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Inland Revenue's ESS U-turn

By Mila Robertson and Jayesh Dahya

Employee share schemes can be a powerful incentive tool for employers in a globally tight talent market. They can act as 'golden handcuffs' to lock in key staff members for a fixed amount of time, a tool for cash-strapped companies to compete by providing market remuneration and are widely used to incentivise employees to work hard to increase the value of companies' stock by giving them an ownership share.

Unlike some other countries, New Zealand has limited tax incentives available to employees who are remunerated in part via shares or options. Broadly, employees in New Zealand should be indifferent to receiving their pay in cash or shares, options, or related rights. This is consistent with New Zealand's overall tax policy settings of having a broad-based, low-rate system.

In 2018, New Zealand's employee share scheme ('ESS') taxing rules were overhauled to increase certainty in the application of the ESS rules, clarify the corporate deductibility of share scheme costs, and tighten up the taxability of ESS.

While the new rules largely work as intended, there continues to be some technical uncertainty in the application of the rules at the fringes and where more complex arrangements are established. To address this uncertainty, Inland Revenue recently released five draft interpretation statements and a "Questions we've been asked" (QWBA), looking to clarify technical matters concerning employee share schemes:

- PUB00364/A – IS: What an employee share scheme is, the taxing date and apportionment
- PUB00364/B – IS: Deductions for parties to employee share schemes
- PUB00364/C – IS: Trustee of employment share scheme trust treated as nominee
- PUB00364/D – IS: Employee Share Scheme benefits paid in cash – PAYE and KiwiSaver obligations
- PUB00364/E – IS: PAYE – How an employer funds the tax costs on an employee share scheme benefit
- PUB00364/F – QWBA: Fringe benefit tax – employee share loans and associates

These guidelines largely clarify existing practices in relation to ESS, with varying levels of relevance to employers, from corporate tax considerations, such as ESS deductibility in capital transactions and the available subscribed capital considerations associated with ESS, to more of an employment tax focus, such as the apportionment formula for calculating ESS income of cross-border workers.

We expect that the change with the most widespread impact for employers will be Inland Revenue's change in position on PAYE withholding on cash-settled ESS benefits, as well as the change in the taxing point of options.

Current state of play – optional PAYE withholding on ESS benefits

An employee share scheme is essentially any arrangement by an employer (or associated entity) with the purpose, or effect, of transferring shares in the employer's business to an employee.

Currently, the widely held interpretation is that while PAYE reporting is required for ESS benefits, withholding PAYE and other

related payroll deductions is optional for all ESS benefits, regardless of whether the benefit is delivered to the employee in the form of shares or cash (other than when cash is delivered under a 'phantom' share scheme/akin to a bonus scheme that tracks the value of the shares).

This approach to PAYE withholding tax on cash-settled ESS is not just the view of overzealous tax advisors across New Zealand. In their draft interpretation statement, Inland Revenue also acknowledges that this has historically been their interpretation. To illustrate this point, Inland Revenue's Employer's Guide released in April 2023, notes that:

"You can choose to tax ESS benefits as an "extra pay". Deducting tax is optional because it will not suit all schemes."

Practically, this means that currently all employees have their ESS income reported to Inland Revenue via PAYE reporting and if PAYE is not accounted for on the ESS income the employee must make arrangements to settle their own tax due via the terminal tax/provisional tax rules.

This can at times be complex for employees to manage as they may not be familiar with paying tax in this way. However, it reduces compliance costs for the employer.

Inland Revenue's proposed change to PAYE withholding

Inland Revenue's draft interpretation statement proposes that PAYE withholding on cash-settled employee share schemes will be required on a "go forward basis", once the draft statement is finalised.

The basis for this change of interpretation is that essentially all cash payments from an employer to an employee, as a starting point, should have PAYE withheld. Whereas non-cash payments from an employer to an employee are not ordinarily caught by the PAYE rules (usually these are dealt with via the FBT regime). Therefore, Inland Revenue's revised position is that the rule that makes PAYE withholding 'optional' on ESS benefits is not a 'carve out' of the withholding rules for all ESS benefits, but it is simply the legislative basis for allowing employers to withhold PAYE on share-settled ESS if they wish to do so.

While this interpretation statement is still in draft, employers should be ready to withhold tax on cash-settled ESS. Inland Revenue notes that whether employers will be required to 'gross up' for the PAYE or deduct PAYE from the gross ESS amount, will depend on the contractual agreements in place.

So, what do I need to withhold?

Withholding will be required under the extra pay rules (lump sum payment/ extra emolument rules), meaning tax will be withheld at the flat extra pay rate applicable to that employee, calculated with reference to the employee's prior four weeks of earnings.

If the scheme is a cash-settled ESS, ACC earners levy will need to be withheld but KiwiSaver will not need to be withheld. If the scheme is a share-settled ESS, then no KiwiSaver or ACC deductions are required.

If the scheme is not a cash-settled ESS, nor a share-settled ESS (i.e. a phantom scheme), the treatment will revert to how other amounts of extra pay are taxed, e.g. the treatment applied to bonuses will apply. This will mean ACC earners levy, KiwiSaver and other payroll deductions will need to be withheld. Therefore, employers need to be aware of whether they have a 'cash-settled' ESS or scheme that is more akin to a bonus or a 'phantom' scheme as it will determine whether withholding KiwiSaver is required. Further, Inland Revenue has signalled that the treatment of ESS benefits is under closer scrutiny.

Some examples of Inland Revenue's current thinking on what a 'cash-settled' ESS are:

- Arrangements where performance rights (e.g. Restricted Stock Units (RSUs)) are granted to employees, and it is at the employer's discretion whether or not cash or shares are delivered.
- An option scheme, where at the employer's discretion the options can be cancelled on vesting and cash provided.
- An option scheme, where at the employee's discretion they can choose on exercise of the options whether they receive the shares or take an equivalent cash payment.
- On the sale of a company where the employee's performance rights (e.g. RSUs) are accelerated to vest, in return for a cash payment.
- At the unwind of an ESS, where cash is received in return for the cancellation of the related rights to the ESS (e.g. at the point of cancellation of RSUs).

Some examples of Inland Revenue's current thinking on what is not a 'cash-settled' ESS are:

- Share-settled schemes, including RSU, options, etc. (the existing optionality for withholding for ESS will remain for these schemes).
- Phantom share schemes, where the employee is entitled to participate in an ESS scheme and shares are never offered, however, the employee's entitlement is linked to the company's share price.
- Incentive schemes involving a combination of cash and shares e.g. the employee is entitled to receive $100,000 after three years delivered 40/60 in cash and shares respectively however the cash component of $40,000 will be treated like a bonus, rather than cash-settled ESS, meaning all relevant PAYE deductions would be required (including KiwiSaver and ACC).

While the interpretation statements are still in draft, we recommend that employers begin to consider how these rules will impact any ESS offered to their employees, and whether their current scheme plans require a 'gross-up' of PAYE.

Taxing Date for Options

Another important change for employers to be aware of is the share scheme taxing date for options.

In the case of options, often once an employee exercises their rights under the scheme, the employer will need to arrange for shares to be issued and then delivered to the employee, which is a process that can take time.

Before the 2018 rules overhaul, the taxing date for options was the date the employee exercised their options. While we have been aware of some technical uncertainties in applying this view under the legislation, Inland Revenue had previously made it clear that the policy intention is that the share scheme taxing date for options is the date the employee exercises their right to receive the shares/cash under the scheme.

Inland Revenue's revised interpretation of the rules is that the taxing point for options is not the date of exercise, but rather it is the first date the shares are 'held' by or for the benefit of an employee. This is the date the employee has their name entered on the company's share register.

This position change, if finalised, would mean that employers and employees can no longer rely on the exercise date being the share scheme taxing date for options (i.e., the date that triggers the valuation of the benefit, reporting and potential withholding requirements). This may cause difficulties as employers will now need to seek information on the date the employee is recorded as the owner of the shares, rather than adopting the date of exercise or vest for valuing the benefit.

This change may also impact other ESS arrangements to the extent the shares are not 'held' by or on behalf of the employee at the time the employee is entitled to receive the shares. For example, if there is a trading restriction meaning shares cannot be issued on the RSU vest date, the share scheme taxing date may now become the date the restrictions lift.

These are only a few of the key proposed changes included in the draft interpretation statements. Therefore, if you offer an ESS to your employees, we recommend that you discuss how these proposed changes may impact your schemes with your Deloitte Advisor.

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The ever-changing Australian tax landscape: an update

By Amy Sexton, Robyn Walker and David Watkins

Recently there have been several high-profile tax developments in Australia that may have a flow-on effect for New Zealand businesses. In this article, we take a look at four of the more topical issues that businesses operating in Australia should keep on their radar.

Software distribution models

In January 2024 the Australian Commissioner of Taxation (the Commissioner) published the draft ruling TR 2024/D1 "Income tax: Royalties – character of payments in respect of software and intellectual property rights" (TR 2024/D1) for consultation. This replaced an earlier draft ruling issued for public consultation in 2021.

The original draft ruling (TR 2021/D4) was an attempt to address methods of software distribution and use, whilst also expanding the scope of when payments for the licencing and distribution of software would constitute royalties. Concerns were raised by industry stakeholders through submissions on TR 2021/D4), however this latest iteration of the ruling perhaps just raises more concerns. We set out below some of the key elements of the draft ruling which will be of relevance to any New Zealand businesses selling software into Australia.

Treaty analysis

The Commissioner has addressed industry feedback on the original draft by acknowledging that, where a tax treaty applies then the royalty definition in that tax treaty is given primacy over the Australian domestic tax law definition. For New Zealand, Article 12 of the Australia – New Zealand Double Tax Agreement is relevant.

Apportionment of payments

Where a payment relates to more than one thing apportionment is required and appropriate to ascertain the extent to which a payment is a royalty. While TR 2024/D1 states that apportionment should be done on a "fair and reasonable basis", it does not provide any examples or methodologies that the Commissioner may consider to be "fair and reasonable" in most circumstances.

Concerningly, TR 2024/D1 states the Commissioner does not accept that a payment for multiple "things" (i.e., intellectual property (IP) rights and other, non-IP rights) necessarily results in that payment being paid, in part, for each of those things equally or in some proportion. In other words, the Commissioner is of the view that an amount that is paid for multiple things may not necessarily warrant apportionment if those things (being both royalty and non-royalty items) are, from a practical and business point of view, inseparable.

Categorisation of payments
Broadly, the Commissioner's view is that if a payment from a payer (A) to a copyright owner (B) enables A to do something that is the exclusive right of B, then that payment is a royalty for Australian domestic tax purposes. TR 2024/D1 sets out five categories of payments that are characterised as royalties for both domestic and tax treaty purposes:

1. Payments for the grant of a right to use IP, regardless of whether that right is exercised.
2. Payments for the use of an IP right.
3. The supply of know-how in relation to certain IP rights.
4. The supply of assistance furnished as a means of enabling the application or enjoyment of the supply.
5. The sale by a distributor of hardware with embedded software, where the distributor is granted or uses rights in the IP of the software.

A full analysis of the substantive changes can be found in this [January 2024] article published by Deloitte Australia.

Intangibles migration arrangements

Also in January 2024, the Australian Taxation Office (ATO) released finalised Practical Compliance Guide PCG 2024/1 Intangibles migration arrangements (the PCG). The PCG applies to both new and existing arrangements and sets out where the ATO is likely to apply resources to consider the potential application of the general anti-avoidance rules (GAARs) or the transfer pricing rules to cross-border related party "intangibles migration arrangements" (defined as cross-border arrangements involving the migration of intangible assets, or arrangements with similar effect).

The PCG highlights the ATO's focus on the migration of Australian generated intangible assets and the mischaracterisation and non-recognition of Australian activities connected with intangible assets held offshore (as opposed to offshore activities concerning intangible assets held by an Australian entity where there is no intangibles migration). The ATO's expectations around holding documentation for such transactions are very high.

The release of the PCG emphasises the importance of having a global intangible asset strategy. A global intangible asset strategy, within a broader corporate framework, ensures alignment of the intangible asset portfolio with long-term business objectives and helps drive overall value.

> Maintaining an intangible asset strategy that considers tax, transfer pricing, legal, and governance issues is imperative in the current challenging tax and legal landscape multinationals face, where tax authorities globally are increasingly scrutinizing intangible arrangements.

For a full analysis of the contents of the PCG, please refer to this [Deloitte Australia article].

Out with thin capitalisation rules, in with an EBITDA test

During the 2022 election campaign, the ALP proposed to replace existing thin capitalisation rules. Since then, there have been rounds of consultation and exposure draft legislation which have led many businesses to be concerned about the future ability to claim interest deductions in Australia. At its core, the Australian Government is seeking to replace the thin capitalisation rules with something more closely resembling the OECD EBITDA rules (which limit interest deductions to a portion of EBITDA).

The legislation is intended to apply on or after 1 July 2023, which is of concern to taxpayers given the legislation has not yet been passed into law. In fact, the bill has the uncommon distinction of being referred back to the Senate Economics Legislation Committee for a second time. The Committee has since reported back to the Senate recommending the bill be passed. The dissenting Coalition report lists the many matters that business still has concerns with, in respect of the Bill.

The Bill was not debated during the February sitting weeks. Until new legislation is passed by the Australian Parliament, the existing thin capitalisation law remains as it is, albeit the intention was that the new legislation was to apply from 1 July 2023. Parliament will next sit again on 18-28 March 2024.

In addition, additional debt deduction creation rules are to commence for years starting on or after 1 July 2024). These measures apply to existing borrowings and can effectively convert what is presently tax-deductible interest to non-deductible interest in respect of certain related party borrowings.

Public country-by-country reporting requirements

And finally, in February 2024 the Australian Government released for consultation updated draft legislation that will require certain large multinational entities (wherever headquartered) that operate in Australia to publicly release certain tax and other information, on a jurisdiction-by-jurisdiction basis, as well as a statement on their approach to taxation. The proposed measures will operate separately from the existing OECD country-by-country (CbC) reporting requirements. The publishing of tax and other information in the public domain has potentially broad implications for multinational organisations and therefore awareness of these measures is important.

The draft legislation is a refinement of an earlier exposure draft released in April 2023 and reflects an intent to align the measures more closely with the European Union public CbC reporting directive (Directive (EU) 2021/2101).

Key points to note from the draft legislation include:

- The removal of certain jurisdictional disclosure requirements proposed in the April 2023 exposure draft, such as international related party expenses, list of tangible and intangible assets, book value of intangible assets (but not tangible assets) and effective tax rate disclosures.
- Deferral of the start date of the regime by 12 months (to reporting periods starting on or after 1 July 2024).
- A de minimis threshold, such that the measures only apply if a relevant entity's (the CbC reporting entity) aggregated turnover includes Australian-sourced income of AUD10 million or more.
- Jurisdictional-based country-specific reporting will be limited to Australia and certain specified jurisdictions (currently proposed to be 41, which differs from the EU non-cooperative jurisdictions for tax purposes), and aggregated reporting will be permitted for all other jurisdictions. New Zealand is not one of the specified jurisdictions.
- The requirement for an entity to describe the CbC reporting group's approach to tax.
- The penalty regime has been updated to ensure that the Australian resident entity will be subject to penalties under the Taxation Administration Act 1953 if it commits an offence by refusing or failing to comply with its obligations to publish the tax information.

For a more detailed analysis of the contents of the proposed Australian CbC reporting requirements, please refer to this Deloitte Australia article.

If you wish to discuss any of these topics, or Australian tax issues generally, please contact your usual Deloitte advisor.

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Same old Aussies, always taxing – ATO re-confirms position on software royalties

By Bart de Gouw, Melanie Meyer and Liam O'Brien

New Zealand-headquartered technology companies with Australian subsidiaries beware - the Australian Taxation Office (ATO) has doubled down on its position on when an amount paid under a software arrangement is subject to royalty withholding tax.

On 17 January 2024, the ATO withdrew Draft Taxation Ruling TR 2021/D4 (TR 2021/D4) and replaced it with an updated Draft Taxation Ruling (TR 2024/D1), setting out the ATO's position on when an amount paid by an Australian entity for the "use of, or the right to use copyright or other like property or right" under a software arrangement is subject to royalty withholding tax.

The structure of TR 2024/D1 has fundamentally changed when compared to TR 2021/D4, however, the ATO's position continues to be bold, and it is clear that the ATO intends to continue with an approach that characterises the nature of payments with primary reference to legal form and exchanged rights.

Reliance on Copyright law

The ATO's position is heavily based on an analysis of the Australian Copyright Act, noting that the tax treaty definition of "royalty" contemplates payments made for the "use of, or the right to use, any copyright or other like property or right". The ATO's position in TR 2024/D1 is that the use of, or the right to use, a copyright right consists of doing an act in respect of a copyrighted work (in this case, software) that is the exclusive right of the copyright owner. Per the Copyright Act, the exclusive rights of a copyright owner include:

- Reproducing the work in a material form;
- Communicating the work to the public;
- Making an adaptation of the work;
- Entering into a commercial rental agreement; and
- Authorising a person to do an act.

The scenarios included in TR 2024/D1 suggest that the ATO's position is intended to capture most common software distribution/resale models (including software-as-a-service models), and payments made by Australian software distributors to the relevant copyright owner are, in many cases, likely to be characterised as royalties and therefore subject to royalty withholding tax.

TR 2024/D1 also sets out the ATO's reasoning for distinguishing the OECD Commentary on Article 12, which suggests that payments for the supply of software will only be royalties where the rights to reproduce and modify the software are granted. The ATO's view is that the facts contained in the example in paragraph 14.4 of the OECD Commentary on Article 12 "place a significant qualification and limitation on its application". As such, under some fact patterns, there may still be instances of being able to support a "no-royalty" characterisation for payments made by Australian software distributors, notwithstanding the ATO's strict interpretation of the guidance included in the OECD Commentary (which the ATO acknowledges is relevant in interpreting Australia's tax treaties).

Apportionment

Somewhat helpfully, TR 2024/D1 does acknowledge that apportionment is required and appropriate to ascertain the extent to which a payment is a royalty, and any apportionment should be done on a "fair and reasonable basis." There is, unfortunately, no additional guidance on how a fair and reasonable apportionment exercise should be performed.

Concerningly, the Commissioner has expressed a new view in TR 2024/D1 at [18] and at [107], being that the Commissioner does not accept that a payment for multiple "things" (i.e., IP rights and other, non-IP rights) necessarily results in that payment being paid, in part, for each of those things equally or in some proportion. In other words, the Commissioner is of the view that an amount that is paid for multiple things may not necessarily warrant apportionment if those things (being both royalty and non-royalty items) are, from a practical and business point of view, inseparable, as follows (emphasis added):

107...For instance, where a payment is principally for the grant of IP rights and the other rights granted are ancillary or incidental, the consideration is properly characterised as being entirely for the grant of IP rights. To illustrate this point, if the software arrangement has no value or substance without the use of IP rights, then all the payments under the arrangements will be royalties.

Status

The public consultation phase completed on 1 March 2024. It is now with the ATO to consider the various submissions made and determine whether any changes are needed to be made to TR 2024/D1 prior to being published as a final Taxation Ruling. As TR 2024/D1 is currently a draft ruling, it is potentially subject to change prior to finalisation. However, if taxpayers rely on the draft ruling reasonably and in good faith, interest or penalties will not apply if the draft ruling turns out to be incorrect. It is noted that TR 2024/D1 will not take effect until it is finalised. Once finalised, the ruling is proposed to apply both before and after its date of issue and the ATO will be legally bound by the position adopted. It is not clear how the ATO will apply its resources in reviewing historical positions and whether it will pursue royalty withholding tax over multiple previous income years.

Impact on New Zealand businesses

Noting that the ATO's position is not yet finalised, potentially impacted New Zealand companies with Australian software distribution arrangements should review those arrangements considering the ATO's analysis and position as articulated in TR 2024/D1. Such a review at this stage might involve:

- Determining whether any existing software payments from Australia are subject to withholding tax based on the ATO's position;
- Assessing the financial impact of such an outcome (the withholding tax rate on royalties between New Zealand and Australia is 5% per the New Zealand-Australia Double Tax Agreement); and
- Considering potential courses of action in response (e.g. apportionment, preparing and collating additional evidence to support current positions, etc.).

Inland Revenue (along with other tax authorities around the world) will be monitoring developments in this area closely. New Zealand businesses will be particularly interested in Inland Revenue's position on foreign tax credit relief in New Zealand for any Australian withholding tax paid. This would require Inland Revenue to effectively agree with the ATO's position, which could then have implications for how Inland Revenue treats similar payments made by New Zealand companies to overseas copyright owners. It is unlikely that Inland Revenue will communicate its view until TR 2024/D1 is finalised.

Additionally, if the New Zealand copyright owner is in a tax loss position any Australian withholding tax on payments received from Australian entities that use or have the right to use the New Zealand-owned copyright will simply create an additional cash cost.

This is an evolving and complex area but has the potential to have a significant financial impact on in-scope New Zealand businesses.

New Zealand businesses should carefully consider their Australian software distribution/resale arrangements and supporting documentation.

For further guidance on preparing for and responding to this measure, please reach out to your usual Deloitte advisor.

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More tax changes coming for residential property owners

By Susan Wynne and Jordyn Coxhead

Do you own a residential property? The tax rules are set to change again, this time in your favour.

As part of the "mini-budget" released on 20 December 2023, Minister of Finance, Hon Nicola Willis, announced two tax changes relevant to property owners, bringing into effect promises made by National and ACT in their election campaigns. Despite the announcements, legislation has not yet been introduced into Parliament and therefore details are still subject to change.

Bright-line test changes

A previous National Government introduced the original bright-line test as a two-year rule that applied to certain residential property purchased from 1 October 2015. The bright-line test was subsequently extended by the Labour Government to five and then ten years. As promised in the National Party's Election Tax Plan, the Government has confirmed that the bright-line test will be restored to two years, effective from 1 July 2024.

Our expectation is the proposed change should mean that residential properties sold on or after 1 July 2024 will only be subject to income tax under the bright-line test if owned for less than two years at the date of sale.

The effective date of 1 July 2024 may seem odd, but it is likely based on the Government's fiscal year.

The changes are expected to be included added to the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill (Annual Rates Bill) currently being considered by the Finance and Expenditure Committee. This leaves some uncertainty around the specifics of the changes, for example, if it will apply to all disposals post-1 July 2024 and whether the application will be based on the date of sale and purchase agreements (as has been the case for previous bright-line changes) or if it could be based on settlement date when title typically changes in a standard sale and purchase of residential property. When it comes to bright-line tests it is important to ensure everyone understands what the bright-line start and end dates are to avoid a technical mistake.

What is the bright-line test?

Where residential land is sold and is not taxable under any other tax rules the bright line test can tax any gain on sale where a residential property is acquired and sold within a specified timeframe.

Currently, the bright-line period is set at 10 years for properties acquired since 27 March 2021 or 5 years if the property can be classified as a new build or was acquired between 29 March 2018 to 26 March 2021.

There are various exceptions to the bright-line test, with the most commonly used being the main home exemption. The Government has not indicated whether there will be any changes to these exceptions and how they might apply to the new bright-line test.

Interest deductibility on residential rental properties

Also announced in the mini-budget was the complete restoration of interest deductibility on residential rental properties. Currently, the interest on loans for many residential rental properties is either fully non-deductible or is being phased out for existing debt when the rules were changed.

According to the Finance Minister, the phasing back in of these deductions is to be determined early this year. Based on the National-ACT Coalition Agreement the allowed percentages of interest could be as follows, but the exact changes are still to be confirmed.

- 2023/2024 tax year (current tax year) – 60% deductible
- 2024/2025 tax year – 80% deductible
- 2025/2026 tax year – 100% deductible

This will help residential rental property owners who will once again be able to access tax deductions to reduce tax year on year, particularly as the cost of lending in relation to properties continues to rise. It is worth noting that there have been no announcements on the ring-fencing rules (residential property deduction rules) for residential rental properties, so these are expected to continue in place and limit the total amount of deductions that can be claimed.

The property tax rules are complex and with the changes not yet being fully known, there is uncertainty. For tailored advice for your specific situation, as these changes are enacted, we encourage you to reach out to your regular Deloitte advisor.

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What is investment income reporting?

By Viola Trnski and Robyn Walker

While New Zealand was in the midst of the first COVID-19 lockdown the investment income reporting rules took effect on 1 April 2020. As a consequence of people being focused on other things, these rules may have slipped the attention of some taxpayers, as such this article provides a reminder of the requirements that apply to anyone who pays out investment income or royalties to non-residents.

What is investment income?

Investment income, for the purposes of this article, refers to any passive income paid where tax is withheld. This includes interest, dividends, PIE income, taxable Māori authority distributions, and royalties paid to non-residents. While Approved Issuer Levy (AIL) is not a withholding tax, details of AIL payments must also be provided. For completeness, we also address income payers not required to withhold tax.

Any person (i.e. business or organisation) who makes a payment of investment income (Payer) is required to provide certain information to Inland Revenue. Payers are responsible for collecting, and reporting, information of persons who derive or receive a payment of investment income (Recipient).

What are the Rules...and why do we have them?

The investment income reporting rules (Rules) took effect on 1 April 2020 and require more detailed and frequent information to be reported on investment income and allow Inland Revenue to:

1. Pre-populate returns;
2. Proactively adjust tax rates; and
3. Ensure taxpayers meet their tax obligations accurately throughout the year (and correct that rate if required).

Similarly, the withholding tax, NRWT and AIL reporting requirements allow Inland Revenue to determine whether the tax treatment applied is appropriate – and if not, adjust. A 15 May reporting deadline provides time for Inland Revenue to pre-populate tax returns and personal tax summaries.

Information requirements for ALL types of income

PAYER'S:
name, IRD number, contact address

RECIPIENT'S:
name, IRD number (if held by Payer), address, date of birth (if held), amount and type of income for the period, tax withheld (/AIL paid) for the period, date/period tax withheld (/AIL paid)

JOINT OWNERS (IF APPLICABLE):
name, IRD number, date of birth, address (if held)

Total amount of income, tax withheld, credits, imputation ratio, Māori authority ratio (as applicable)

All investment income information must be reported electronically unless an exemption applies

TYPE OF INCOME	ADDITIONAL INFORMATION REQUIREMENTS	REPORTING DEADLINE	PAYMENT DEADLINE
PAYERS OF INTEREST	Recipient's: tax rate for the period as notified	20th of the month following the month interest was paid. A return must be filed with any payment.	20th of the month following the month interest was paid (if $500+ deducted in the month). 20 April & 20 October if less than $500 deducted in any month and in the entire year. *If under $500 monthly, but deductions exceed $500 annually, different rules apply.*
PAYERS OF DIVIDENDS	Imputation credits (ICs) attached, number of shares declared for, date declared, payment date. If applicable: Details of bonus issue, exchange rate (if not in NZD).	20th of the month following the month dividend is paid.	
PIES THAT ATTRIBUTE INCOME	Notified investor rate, whether the PIE is a superannuation fund or retirement scheme. If applicable: IC's attached.	Report due 15 May if balance date is Oct - Feb. End of 2nd month after year-end if other balance date.	
MĀORI AUTHORITIES	Māori authority credits attached.	20th of month following the month a distribution is made.	Must deduct RWT when the distribution is paid if unable to fully impute OR does not have Recipient's IRD number.
UNIT TRUSTS PAYING DIVIDENDS	Recipient's: tax rate for the period as notified. If applicable: IC's attached.	Report due 15 May each year.	
ROYALTIES TO NON-RES'S	Recipient's: tax rate for the period as notified.	31 May OR option of 20th of month following.	NRWT due 20th of month following month royalty payment is made.
EMIGRATING COMPANIES	Recipient's: tax rate for the period as notified. If applicable: IC's attached.	Report due within 3 months of company ceasing to be resident for tax purposes.	
INTEREST PAYERS NOT WITHHOLDING	No information on tax withheld to be reported.	When income tax return is filed.	

Correcting errors

If you make an error when reporting investment income information, Inland Revenue has summarised the options to rectify this. Depending on the error, it can be corrected in a future return, or it may require a previous return to be amended.

For errors made in the same tax year, errors can be corrected in a future return by the next reporting date.

The original return will need to be amended if the error relates to:

- Using the incorrect IRD number;
- Missing or incorrect income information;
- Using the wrong tax type (not rate – e.g. if AIL was deducted instead of NRWT); or
- Relates to a tax year earlier than the previous year.

An amendment to the original return is also required if the error exceeds the greater of $2,000 or 5% of withholding liability for RWT or NRWT.

If you do not deduct enough tax from a payment due to an error, this can be corrected by reducing a later payment to the payee, recovering an amount from the payee, or adjusting the amount of a non-cash dividend that is subject to tax, as long as the amount doesn't exceed the greater of $2,000 or the 5% threshold detailed above.

If you withhold too much tax, you can pay the excess amount to the payee before 20 April after the end of the tax year, if you have not provided the payee a withholding tax certificate or dividend statement. Include the refund amount in the next return for the same payee to Inland Revenue. If you do not pay the refund by 20 April you need to advise Inland Revenue.

Filing the investment income return

Depending on the volume of transactions, investment income returns can be filed in one of three ways:

1. myIR (if less than 2,000 lines per filing instance);
2. CSV file upload; or
3. Gateway services (automated submission from the payer to Inland Revenue).

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

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Tick, tock!
Tips for the end of the tax year

By Susan Wynne and Andrea Scatchard

As another tax year draws to a close (for those with a standard 31 March balance date) there are some key things to keep in mind.

Bad debts

If you have debtors who are unlikely to pay you, these can only be treated as deductible bad debts if they have been fully written off in your accounts before year-end.

Imputation credit account

For companies, your imputation credit account should have a nil or credit balance on 31 March, regardless of your financial balance date, as a debit balance on 31 March will result in penalties. This should be carefully monitored, especially if:

- you have paid out imputed dividends;
- you have received tax refunds; or
- there has been a loss of shareholder continuity.

Depreciation

Check your fixed asset register to ensure the correct Inland Revenue tax depreciation rates are being used. New assets should be depreciated from the beginning of the month of acquisition, rather than from the date of purchase. Pooled assets can be depreciated from the start of the year of acquisition. If you are writing off assets, make sure they are disposed of by year-end.

The ability to claim tax depreciation on commercial and industrial buildings is expected to be removed effective 1 April 2024 for 31 March balance date taxpayers. Check your fixed asset register and consider whether you need to update the depreciation rates of any relevant building assets. Businesses with significant building assets may need to consider the effect of increased taxable income on future forecast tax payments.

Low-value assets

Assets that cost less than $1,000 are considered "low-value assets" and can be immediately deducted, rather than depreciated. If multiple low-value assets are purchased at the same time from the same supplier, the combined cost must be less than $1,000 for the immediate deduction to apply.

Trading stock
Obsolete trading stock can be valued at market selling value where this is lower than cost and you can substantiate the valuation.

Tax Losses
Be aware of the rules regarding shareholder continuity and business continuity if you have losses to carry forward. Breaching both during the year can result in your tax losses being forfeited.

Fourth-quarter FBT returns
31 March is also the end of the FBT year, regardless of your financial balance date. Annual FBT returns and returns for the March quarter are due to be filed by 31 May 2024. If you have not done so in the past, you should consider using the various alternate rate options available to reduce FBT payable from the standard 63.93% rate.

GST mixed-use taxable and non-taxable supplies
If you are GST registered and have assets that are used to make both GST taxable and GST exempt or non-taxable supplies, you may need to make an annual change of use adjustment in the GST return period that includes your balance date.

Tax pooling
With the Inland Revenue use of money interest rate currently at 10.91% on outstanding tax payments, it may be prudent to consider using tax pooling to reduce the effective rate of interest. Tax pooling can also provide the flexibility to make your tax payments at times that suit your own cashflow patterns.

Tax on KiwiSaver contributions
If you have employees, you need to review the ESCT rates that apply to your employer KiwiSaver contributions as these may change on 1 April based on earnings levels over the last 2 years.

Year-end is a busy time, so if you have any questions or would like help with any year-end tax issues, take away the stress by talking to your usual Deloitte advisor.

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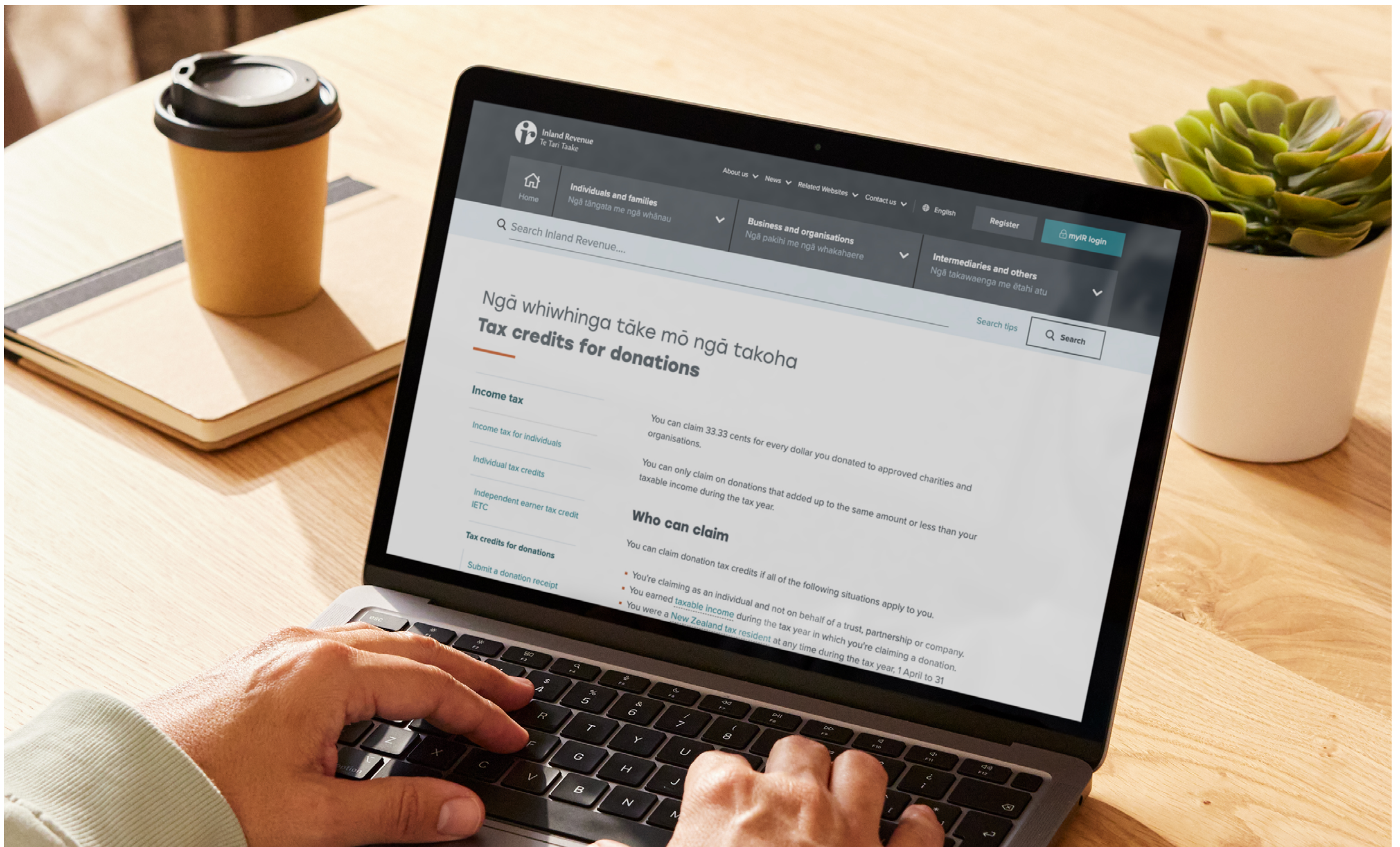
Donations and the often-forgotten tax benefit

By Andrea Scatchard and Ryan Beamish



By and large, we New Zealanders are a giving bunch. Whether we give our time, money, or items we no longer need, we often do so without expecting anything in return. And when times are tough it seems that this brings out the best of us. Inland Revenue data shows that in the 2022 tax year, there was a total of $926 million in donations with a donation tax credit claimed. This amount is likely to only scratch the surface of total donations, as this number doesn't capture donations by businesses and those who neglect to make a donation tax credit claim. The Department of Internal Affairs reports that the total income of New Zealand's 28,000 registered charities is $21 billion.

The Government recognises the good work that these charities do in our communities, so to encourage cash donations it allows a tax break for the individuals, companies and Māori authorities that make them.

Companies and Māori Authorities

As genuine donations are made without the expectation of anything in return, and thus may not otherwise be tax deductible, the Income Tax Act 2007 has specific provisions that allow Companies and Māori Authorities a tax deduction against their income for cash donations to registered charities. Deductions are available up to the level of taxable income. Because the donations will be recorded in their accounting systems, the claiming of this deduction will not usually be overlooked. Companies and Māori Authorities are required to disclose total donations to donee organisations in the annual tax return.

It is worth noting that there are specific rules for companies and Māori Authorities, but such a rule does not exist for trustees. If trust funds are intended to be used to fund charitable donations on behalf of beneficiaries, we recommend seeking advice before making these donations.

Individuals

Individuals however are a different story. We can claim a donation tax credit of 33.33% of the qualifying donation amount but need to file a donation tax credit claim separate from our income tax return to claim the tax credit. Many people are either unaware of this, think it is too hard to make a claim or don't know how to do so.

As noted above, in the 2022 tax year, Inland Revenue paid out a total of $308m of donation tax credits to individuals, equating

to donations of $926m. While there are no readily available statistics on the total amount of qualifying cash donations made by individuals, it is commonly understood individuals do not make all the donation tax credit claims that they could.

The general criteria for claiming a donation tax credit are:

- The recipient must be an approved donee organisation – Inland Revenue has a searchable database of these on its website, but generally these will be New Zealand registered charities or schools, plus some specifically named overseas charitable organisations;
- The cash donation must be $5 or more;
- A signed and dated receipt from the charity must be held and include certain information; and
- The total amount of donation tax credits claimed cannot exceed your taxable income for the relevant year.

Inland Revenue reviews donation tax credit claims quite closely. Areas of concern for Inland Revenue are where the donor receives a benefit back from the charity in return for making the payment (as this is not a donation), or where amounts are paid to schools for goods and services (such as compulsory school fees, camp fees, stationery etc) rather than making a donation (i.e. school fees paid voluntarily).

Donation tax credits are only available for cash donations. Any donations of time, goods or services do not qualify for a tax credit.

So, as we get closer to the end of the tax year on 31 March, now is the time to think about the donations that you have made during the year and to make sure you take advantage of the tax credits available to you. If you use an accountant to prepare your tax returns, make sure you send them copies of the donation receipts so these can be claimed. If you file your own tax return or receive an automatic income tax assessment, it is very easy to complete a donation tax credit claim yourself via the Inland Revenue's MyIR website – it is possible to upload donation receipts to the portal as you received them to reduce the likelihood of forgetting.

Once your income tax return has been filed, or your income confirmed if you don't need to file a return, Inland Revenue will process the donation tax credit claim and refund the credit to you.

While you are digging out this year's receipts, keep in mind that you can file a donation tax credit claim up to 4 years after donating, so you can still file a claim for donations made in the tax year ended 31 March 2020.

If you would like to discuss donations further, please contact your usual Deloitte advisor.

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Snapshot of recent developments

Tax legislation and policy announcements

Briefing to the Incoming Minister

Inland Revenue has released its Briefing to the Incoming Minister, dated November 2023.

The document outlines the tax and social policy system, tax design principles, Inland Revenue's priorities, structure, funding and people, and how they will support the Minister.

Family Tax Credit and Best Start Tax Credit amounts to increase from 1 April 2024

On 29 November 2023, the Income Tax (Tax Credit) Order 2023 was passed, increasing the Family Tax Credit (FTC) and Best Start Tax Credit (BSTC) amounts in line with inflation. This will take effect from 1 April 2024.

The new FTC amount for the eldest child is $7,524 (currently $7,121) and for subsequent children $6,130 (currently $5,802). The BSTC will increase to $3,838 (currently $3,632).

Taxation Principles Reporting Act 2023 repealed

On 22 December 2023, the Taxation Principles Reporting Act Repeal Act 2023 received royal assent. The full press release can be read here, and the Regulatory Impact Statement here.

On 1 February 2024, Inland Revenue proactively released the draft report that was prepared by Officials and the Cabinet minute and papers relating to the repeal.

New Zealand dairy products can now enter China duty-free

From 1 January 2024, all New Zealand dairy products can enter China duty-free, with the end of safeguard duties on milk powder. The full press release can be read here.

Electric vehicles to pay Road User Charges

On 16 January 2024, the Minister of Transport announced the exemption from road user charges for owners of light electric vehicles and plug-in hybrid vehicles will end on 1 April 2024. The new road user charges will be $76 per 1,000 kilometres for owners of electric vehicles and $53 per 1,000 kilometres for plug-in hybrid vehicles.

New Zealand - European Union Free Trade Agreement Legislation: First reading held

On 31 January 2024, the NZ-EU Free Trade Agreement legislation passed its first reading and was referred to the Foreign Affairs, Defence and Trade select committee.

The Minister of Trade announced that the Government aims to finish its part of the procedure through Parliament by May 2024. The agreement will then come into force at an agreed date after New Zealand has passed the implementing legislation and notified the EU.

R&D Tax Incentive in-year payment loan scheme ends

On 12 February 2024, Tax Management New Zealand announced the Government had closed the in-year payment loan scheme.

No new loan or payment requests will be accepted. However, existing loans will remain in effect (with no change to the repayment due dates) and the most recent round of loan requests (which closed on 15 January 2024) will continue to be processed and paid out to eligible businesses.

Income Tax (ACC Payments) Amendment Bill

On 15 February 2024, the Income Tax (ACC Payments) Amendment Bill was drawn by ballot. The Members Bill seeks to make changes to how certain ACC lump sum payments are taxed (this issue is also addressed by the current Annual Rates Tax Bill). The bill is waiting for a first reading.

Goods and Services Tax (Removing GST From Food) Amendment Bill

On 15 February 2024, Rawiri Waititi's (Te Pati Māori) Members Bill proposing to remove GST from all food products and non-alcoholic beverages was drawn from the ballot. The bill is waiting for a first reading.

Social Security (Benefits Adjustment) and Income Tax (Minimum Family Tax Credit) Amendment Bill

On 15 February 2024, the Bill adjusting the minimum family tax credit completed the committee stage and will now face its third reading.

The bill proposes to amend section ME 1 of the Income Tax Act 2007, replacing the minimum family tax credit amount of "$34,216" with "$35,204" for the 2024-25 and later tax years.

Regulated tyre fee from 1 March 2024

From 1 March 2024, a new regulated tyre stewardship fee will apply. The fee will fund Tyrewise, NZ's first regulated product stewardship scheme. The scheme will see worn-out tyres collected, processed and recycled. Anyone who sells a regulated tyre, including importers of loose tyres must do so in accordance with the Waste Minimisation (Tyres) Regulations 2023 and register with Tyrewise.

Business Payment Practices Act Repeal Bill introduced

On 5 March 2024, the Business Payment Practices Act Repeal Bill was introduced to Parliament. A motion was agreed to pass all stages of the Bill under urgency.

Inland Revenue statements and guidance

Technical Decision Summaries: Adjudication – Omitted income and liability for shortfall penalties

On 24 November 2023, Inland Revenue published TDS 23/14 which considered whether a taxpayer returned all their assessable income for the income years in dispute and, if not, whether they were liable for shortfall penalties.

The taxpayer proposed adjustments in relation to undisclosed dividend income, beneficiary income and other income that Inland Revenue had assessed as derived.

It was held that some deposits were beneficiary income, and most were income under ordinary concepts. The taxpayer was liable for evasion shortfall penalties from income not returned on some unexplained deposits, reduced by 50% for previous behaviour.

On 29 November 2023, Inland Revenue released TDSs 23/15, 23/16, 23/17, 23/18, and 23/19 (all on omitted income and shortfall penalties) regarding a taxpayer(s) with complex personal and business affairs. Inland Revenue held that the taxpayer(s) were liable to pay tax on omitted income, a time bar exemption applied, and evasion shortfall penalties applied.

Tax Information Bulletin – December 2023

On 1 December 2023, Inland Revenue released TIB Vol 35 No 11 (December 2023).

Interpretation Statement: Income – when gifts are assessable income

On 6 December 2023, Inland Revenue issued IS 23/11 which clarifies when a gift is subject to income tax in the recipient's hands. This statement replaces *Assessability* of gifts received by volunteer workers in NZ (TIB Vol 6, No 3, September 1994) and Cash gifts received by voluntary workers (TIB Vol 4, No 5, December 1992).

In summary, gifts are generally not subject to income tax because they are made as a mark of affection, esteem or respect for an individual, and therefore do not have the character of "income". However, a gift may be liable to income tax if it's a person's income under Part C, i.e., from a business, from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit, in connection with employment, or in undertaking a voluntary activity.

Question We've Been Asked: Income tax – deductibility of expenditure – renting to flatmates

On 6 December 2023, Inland Revenue issued QWBA 23/08 which explains when a person can claim deductions for expenditure incurred in deriving rental income, where the person rents a room in their home to a flatmate. In summary:

Q: If a homeowner lives in their home and rents out a room to a flatmate, can they claim deductions for costs incurred in deriving the rental income?

A: Yes. A homeowner can claim deductions for costs incurred to the extent the expenditure is incurred in earning the rental income from the flatmate(s). The rental income from the flatmate is taxable.

The QWBA also considers interest limitation, residential ring-fencing, apportionment, and mixed-use asset rules.

Technical Decision Summary: Private Ruling – Deductibility of retention payments

On 7 December 2023, IR issued TDS 23/20 which considered an agreement between companies, while an acquisition was being considered, to enter into retention agreements with key staff. The agreements were accepted as variations to employment agreements. The retention agreements incentivised key staff to remain and entitled these staff to bonus payments calculated by reference to their salary.

The issue was whether a portion of the retention payments were deductible. Based on the specific facts, the Tax Counsel Office decided that the retention payments were deductible, the capital limitation does not apply to deny a deduction, and the deduction is allocated to the income year in which the payments were made.

Question We've Been Asked: Income tax – forfeited deposits from cancelled land sale agreements

On 13 December 2023, Inland Revenue released QWBA 23/09 which clarifies the circumstances in which a forfeited deposit from a cancelled land sale agreement is income to the seller. In summary:

Q: Is a forfeited deposit from a cancelled land sale agreement income to the seller?

A: Yes, if one or more of the following situations apply:

- *the sale of the land that is the subject of the cancelled land sale agreement was part of the current operations of the business or an ordinary incident of the business (s CB 1) of the Income Tax Act 2007.*
- *the seller is carrying on a profit-making scheme that involves the sale of the land (s CB 3).*
- *it has the character of income (s CA 1(2)) i.e., if the proceeds of the sale under the cancelled land sale agreement would have been taxable had the sale gone ahead.*

Question We've Been Asked: FIF calculation methods in cases of non-compliance

On 14 December 2023, Inland Revenue finalised QB 23/10 which explains that a person has a choice of methods to calculate FIF income even if they fail to declare the income in a tax return and later file a voluntary disclosure, or fail to file a tax return by the due date and later provide one including income.

This QWBA was expanded from the revised draft by confirming that the principle also applies to "other taxpayers", not just a natural person or eligible trustee.

Technical Decision Summary: Private Ruling – Interest free loan and dividends

On 9 January 2024, Inland Revenue issued TDS 24/01 which analysed an interest free shareholder loan from a non-resident company and the ongoing repayments of the loan. The issues were whether the interest free loan gave rise to dividends and whether repayment of the loan was subject to withholding tax.

The Tax Counsel Office decided that the loan did not give rise to dividends, including as a result of the issue or repayment, and that the receiving company was not required to pay withholding tax.

Determination: Participating Jurisdictions for the CRS applied standard

On 18 January 2024, Inland Revenue released AE 24/01 which details Participating Jurisdictions. Since the last update in 2023, Georgia, Kenya, Maldives, Moldova, Montenegro, Morocco, Thailand, Uganda and Ukraine have been added.

Participating Jurisdictions can provide NZ with financial account information under the CRS which is important for financial institutions when conducting due diligence in respect of accounts held by passive non-financial entities.

The Determination is effective from 1 April 2024.

Technical Decision Summary: Adjudication - Renovation work on recently acquired properties and the capital limitation

On 31 January 2024, Inland Revenue issued TDS 24/02 which involved a trust that purchased several tenanted properties and, after purchasing, undertook work on the properties. The issue was whether the work was capital expenditure or ordinary repairs and maintenance.

The Tax Counsel Office decided that the expenditure was not deductible as it was part of the cost of acquisition, and therefore, capital. Relevant factors in this decision included the valuer's assessment of the properties condition, the taxpayer's intention, the cause of the need for the work, and the purchase price.

Tax Information Bulletin – February 2024

On 1 February 2024, Inland Revenue released TIB Vol 36, No 1 (February 2024).

Interpretation Statement: Taxation of trusts

On 1 February 2024, Inland Revenue released IS 24/01 which explains the trust rules in the Income Tax Act 2007.

This comprehensive Interpretation Statement updates and replaces IS 18/01 and is a general guide as to how income derived by the trustees of a trust is taxed. It also explains the various compliance obligations imposed on settlors, trustees, and beneficiaries under tax law.

It does not deal with the proposed change to the trustee tax rate and related measures.

Draft Interpretation Statement: Charities – Business income exemption

On 2 February 2024, Inland Revenue released PUB00465 which is an exposure draft considering the extent to which business income a charitable entity derives is exempt from tax under section CW 42 of the Income Tax Act 2007.

Income a tax charity derives can broadly be classified as either "business income" or "non-business income". Both types of income can be exempt (non-taxable) if a tax charity meets the requirements of ss CW 41 and CW 42.

A tax charity that derives business income must apply s CW 42 to work out the extent to which that income is exempt. For all other income, a tax charity applies s CW 41. The main difference between the two sections is that business income is subject to additional restrictions compared with non-business income.

The deadline for comment is 15 March 2024.

Inland Revenue updates Public Guidance Work Programme

On 12 February 2024, Inland Revenue updated its Public Guidance Work Programme. This includes not proceeding with PUB00456 Income tax – Land – Main home exclusion and caravans, tiny homes etc (due to bright-line changes) and PUB00479: deductibility on UTBC levies (as this is addressed in IS 23/10).

Technical Decision Summary: Private Ruling - Fringe benefit tax – discounted goods provided by third party

On 22 February 2024, Inland Revenue issued TDS 24/03 which considered a staff discount scheme for employees. The applicant contracted a non-associated third party to provide discounted goods, then reimbursed the third party for costs incurred in providing the discounts.

The issue was whether the discounted goods give rise to a "fringe benefit" and, if so, what was the value of that fringe benefit. The Tax Counsel Office concluded that a fringe benefit did arise with a value determined under s RD 27 of the Income Tax Act 2007 (i.e., market value or otherwise as the Commissioner determines).

Global tax news

European Union – New Zealand Free Trade Agreement

On 27 November 2023, the European Parliament approved the Free Trade Agreement with New Zealand that was signed on 9 July 2023.

Double Tax Agreement with Slovak Republic signed

On 28 November 2023, New Zealand and the Slovak Republic signed a Double Tax Agreement.

Deloitte Tax Technology Report: Tax in a data-driven world

On 29 February 2024, Deloitte Global released a report on tax and technology. Using the results from Deloitte's Tax Transformation Trends 2023 research, the report explores challenges relating to technology transformation in the current tax landscape, including investment, obtaining budget, and optimal implementation and maintenance programs.

European Union: Corporate Sustainability Due Diligence

New mandatory requirements for corporate due diligence reporting have been agreed by the EU and are expected to enter into force following European elections in June 2024.

This report outlines the background, outcome, and planned implementation of the EU's new Corporate Sustainability Due Diligence Directive including the potential impacts for New Zealand companies trading with or doing business in the EU.

For more information, please visit the MFAT website page or contact exports@mfat.net.

Deloitte Insights: Global tax reform is coming – and CEOs need to be ready

Deloitte Global has released an Insights article on why Pillar Two tax reform is a C-suite priority. This includes a survey of 300 senior tax and finance leaders at companies across a range of industries, sizes, and regions, and what Pillar Two means for boards and C-level leaders.

Austria – New Zealand Double Tax Agreement

New Zealand and Austria have signed the Second Protocol updating the Double Tax Agreement and First Protocol between the two countries. The Protocol lowers the dividend withholding rates and includes the most recent OECD anti-abuse provisions.

OECD updates

Misuse of citizenship and residency by investment programmes

On 22 November 2023, the OECD released a report on the misuse (by criminals and corrupt officials) of citizenship and residency by investment programmes.

Fuel taxes less resilient than emission permit prices amid high inflation

On 27 November 2023, the OECD released the report Effective Carbon Rates 2023: Pricing Greenhouse Gas Emissions through Taxes and Emissions Trading which presents data on taxes and tradeable permits for carbon emissions in 72 countries.

Resilience and reform in carbon pricing: Adapting to new realities

On 28 November 2023, the OECD released a recording from the COP28 virtual pavilion on the future of carbon pricing.

Revenue Statistics 2023

On 6 December 2023, the OECD published the Revenue Statistics for 2023. Global energy crisis and government responses drove a significant fall in tax levels in most OECD countries, including NZ.

Dividend Tax Fraud

On 7 December 2023, the OECD published Raising Awareness of Dividend Stripping Schemes.

Over 54,000 exchanges on tax rulings carried out under BEPS Action 5

On 13 December 2023, the OECD released the latest peer review assessments for 131 jurisdictions in relation to the compulsory spontaneous exchange of information on tax rulings. The 2022 Peer Review Report indicates that over 54,000 exchanges of information have taken in over 24,000 tax rulings identified.

Public comments received on proposed changes to Article 5 Commentary

On 22 January 2024, the OECD published the comments received on the proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources.

OECD releases International Compliance and Assurance Programme statistics

On 29 January 2024, the OECD released the first aggregated statistics from the Forum on Tax Administration ICAP for a multilateral risk assessment of an MNE group's key international tax risks.

New Zealand will not apply Pillar One – "Amount B"

On 19 February 2024, the OECD published its optional simplified and streamlined approach to in-country baseline marketing and distribution activities (formerly "Amount B").

Inland Revenue confirmed New Zealand will not be applying this approach and there is no change to current rules or practice. The existing simplification measure for small foreign-owned wholesale distributors remains available and existing transfer pricing rules apply in all other cases.

OECD Tax and Development Days 2024

The OECD will host meetings on their initiatives to strengthen tax capacity, improve tax policy and compliance in developing countries, and explore future challenges.

These will take place on 12 and 13 March 2024 from 12:30-17:15 (UTC+1) (Day 1) and 12:30-16:30 (UTC+1) (Day 2). Replays of the sessions will be available here the week following.

All sessions are open to the public and will take place virtually. You can register here.

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

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