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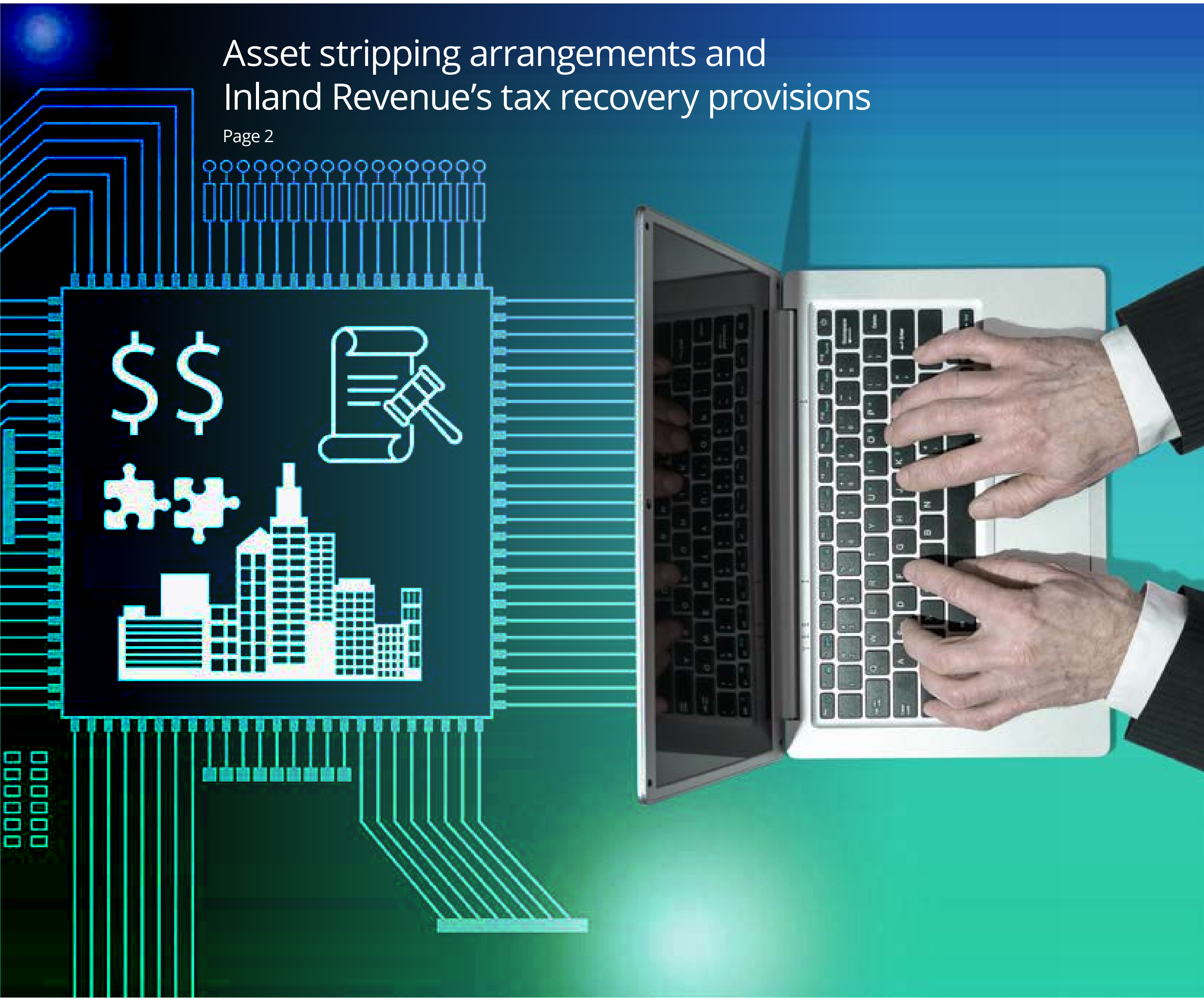
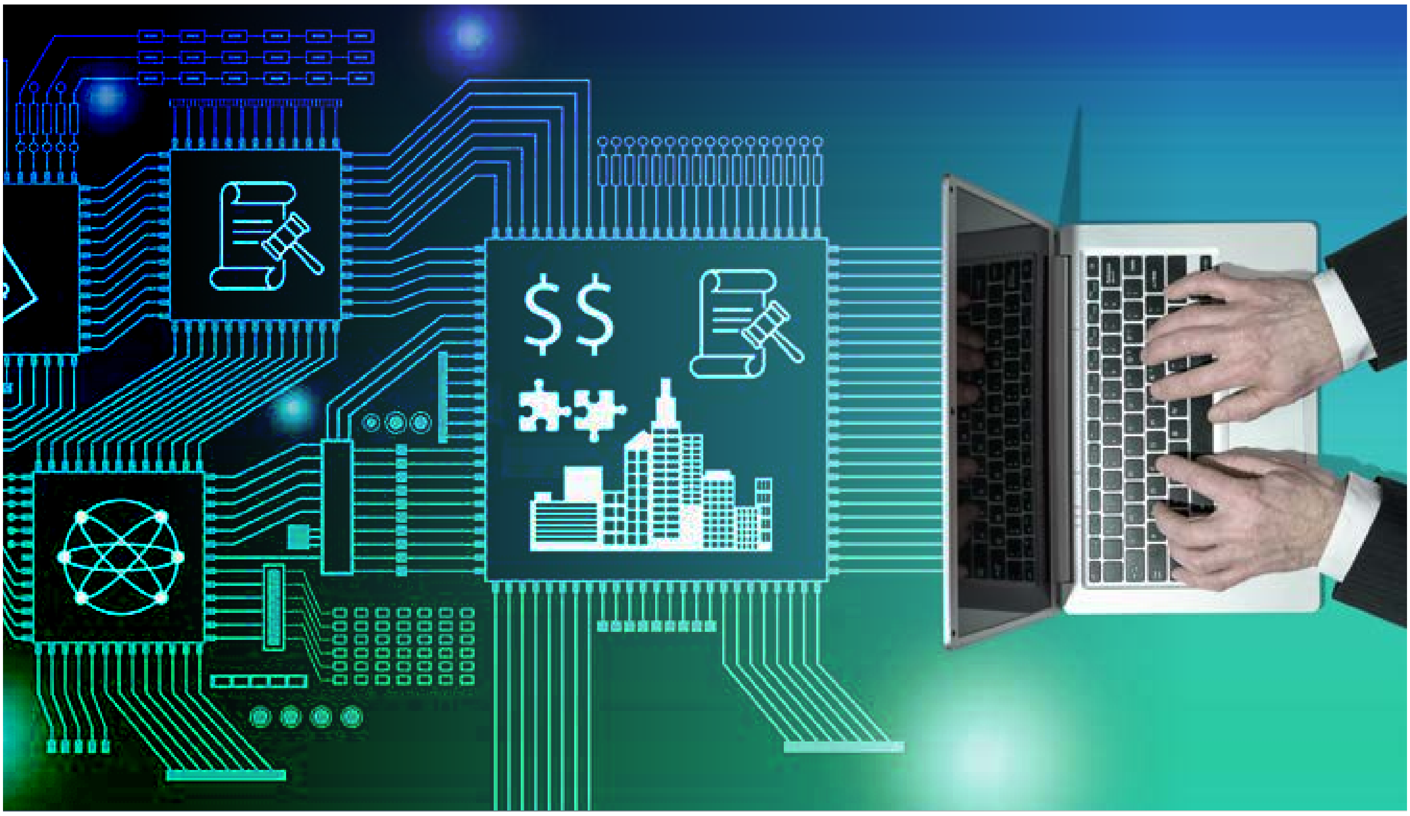
Tax Alert

August 2022



Asset stripping arrangements and Inland Revenue's tax recovery provisions

By Amy Sexton and Virag Singh



The Inland Revenue has recently published a Technical Decision Summary (TDS 22/14) in which the Tax Counsel Office (**TCO**) found a sole director/shareholder of a company (in liquidation) personally liable, as agent, for the tax liabilities of the company under section HD 15 of the Income Tax Act 2007 (ITA) and section 61 of the Goods and Services Act 1985 (GSTA) (referred to together as the **Recovery Provisions**). The Recovery Provisions are intended to counter asset stripping arrangements in companies as discussed below.

What is asset stripping?

Asset stripping involves arrangements or transactions that result in the assets of a company being depleted so that the company has insufficient funds to fully meet its tax liabilities (existing or future). The Recovery Provisions were enacted to counteract such arrangements, enabling the Commissioner of the Inland Revenue to recover the tax liabilities of the company from its directors and/or shareholders. The Recovery Provisions make persons who were directors, controlling shareholders or who had a voting or market value interest in the company at the time the asset stripping arrangement was entered into potentially responsible, as agents, for the company's tax liabilities. Tax liabilities for the purposes of the Recovery Provisions include income tax, GST, penalties and interest.

Recovery Provisions

The Recovery Provisions apply when the following criteria are met:

- An arrangement has been entered into in relation to a company;
- An effect of that arrangement is that the company is unable to satisfy an existing or future tax liability; and
- It is reasonable to conclude that:
    - Had a director of the company made reasonable inquiries into the affairs of the company at the time of the arrangement, that director could have anticipated at that time that the tax liability would, or would likely, be required to be met, and
    - A purpose of the arrangement was to have the effect noted above.

It is sufficient that "a" purpose of the arrangement is to have the effect noted above i.e. it does not need to be the sole or dominant purpose but merely only one of the purposes.

The Commissioner has extended powers to give effect to the Recovery Provisions, such as being able to assess a company that has been liquidated (as if it had not been liquidated) and potentially apply time bar for a period of 4 years from the end of the tax year in which the company was liquidated.

The question that then arises is what date do the terms “liquidated” or “liquidation” refer to? Is it the date the company is wound up and put into liquidation, or is it the date on which the company is removed from the Companies Office register at the end of the liquidation process? This interpretation has yet to be tested in court and would have a significant effect on the time bar as a company may be in liquidation for many years (more than 4) before it is removed from the Companies Office register.

TDS 22/14

In this case, the Taxpayer was a citizen and resident of Australia, whilst being the sole director and shareholder of a New Zealand company (**NZCo**). The Taxpayer performed “computer programming services” in New Zealand through NZCo. The Taxpayer (trading as NZCo) entered into agreements to provide services to New Zealand registered companies. Payments received from the provision of these services were deposited into the New Zealand bank account of a related Australian company (which had a name similar to the NZCo) The Taxpayer was the sole signatory on that bank account. NZCo itself did not have a New Zealand bank account. Inland Revenue’s investigations determined that once payments were deposited into the New Zealand bank account, they were mostly transferred to an Australian bank account or to the Taxpayer’s joint account with his spouse. The funds left in the New Zealand account were just enough to cover the Taxpayer’s private costs until the next payment was received; no surpluses were retained in New Zealand.

After an investigation, Inland Revenue issued assessments of GST and income tax to NZCo. The assessments were not disputed and were deemed to be accepted. Inland Revenue then issued a notice of disputable decision and assessment determining that the Taxpayer was personally liable, as agent, for the GST and income tax debts of NZCo. This was disputed by the Taxpayer.

The TCO determined that the Taxpayer was liable, as agent, for NZCo’s tax obligations for the relevant periods under the Recovery Provisions as all of the requirements of these sections were met because:

- The Taxpayer, NZCo and the related Australian company (both operated by the Taxpayer) engaged in an arrangement that involved:
  - Receiving payments into the related Australian company’s New Zealand bank account;
  - Quickly transferring the build of the payments to Australian bank accounts under the Taxpayer’s control;
  - Causing NZCo’s tax liability to be understated in tax returns that were filed with Inland Revenue; and
  - Filing nil returns.
- Looked at objectively, this arrangement had an effect of depleting NZCo’s assets almost completely on a regular basis, which left NZCo unable to meet its tax liability, or any expected tax liability that would naturally arise from the activities NZCo engaged in.
- It was reasonable to conclude that:
  - A purpose of the arrangement was NZCo could not meet its tax liability as funds were kept in New Zealand only if they were needed to meet the Taxpayer’s and NZCo’s other expenses. All of these other expenses were met expect the tax liability, and funds were not retained in the account to meet any expected tax liability that might arise; and
  - The Taxpayer, as sole director of NZCo, could have anticipated that NZCo’s tax liability would arise.

Deloitte’s view

In our experience, we have rarely seen the Commissioner invoke the Recovery Provisions. This is also reflected through the limited number of cases on these provisions. The facts in TDS 22/14 demonstrate a blatant attempt to deplete funds from a company which has had the effect of the company being unable to meet its tax liabilities and this this regard these facts sit at an extreme end of the spectrum. However, given the wide drafting of the Recovery Provisions, they have the potential to apply to other, less blatant, arrangements. Furthermore, with the potential increase in tax debts post-COVID-19 and in the current economic climate, the Commissioner may be prompted to rely on this recovery provision more often. If you would like to discuss this issue further, please contact your usual Deloitte adviser.

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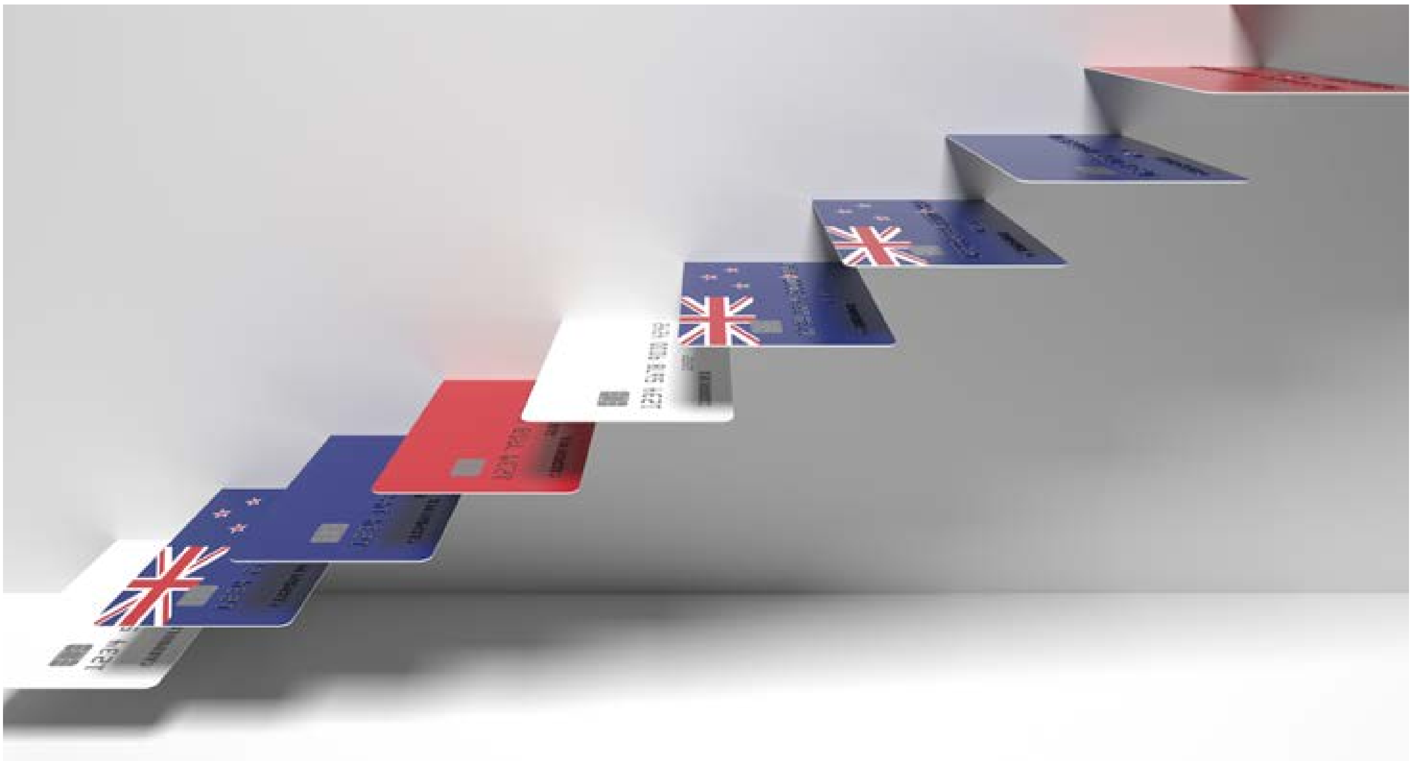
Considering business expansion into New Zealand? Here's what you need to be aware of...

By Emma Marr and Kayla White



When a business starts expanding its activity into New Zealand, it might find that tax issues arise quickly. Something as innocuous as a customer requiring you to provide a GST number, or fill out an IR330C, can seem like a small thing. However, this may be just the tip of the iceberg for your New Zealand tax obligations. We recommend getting advice on the tax implications of doing business in New Zealand. You may be triggering New Zealand liabilities without even realising you are doing so.

Your New Zealand customers may be the first to advise you of your New Zealand tax obligations, which can be a useful prompt to seek New Zealand tax advice and assistance to register with Inland Revenue and manage your New Zealand taxes for the duration of your activities in New Zealand.

Talking to a tax advisor about your New Zealand activities can assist in identifying all the intricate areas of New Zealand tax that will be applicable in each unique circumstance. A business may initially seek New Zealand tax assistance by simply registering with Inland Revenue to provide an IRD number in order to receive payment for services, but then learn that their activities and presence are creating obligations in other areas of New Zealand taxation.

Read on for five tax issues you should think about if you are expanding your business into New Zealand.

1. GST

GST is often the canary in the mine, as this can be the first tax that a non-resident business is forced to consider when doing business in New Zealand. It is not uncommon for a New Zealand customer to be the catalyst for a non-resident supplier to register with Inland Revenue, by requesting that the non-resident provide them with a GST number. It is also very easy for a non-resident business with New Zealand customers to unwittingly have a New Zealand GST liability. There are cases where it is beneficial for a non-resident doing business in New Zealand to register for GST so it can recover GST on its costs incurred in New Zealand. The rules applying GST to non-residents are complex and can apply to businesses with little or no physical presence in New Zealand, and for activity of relatively short duration.

2. Non-resident contractor's tax

The second canary in the mine is non-resident contractors' tax (NRCT), and it is usually the New Zealand customer that first raises this tax with a non-resident.

The key message when considering expansion to New Zealand is that your business may be subject to New Zealand tax obligations that you do not expect, so it is always worthwhile to reach out to a New Zealand tax advisor once you are considering expanding, to ensure you have worked through any fishhooks.

New Zealand residents making payments to non-resident contractors have an obligation to deduct NRCT and can face penalties for getting it wrong, so they are motivated to make sure they are getting this right. Depending on the terms of the contract between the parties, NRCT can be a cost to either the payer or the payee, and the cost can be significant. If the activities a non-resident business carries on in New Zealand are subject to NRCT, registering with Inland Revenue and obtaining an IRD number can assist in reducing the rate of NRCT withheld. Alternatively, businesses may be eligible to apply for an exemption, or special tax rate based on their forecast taxable income while in New Zealand, which can either eliminate or significantly reduce the cost.

3. Employees coming to New Zealand

An area that commonly presents tax risks for offshore businesses is the movement of people from the business's home country into New Zealand. Although sending your own employees to oversee jobs in New Zealand may seem like the most straightforward option in terms of knowledge and continuity, it may create additional tax issues, including payroll taxes for the individuals and the company, and can create a taxable presence for the company in New Zealand.

4. Structuring

There are various ways to do business in New Zealand, and the option that best works for your business depends on many factors - how long your business intends to operate in New Zealand, the impact of financial reporting obligations (see further below), your businesses' preference for its global structure, and the tax profile of the planned business.

The two most common structures adopted by non-residents expanding into New Zealand are a branch or subsidiary, although other options such as a limited partnership are available. New Zealand tax rules for branches and subsidiaries are similar in some ways, however, there are some important differences that can determine which of the two structures is the best option. Key issues to consider are how you want to fund the entity, repatriation of profits, how long it will operate, and the tax profile over the term of its time in New Zealand. It is important to carefully consider this at the outset, to help you achieve the most tax-efficient outcome possible.

5. Financial reporting obligations

There may also be registration and financial reporting requirements for the New Zealand business. Overseas companies may need to register in New Zealand with the Companies Office, depending on various factors including their size and the type of activity it has in New Zealand. Both branches and subsidiaries of overseas companies have obligations to prepare, have audited and file financial statements with the Companies Office (that are then publicly available), depending on the size of the business, so you will need to carefully consider the rules and whether they apply to your business.

The key message when considering expansion to New Zealand is that your business may be subject to New Zealand tax obligations that you do not expect, so it is always worthwhile to reach out to a New Zealand tax advisor once you are considering expanding, to ensure you have worked through any fishhooks.

Speaking to a New Zealand tax advisor sooner rather than later is useful in identifying other tax risks with proposed or current activities, and whether there is a more efficient way to structure the New Zealand presence.

If you need any help navigating the tax rules that might apply when you're expanding your business to New Zealand, contact Emma Marr or your usual Deloitte advisor.

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Tax Debt: Getting out of the red

By David Webb, Colin Owens and Amy Sexton

Deloitte Turnaround & Restructuring

The Deloitte Turnaround & Restructuring team is focused on supporting businesses to reduce risk and maximise value. Experienced at addressing the pressures associated with change, whether that is due to growth or stress, the team partners with boards, management teams, banks, investors, government agencies and other stakeholders to help organisations navigate complex challenges and achieve optimal outcomes.

In this article, Deloitte Tax joins forces with the Turnaround & Restructuring team to examine the rise of tax debt and insolvency issues in the current environment.

Tax Debt

All taxpayers are required to pay their tax in full and on time. Unpaid tax returns can quickly spiral into significant accumulated debt to the Inland Revenue, particularly when penalties and interest start to be applied. There are however financial relief options available to taxpayers who find themselves in this uncomfortable position. The Commissioner of Inland Revenue's standard practice for considering tax debt relief is set out in the Standard Practice Statement *18/04 Options for relief from tax debt* ("the SPS"). This SPS sets out two avenues for financial relief for taxpayers; entering into an instalment arrangement or writing off amounts for serious hardship. Instalment arrangement applications are available to all taxpayers, whilst hardship applications are only available to natural persons. It must be remembered though that the decision to provide financial relief is a discretion that rests with the Commissioner and it is not available as a right.

Instalment Arrangements

An instalment arrangement can be a one-off payment or a number of payments over time (regular or irregular, equal or varied amounts). What is important is the core tax debt is paid with an agreed payment plan and in an agreed timeframe, whilst ensuring all current tax returns are filed and paid as they become due. Use of money interest will continue to be imposed over the term of the arrangement. The proposed term for an instalment arrangement should generally be as short as possible, whilst not putting the taxpayer in serious financial hardship. Generally, a term of no longer than two-to-three years is acceptable to the Inland Revenue.

Once an instalment arrangement has been successfully completed and the core tax debt paid, an application can be made to the Inland Revenue for the Commissioner to consider the remission of any penalties and interest that were imposed on the debt. Remission applications require specific information to be provided to the Inland Revenue as relief can only be granted under the specific circumstances set out in the Tax Administration Act 1994. We suggest discussing any remission application with your tax advisor to ensure you have the best chance of a successful application.

Hardship Applications

When considering a serious hardship application the Commissioner follows a two-step approach, "Is there serious hardship?" and secondly, "What relief, if any, should be granted?". The Tax Administration Act 1994 specifically defines what serious financial hardship is, and therefore to have the best chance at a successful application we again recommend discussing any applications with your usual tax advisor.

If a financial relief application is successful, taxpayers need to bear in mind that this debt relief may trigger other tax consequences, for example, adjustments may be required to prior year tax losses or imputation credits.

If a financial relief measure is not able to be agreed upon with the Commissioner, then the options available to the Inland Revenue to collect outstanding debt include insolvency actions like the appointment of liquidators.

Insolvency Appointments

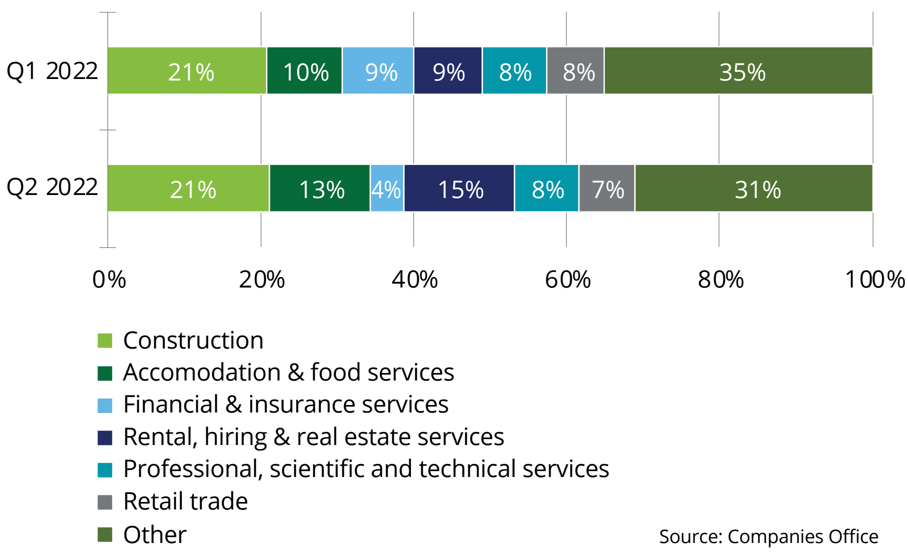
Although the number of insolvency appointments in 2022 is following a similar trend to 2021, the total number of appointments thus far in 2022 has been lower than that of 2021. There was an average of 386 appointments per quarter throughout 2021, but this average is slightly lower in 2022 to date at 339 appointments per quarter (albeit there is a trend towards rising appointment numbers).

Recent data shows that the three largest affected sectors by insolvency in Q2 of the calendar year 2022 continue to be construction; rental, hiring & real estate services; and accommodation & food services. These three sectors are those that were, and continue to be, significantly impacted by COVID-19. The construction industry continues to face supply chain issues, whilst the real estate services and hospitality industries are challenged by border closures and a lack of tourism.

These forces are combining to push up insolvencies of these industries above medium-term moving averages, and we observe the following:

- Construction accounted for 20% of total insolvencies over the last 18 months. This has crept up to account for 21% of total insolvencies in Q2 2022.
- Hiring & real estate services accounted for 12% of total insolvencies over the last 18 months. This has seen a sharp rise to account for 15% of total insolvencies in Q2 2022.
- Accommodation & food services accounted for 10% of total insolvencies over the last 18 months. This has also seen a sharp rise to account for 13% of total insolvencies in Q2 2022.

Split of insolvencies by industry



Source: Companies Office

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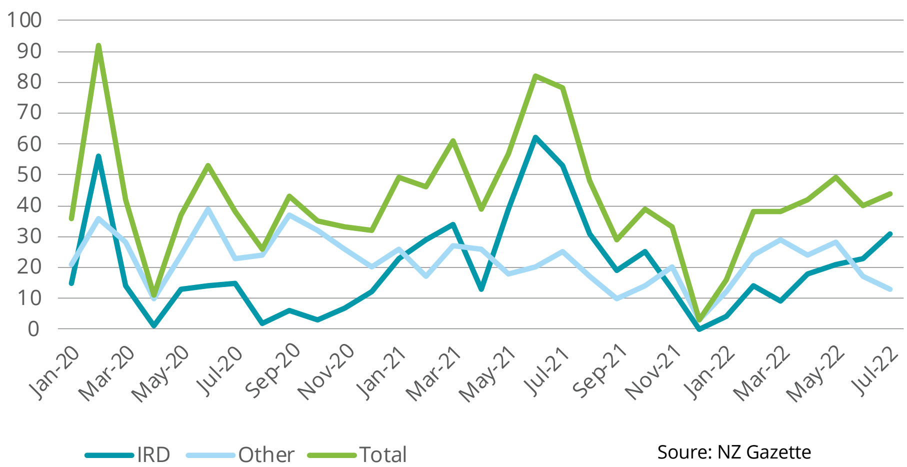
Winding up applications

The number of winding up applications through the Courts significantly dropped in 2020 as a direct result of COVID-19, together with Government (including Inland Revenue) stimulus packages. In 2021, 60% of all winding up applications were made by Inland Revenue compared to 33% the previous year (2020). This was evident in the first seven months of 2021 when winding up applications made by Inland Revenue drastically increased but then reduced due to the new COVID-19 variances hitting New Zealand in the latter part of the year. This year to July 2022, Inland Revenue winding up applications make up 45% of all winding up applications, which has seen a month-by-month increase since March 2022.

July 2022 is already the highest month for Inland Revenue winding up applications and from our observations, this trend is predicted to keep rising for the rest of 2022 as Inland Revenue takes a more aggressive approach to collecting overdue tax debt.

The following graph highlights the total winding up applications from 2020 to 19 July 2022 with Inland Revenue comparisons:

Winding Up Applications
2020-2022 (to 19 Jul 2022)



Soure: NZ Gazette

July 2022 is already the highest month for Inland Revenue winding up applications and from our observations, this trend is predicted to keep rising for the rest of 2022 as Inland Revenue takes a more aggressive approach to collecting overdue tax debt.

Key recommendations

- If your company has an overdue tax liability that can't be paid in full, then it is important that you seek advice from your usual Deloitte tax advisor and open communications with Inland Revenue as soon as possible. In our experience, Inland Revenue is open to repayment proposals for overdue tax if they are contacted now rather than when the debt becomes too high.
- Any repayment proposal will usually need to accompany a cashflow schedule to show that the company can afford the repayments under any proposal submitted.
- It is essential that when on a repayment proposal, the company adheres to the agreed repayments or contacts Inland Revenue if they are about to miss a repayment.
- If you receive a statutory demand from any creditor (not just Inland Revenue), it is recommended that you seek independent professional advice as soon as possible.

Deloitte Turnaround & Restructuring - How can we help

We are here to support your business to reduce risk and maximise value. Navigating the pressures associated with change, whether that's due to growth or stress, is key to the sustainable performance of a business. Our team works with boards, management teams, banks, investors, government agencies and other stakeholders to help organisations navigate complex challenges and achieve optimal outcomes.

If you would like to discuss how Turnaround & Restructuring may be able to help you, please contact one of the team.

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Bringing overseas talent into New Zealand? Visa rules set to change

By Zoe Han, Sasha Grimm and Georgina Haines

Local businesses have only a few short months to align their practices to the new rules on supporting Work Visas for overseas talents. Hiring from overseas during a pandemic with a newly introduced visa framework has added extra time to the relocation process for migrant workers. Read on to see if your business is ready.

The Work Visa and Resident Visa requirements for New Zealand have always been complex and during the past two COVID-19 impacted years, they became much worse: delays in multiple categories for residency and limited opportunities to bring overseas talents to New Zealand constantly hit the headlines. The Government decided to review and re-work the rules in place for the immigration system well before 2020, but we are only now seeing the changes implemented for both Work Visa and Resident Visa.

Work Visa changes in place

The driving force behind the changes is to attract high-skilled migrants and to assist some sectors to transition to productive and resilient ways of operating while reducing the dependence on lower-skilled migrant workers.

The new streamlined Accredited Employer Work Visa program has been fully up and running from the beginning of July, requiring employers who are hiring work visa holders or talents from overseas to become accredited. Maintaining such accreditation includes commitments such as the employer providing settlement support information and allowing the visa holders to complete Employment New Zealand training modules during working hours.

The introduction of the step "Job Check" is to maintain the labour market testing requirements and avoid the roles that can be filled by locals being offered to overseas talent. A Green List was introduced for construction, engineering, trade, health and ICT sectors - traditional skill shortage sectors - and along with this group, roles offering twice the median salary or higher (NZ$55.52 per hour) are exempted from providing recruitment evidence in the Job Check stage.

During 2023 more businesses in the market will need the accreditation as all employers must be accredited to employ any migrant,

including those with open work rights. This shift in policy may lead to a significant increase in small and medium businesses holding accreditation and wanting to maintain the accreditation status.

Resident Visa changes upcoming

The most commonly utilised resident visa category for skilled workers, the Skilled Migrant Category, is about to be re-introduced after 27 months since the expression of interest selection was suspended due to COVID-19.

Under the new Accredited Employer Work Visa program, pathways for residency are in place for those whose salaries are over twice the median salary and will be in place for Green List occupation visa holders from later this year.

Business visits from the end of July

Business visitors are welcomed back from the end of July, including those who do not hold a visa waiver country passport. The market is witnessing a bounce back for activities, conferences and business growth as the border finally fully opens up, reconnecting New Zealand with the rest of the world. This also puts an end to the Border Exemption and Critical Purpose Visa, the two-step pathway which was required to bring overseas talents into New Zealand under the COVID-19-impacted border policy, saving businesses time and money, and streamlining the process for bringing specialist or senior professionals to New Zealand for these activities.

Our view

The changes that have been implemented under this new program are certainly adding a layer of complexity and perpetuating a sense of uncertainty around recruitment planning and global mobility for New Zealand businesses. We are here to assist with tailored advice for navigating the program requirements and formulating procedures for businesses. The New Zealand immigration team will continue to closely monitor Immigration New Zealand announcements in this space and keep clients abreast of developments and changes. Please contact the following Deloitte team members with any questions or queries regarding the impact of the immigration changes on your workforce.

Under the new Accredited Employer Work Visa program, pathways for residency are in place for those whose salaries are over twice the median salary and will be in place for Green List occupation visa holders from later this year.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Negotiations concluded on New Zealand European Union free trade deal

On 1 July 2022, New Zealand and the European Union (EU) concluded negotiations on a free trade agreement (FTA) on 30 June 2022.

In a press release by the government, the following outcomes relating to tax were noted:

- Duty-free access on 97% of New Zealand's current exports to the EU, with over 91% being removed the day the FTA comes into force.
- New Zealand exporters set to save approximately $110 million per annum on tariff elimination, with $100 million slashed from day one.
- Immediate tariff elimination for all kiwifruit, wine, onions, applies mānuka honey and manufactured goods, as well as almost all fish and seafood, and other horticulture products.

Signing of the FTA is expected to be in 2023. Once the FTA is signed, both sides will begin their legal processes to bring the FTA into force. This could occur in 2024, subject to domestic processes on both sides.

Parliament written questions and answers – Penalty and Interest Remission Figures

On 6 July 2022, Andrew Bayly asked the Minister of Revenue, Honourable David Parker, "*How many sole traders, partnerships, and companies, if any, have requested remission of interest and penalties for late payments, and how much has been waived in total in each month for the last five years since the 2017/2018 financial year?*" We thought the answer made interesting reading:

The late payment penalties and interest remitted for individuals (incl. sole traders), companies and partnerships between 2020 and 2022 are summarised below:

	Company ($)	Individual ($)	Partnership ($)	Total ($)
2020	10,611,546	6,869,619	354,300	17,835,466
2021	14,195,157	7,897,969	398,767	22,491,893
2022	13,543,027	12,893,894	408,967	26,845,888

This table shows the dollar value of late payment penalties and interest remitted for individuals (including sole traders), companies and partnerships by month, since the 2019/2020 financial year.

Remission of use of money interest (UOMI) in relation to COVID-19 is not able to be broken down by month. The total UOMI remitted in relation to COVID between 10 June 2020 and 4 July 2022 totals $104m:

	Company ($)	Individual ($)	Partnership ($)	Total ($)
COVID-19 UOMI remitted	86,662,650	16,031,651	1,681,895	104,376,195

Inland Revenue statements and guidance

Interpretation Statement – Variation to section 68CB(2) of the Tax Administration Act 1994

On 6 June 2022, Inland Revenue published COV 22/19 - *Variation to section 68CB(2) of the Tax Administration Act 1994 ("TAA 1994")*. This variation applies to a person who is seeking the Commissioner of Inland Revenue's approval of their research and development activities by filing a general approval application for the 2021–22 income year under section 68CB of the TAA 1994.

The variation recognises that the impact of COVID-19 means the planning or conduct of research and development or the ability to obtain information, seek advice and formulate an application or complete a return, for some taxpayers has been materially delayed.

The variation extends from 7 August 2022 to 30 September 2022 the time by which a person with a 30 June balance date, to be entitled to research and development tax credits under section LY 1 of the Income Tax Act 2007, must apply for a general approval for the 2021–22 income year.

The variation applies from **6 July 2022 to 30 September 2022**.

Operational Statement – Authority to Act for Tax Agents and other Intermediaries and Nominated Persons

On 6 June 2022, Inland Revenue published OS 22/03 - *Authority to Act for Tax Agents and other Intermediaries and Nominated Persons*. This statement prescribes how a tax agent or a representative can obtain the authority to act from their clients. This Statement sets out information about:

- Who may give an authority to act;
- What the authority to act should cover;
- The requirements for obtaining authority to act electronically;
- The requirement to keep a record of the client's authority and identity verification documents; and
- Inland Revenue's process for auditing these documents.

The statement includes an example of an authority to act form.

This statement applies from **6 July 2022**.

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

On 28 June 2022, Inland Revenue published PUB00415 - *Can a close company deduct interest on a shareholder advance where the amount is not known until after balance date?* The proposed answer to this QWBA is yes.

This QWBA updates the Public Information Bulletin No. 130 on "Deductibility of interest, the quantum of which has not been determined at balance date" (September 1984:7) to reflect changes in case law on when expenditure is incurred. It also sets out the resident withholding tax consequences of interest payments made to shareholder current accounts.

In this QWBA, it is proposed that a close company can make such deductions if it has a legal obligation to pay the interest on the shareholder advance based on a previously agreed formula or method. The company must have the legal obligation, including a method of calculating the liability, before its balance date, which is usually 31 March. Companies need to keep records of the method they used to determine the amount of interest owing and of the legal obligation to pay the interest.

The deadline for comment is **9 August 2022**.

Interpretation Statement – Tax depreciation rate for hydrofraise rigs

On 14 July 2022, *Inland Revenue published DEP 108 - Tax depreciation rates for hydrofraise rigs available for use in the ordinary course of business*. Hydrofraise rigs are used to build diaphragm (water blocking) type retaining walls. Diaphragm walls are often constructed in wet areas where groundwater will tend to flood an excavated area. The construction of the wall must therefore keep water out, as well as being strong enough to stop surrounding ground from collapsing into the excavation.

The determination applies to the 2021–22 and subsequent income years.

Public Rulings – GST and directors' fees and board members' fees

On 14 July 2022, Inland Revenue published 3 draft public rulings (collectively referred to as PUB00424) on the GST treatment of directors' and board members' fees:

- Goods and Services Tax — Directors' fees
- Goods and Services Tax — Fees of Board Members not appointed by the Governor-General or Governor-General in Council
- Goods and Services Tax — Fees of Board Members appointed by the Governor-General or Governor-General in Council.

In summary:

- If a GST-registered person accepts an office as a director or board member in carrying on their taxable activity, the fees that person receives for providing their services are subject to GST;
- Where the director or board member has been engaged in their capacity as an employee, they may be required to account for their fees to their employer, in which case the employer is treated as making the supply of services, not the director (and so directors' fees will be subject to GST if the employer is GST registered);
- Where the director or board member has been engaged in their capacity as a partner in a partnership, the partnership is deemed to make the supply of services, rather than the director;
- If a board member is appointed by the Governor-General or the Governor-General in Council, the services that the board member provides will always be excluded from the definition of "taxable activity".

A flowchart illustrating the GST treatment of these fees from a director's or board member's perspective is in Appendix 1. The rulings are accompanied by a fact sheet.

PUB000424 will replace Public Ruling BR Pub 15/10: "*Goods and services tax – directors' fees*" as the draft ruling includes 2 new rulings addressing the GST treatment of board members' fees.

The deadline for comment is **17 August 2022**.

Inland Revenue – Sharing the secrets of successful business transformation

On 15 July 2022, Inland Revenue announced that they have launched a website making the detail behind its successfully completed $1.5 billion transformation programme available to other agencies and organisations. The Business Transformation Programme (BT) was officially closed off last month and Inland Revenue Deputy Commissioner, Greg James, says they have had many requests to share what has been learned in delivering it. You can access the BT website here.

Interpretation Statement – Claiming depreciation on buildings

On 20 July 2022, Inland Revenue published IS 22/04 - *Claiming depreciation on buildings*. This interpretation statement provides guidance to building owners on when they can claim depreciation on buildings. It considers the meaning of "building" for depreciation purposes and the distinction between residential and non-residential buildings. This statement is also accompanied by a fact sheet.

Notably, Inland Revenue has incorporated a number of Deloitte recommendations from our submission on the draft statement, please contact your usual Deloitte advisor if you have any queries on building depreciation.

Inland Revenue and the Ministry of Social Development child support information sharing change

From 1 July 2023, child support collected by Inland Revenue will be passed on directly to sole parents on a benefit.

Child support is counted as income when the Ministry of Social Development (MSD) works out a benefit payment. Currently, MSD must give clients 10 working days to respond to them changing a benefit based on the child support received. Those 10 working days mean MSD is not able to change benefit payment based on Inland Revenue collected child support. This could mean taxpayers get underpaid, or overpaid, and end up with a debt.

Inland Revenue and MSD would like to remove the 10 working day response period from the information sharing agreement they have. Consultation on this is open to the public and will close on **17 August 2020**.

International Tax Update – Simplification Measures for Transfer Pricing

On 20 July 2022, Inland Revenue has completed its annual review of the small value loans simplification measure and updated the measure. For small value loans (that is, for cross-border associated party loans by groups of companies for up to $10 million principal in total), Inland Revenue currently consider 250 basis points (2.5%) over the relevant base indicator is broadly indicative of an arm's length rate, in the absence of a readily available market rate for a debt instrument with similar terms and risk characteristics. The rate previously, from 1st July 2020 to 30 June 2022 was 375 basis points over the relevant base indicator. Transactions priced in accordance with this simplification measure are likely to present a low transfer pricing risk and as such no further benchmarking is required. You can find more information about this here.

Inland Revenue has also updated the information on their APA inventory published on their website. In the year ended 30 June 2022 a further 19 APAs were completed.

Reissued Draft Interpretation Statement – Loss carry-forward – continuity of business activities

On 21 July 2022, Inland Revenue published PUB00376 - *Loss carry-forward – continuity of business activities*. This draft interpretation statement has been released for public consultation. The statement provides guidance on how the main aspects of the business continuity test in s IB 3 of the Income Tax Act 2007 apply.

The business continuity test may enable a company to carry forward tax losses despite a breach in ownership continuity if certain requirements are satisfied.

The deadline for comment is **1 September 2022**.

Interpretation Statement – Cash basis persons under the FA rules

On 27 July 2022, Inland Revenue published IS 22/05 - *Cash basis persons under the financial arrangements rules*, together with an accompanying fact sheet.

This interpretation statement explains when a person can account for income and expenditure from financial arrangements on a cash basis instead of an accrual basis. It also sets out the adjustment that must usually be made when a person ceases to be a cash basis person (cash basis adjustment) and must account for their financial arrangements using accrual basis. The statement includes worded examples and a fact sheet.

The statement answers a specific question that arose from IS 20/07, *Income tax – Application of the financial arrangements rules to foreign currency loans used to finance foreign residential rental property* on the cash basis adjustment. The new statement revisits the meaning of cash basis person and details how to perform a cash basis adjustment.

Fact Sheet – Donations – What is required to maintain a public fund?

On 27 July 2022, Inland Revenue published QB 22/02 FS - *Income tax - Donations – what is required to establish and maintain a "public fund" under s LD 3(2)(d) of the Income Tax Act 2007?* The 6-page fact sheet summarises the conclusions reached in the QWBA that was issued in April 2022: QB 22/02, *"Donations – what is required to establish and maintain a "public fund" under s LD 3(2)(d) of the Income Tax Act 2007"*?

Corporate Tax Residency – COVID-19 guidance

On 31 July 2022 concessional COVID-19 corporate tax residency rules ceased to apply. This guidance dealt with tax issues which could arise when director control over a company was impacted by the inability of directors to easily travel. Inland Revenue's guidance now states: *"From 31 July 2022 changes to border restrictions mean that generally it is no longer the case that directors are unduly restricted in movement between countries. It remains the case that the occasional exercise of control by the directors from New Zealand, for example through a board meeting, will not make the company tax resident in New Zealand. IS 16/03 contains our interpretation of matters relating to company residence. We will continue to monitor any impacts of the COVID-19 pandemic."*

Other guidance

ATO: Central Management and Control Test (CMAC) of residency changes

On 29 June 2022, the ATO published PCG 2018-9, which updated certain rules on residency. The Guideline contains practical guidance to assist foreign incorporated companies and their advisors to apply the principles set out in Taxation Ruling TR 2018/15 *Income tax: central management and control test of residency.*

The ATO has extended their transitional compliance approach in relation to the corporate tax residency rules to 31 December 2022. This means that foreign incorporated companies are not expected to apply compliance resources to assess corporate residency until after this date if the foreign incorporated company was not treated as a resident in Australia under the tax ruling TR 2004/15 which applied before the current tax ruling TR 2018/5 and the company changes its governance arrangements so that its CMAC is outside of Australia by the end of the transitional period.

OECD Updates

Global Forum members' Competent Authorities exchange on their practices and experiences

The 9th Competent Authorities meeting was held virtually on 30 June and 1 July 2022. The event brought together 355 participants from 106 jurisdictions. Discussions covered the implementation of both the exchange of information on request (EOIR) and the automatic exchange of financial account information (AEOI) standards. Competent Authorities exchanged on specific practical matters related to EOIR, such as the translation of the answers provided, the feedback on the usefulness of the answers received and the sending of a status update in the case of a delayed answer, as well as the impact of court cases on the EOI process. The meeting also provided the opportunity to explore more advanced forms of international cooperation, such as simultaneous tax examination.

International tax reform agreement progressing

On 11 July 2022, the OECD issued the OECD Secretary-General Tax Report to the G20 finance ministers and central bank governors stating that the implementation of the international tax reform agreement to ensure multinational enterprises pay a fair share of tax wherever they operate is progressing. The report includes a new Progress Report on Pillar One, presenting a comprehensive draft of the technical model rules to implement a new taxing right that will allow market jurisdictions to tax profits from some of the largest multinational enterprises (Pillar One). This report will now be subject to public consultation through 19 August 2022. The Inclusive Framework will then aim to finalise a new Multilateral Convention by mid-2023 for entry into force in 2024. The revised timeline is designed to allow greater engagement with citizens, business and parliamentary bodies which will ultimately have to ratify the agreement.

Technical work under Pillar Two, which introduces a 15% global minimum corporate tax rate, is largely complete, with an implementation framework to be released later this year to facilitate implementation and coordination between tax administrations and taxpayers.
All G7 countries, the European Union, several G20 countries and many other economies have now scheduled plans to introduce the global minimum tax rules.

Efficiency, effectiveness and equity of housing taxation can be improved

Improving the efficiency, effectiveness and equity of housing taxation as part of an overall tax policy mix can help improve the functioning of housing markets, improve fairness and equity and help raise more revenue better, according to a new OECD report. Housing Taxation in OECD Countries provides an assessment of the wide range of taxes governments levy on residential property. The report shows that while housing taxes play an important role in OECD countries, there is substantial room for reforms to enhance their equity, economic efficiency and revenues.

Tax revenues in Asia and the Pacific hit hard by the COVID-19 crisis

On 25 July 2022, OECD released a report showing that tax revenues in Asia and the Pacific fell by 1.2% to 19.1% of GDP on average in 2020 because of the COVID-19 pandemic. Revenue Statistics in Asia and the Pacific 2022 provides harmonised data on tax revenues for 28 economies in the region. The report reveals that the average tax-to-GDP ratio in Asia-Pacific was 19.1% in 2020, lower than the averages for the OECD and Latin America and the Caribbean (LAC). Between 2019 and 2020, tax-to-GDP ratios fell in 19 of the 26 economies for which 2020 data are available.

New results show progress continues in combatting harmful tax practices

As of 27 July 2022, further progress has been made on the implementation of the international standard on harmful tax practices as the OECD/G20 Inclusive Framework on BEPS agrees new conclusions on preferential tax regimes and substance in no or only nominal tax jurisdictions.

At its April 2022 meeting, the Forum on Harmful Tax Practices (FHTP) agreed new conclusions on 12 regimes as part of the implementation of the BEPS Action 5 minimum standard on harmful tax practices. Eswatini and Honduras made government commitments, and therefore, three regimes are now in the process of being amended/eliminated. Three regimes have been amended to be in line with the standard and are now not harmful (Costa Rica, Greece and Kazakhstan). Italy abolished its patent box regime. Furthermore, three regimes were concluded as potentially harmful (Armenia and Pakistan); the FHTP will assess at its next meeting if these regimes are actually harmful. Finally, one new regime from Cabo Verde is under review.

Deloitte Global News and Resources

2022 Global Tax Survey: Beyond BEPS

The annual Deloitte Global Tax Survey of multinationals provides valuable insight into the strategies of some of the world's largest multinational companies in the face of changes in the international tax framework. In this survey Deloitte asked tax and finance managers and executives from across the globe about topics that were high on their agenda in 2022:

- The Pillar One/Pillar Two project
- Tax governance
- Tax transparency
- Digital taxation
- Effect of EU tax directives on tax compliance
- Progress of BEPS related measures

Some key points from the survey:

- Tax governance remains high on the Board's agenda.
- The Pillar One/Pillar Two project remains a 'hot topic' and businesses are preparing for impact.
- Voluntary tax transparency standards are increasingly being adopted by businesses.
- EU tax directives are seen as increasing rather than simplifying tax compliance.

The full survey results, an executive summary, a narrative paper, and an infographic can be found on Deloitte.com.

Deloitte and SAP – Transforming Tax Together

You can now check out the Deloitte and SAP: Transforming Tax Together website and learn how Deloitte and SAP are supporting customers' tax departments with their digital transformation enabled by SAP S/4HANA Cloud, analytics, and next-generation best practices.

Global Trends in Tax Controversy

The 2022 Deloitte Tax Controversy Research Report "Age of Controversy", conducted by the International Tax Review, surveyed more than 300 companies around the globe and across all major sectors. The survey's goal is to illuminate the most frequent areas for controversy, how companies formulate responses and what drives their decision-making. The survey concluded that:

- Tax controversy levels have risen, and involve multiple jurisdictions
- Disputes are taking longer to resolve
- Experience is crucial in resolving controversies
- Companies value a strong, established relationship with tax authorities
- Companies value advisors with prior experience in tax controversy cases
- It is important to embed strong dispute resolution processes in the wider tax governance and keep senior management in the loop
- Companies have responded by hiring dedicated resource in tax departments
- "Best in class" businesses typically support in-house teams with a combination for risk and project management tools, external advisors, good comms channels with internal and external stakeholders and a well-understood decision tree

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

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