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Tax Alert

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Taxing issues with insurance claims

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Taxing issues with insurance claims

By Alex Robinson and Hana Straight

In the aftermath of a disaster, tax is the last thing anyone wants to be dealing with. Inland Revenue recognises this and has a [range of tax relief measures for emergency events](#) to ease the burden of filing and payments. This is great in the immediate aftermath of a disaster while everyone is transitioning from response to recovery. However, this only touches on the tip of the tax iceberg for businesses affected by significant adverse events, especially once an insurance claim is in the mix.

At a broad level, the tax principles for insurance receipts (or similar compensation) are relatively straightforward and should generally follow matching principles:

- Insurance for Business Interruption (aka lost profits) should be taxable in the period of interruption it relates to.
- Insurance for Material Damage or Increased Costs of Operations is taxable to the extent deductible costs/losses are incurred, or offset capital costs. If the insured asset has been destroyed, then the insurance becomes the disposal proceeds and may give rise to taxable depreciation recovery income (i.e. offsetting historic depreciation deductions) or capital gains.
- Insurance for Trading Stock is taxable on the assumption a deduction is taken for the damaged stock.

However, as we saw in the aftermath of the Canterbury Earthquakes when claims are broad-ranging and significant in size, and both the claim and recovery processes stretch over years, a number of issues can arise including:

- Which year(s) should insurance be allocated to if settlement takes time?
- What happens if I receive an advance or interim payment?
- What happens if I don't spend all of the insurance?
- Can I still depreciate an affected asset, what about if access is restricted, and when do I record disposal of an insured asset?
- How do I handle allocations of insurance, historical cost, and book values when my tax fixed asset register of old properties was condensed or didn't record separate buildings/PPE?

- How does this impact my deferred tax?

Insurers often prefer their settlement agreements to be "global" and generally only document against the two main types of policies: Business Interruption and Material Damage (the broader the settlement scope, the less likely additional claims can be made). Often a material damage settlement will only state "for loss and damages at XYZ Street". However, as highlighted above, for tax purposes we need to consider more discrete matters – often down to individual assets and activities – and where insurers and claimants have negotiated settlement values, excluded certain items, or applied claim excess deductions, the tax process becomes even more complicated.

To get to the correct tax answers, ultimately, we have to look into claim documents and correspondence, including reports from loss adjustors, assessors and engineers.

Ok, so insurance claims may complicate my income tax, but what about GST?

If you're a GST registered business, don't spend your full insurance payment without thinking about the GST impact!

Most insurance payments, made to GST registered businesses/individuals for business risks that have been insured against are made on a GST inclusive basis. This means that 3/23rds of the insurance payment needs to be included in your GST return and paid to Inland Revenue. There are some exceptions to the rules so please confirm the relevant treatment for you with your tax advisor. Normally it does all work itself out in the end, as when the business uses the insurance payout to fund the purchase of replacement goods, the business will get to claim back the GST on those costs.

Grants

Various organisations, including central and local government, as well as private/public companies can make funding available in times of crisis to assist impacted businesses and individuals.

Often these are distributed following applications. You need to be aware that different applications may have different GST requirements. There are two aspects to this, the first is determining whether the grant will be treated as "GSTable" income with 3/23rds being included as income in your GST return and paid to Inland Revenue, and the second is what the application's requirements are regarding the application being made on a GST inclusive basis.

This is an area of confusion, even with larger taxpayers. Before April 2022, when the Government made grants to local councils, some councils failed to consider the GST impact and would commit support of the GST inclusive figure to the community. For example, if the Government announced that it was giving $100,000 to a mayoral relief fund it was in fact only giving $80,956 and expecting the council to pay GST of $19,044 to Inland Revenue. Post-April 2022, these grants are now made exclusive of GST and GST is added to the announced amount when the payment is made. Using the same example of $100,000 grant funding being announced, now $115,000 is given to the mayoral relief fund, with $15,000 being returned to Inland Revenue.

In order to determine the GST treatment you need to know:

- Who is distributing the funds?
- What they are being distributed for?
- Whether there are any special legislation/regulations that allow the payment to be exempt from GST.

Specific tax relief measures

All these tax issues are before even considering any specific tax relief measures that may be introduced for major disasters. We understand that Inland Revenue is currently considering whether the concessions introduced for the Canterbury Earthquakes may be appropriate for Cyclone Gabrielle. These measures included:

- Depreciation recovery income rollover relief – effectively allowing a taxable outcome for asset disposal to be deferred and applied against a replacement asset's value instead, which helps taxpayers have more of their insurance funds available for recovery efforts and quality replacements, rather than paying tax.
- Uneconomic-to-repair situations – engineers are famous for saying anything can be achieved or repaired with sufficient time and money, which doesn't help when trying to determine whether an asset has been "irreparably damaged" or a building "rendered useless" for disposal purposes. This concession created deemed disposals to trigger the asset disposal rules (with instant reacquisition of the dilapidated asset for $0).
- Optional timing rules – allowing insurance income and any related deductions for repairs or disposals to be deferred in their entirety until there is full clarity for costs and receipts.

These concessions were invaluable for taking monetary and tax compliance pressure off taxpayers. However, as you can imagine, each concession had its own requirements and potential fishhooks to be aware of (e.g. an uneconomic to repair building may become revenue account property going forward if there's a purpose or intention to dispose of it at the time of the deemed disposal and reacquisition), not to mention deferred tax implications. The earthquake concessions were also drafted under urgency, so they were not necessarily as tidy as other parts of tax law, but with only a limited

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life to the concessions, there was little interest in revising for clarity. We'll have to wait and see what happens in this space for Cyclone Gabrielle tax relief.

We never want tax outcomes to be the tail wagging the proverbial dog; however, involving a tax advisor sooner rather than later in the recovery and insurance settlement processes can make for a smoother tax compliance process later. Above all else, maintain and retain clear documentation of your claim position and the insurer's responses. If would like to discuss the issues in this article further, please contact your usual Deloitte advisor.

Inland Revenue concessions and assistance announced to date

The Inland Revenue have announced some initial tax relief and assistance for taxpayers impacted by both the flooding and Cyclone Gabrielle. They have an information pages for concessions and assistance which includes:

- Donated trading stock concession extended
- Removing penalties and interest charged on late filing or late payment
- Extension to the filing deadline for R&D Tax Credits
- Paying by instalments
- Financial hardship support
- Estimating provisional tax
- Income equalisation scheme
- Child support assistance
- Updating estimated income for Working for Families
- Tailored tax codes

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Are you ready for another tax year-end?

By Andrea Scatchard and Ryan Beamish

As we are fast approaching the end of the 2023 tax year, there are some key developments that need to be actioned before 31 March (for those with a standard balance date) along with some standard year-end tax issues to consider and some recent developments that you should also bear in mind as you work through your year-end.

Year End Issues

- **Bad debts**

Do you have receivables that are not likely to be paid? Make sure these bad debts are properly written off in your accounts before year-end so that they can be deductible.

- **Imputation credit account**

Your imputation credit account must have a credit balance at 31 March. This applies to all taxpayers, regardless of balance date. A debit balance will result in a penalty so it is wise to pay careful attention to this especially if you have paid out imputed dividends, received tax refunds or have had a loss of shareholder continuity.

- **Depreciation**

Check your fixed asset register: are you using the correct depreciation rates? Remember to depreciate new assets from the beginning of the month of acquisition, not just from the date of purchase. On the other hand, if you have pooled assets, these can be depreciated for the full year of purchase. If you are writing off assets, make sure they have been disposed of by year-end.

- **Low-value assets**

Remember that most assets that cost less than $1,000 can be immediately deducted, rather than depreciated, as long as you didn't buy more than one of the item on the same day from the same supplier.

- **Trading stock**

Have you considered reviewing your trading stock valuation? A stocktake should be done at balance date, and any trading stock that is obsolete may be able to be revalued. You must be able to substantiate valuations that are below cost.

- **Losses – forfeited if continuity breach**

If you are expecting to carry forward tax losses and your company has had a change in shareholding during the year, you may want to check whether the shareholder continuity and business continuity rules have been breached. A breach of both can result in all of your tax losses being forfeited.

Other issues to have on your radar

- **Fourth-quarter FBT returns**

31 March also marks the end of the FBT year, regardless of your financial balance date. The March quarter (or annual) FBT returns are due to be filed by 31 May 2023. This presents an opportunity to use the various alternate rate options to reduce the FBT payable from the standard 63.93% rate.

For more on this, see the March 2022 Tax Alert article.

- **Mileage calculations**

If you're reimbursing staff for mileage, 1 April is the date when employees should be taking odometer readings. These set the baseline for determining which mileage reimbursement rate should apply.

For more on mileage, see the June 2022 Tax Alert article.

- **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 supplies, you may need to make an annual change of use adjustment in the GST return period that includes your balance date.

For more GST adjustments, and in particular, the upcoming changes to these rules, see our September 2022 Tax Alert article.

- **GST invoicing changes from 1 April 2023**

Gone are the days of GST tax invoices (kind of). We remind you that from 1 April 2023, the current requirements for tax invoices are being relaxed. It will no longer be necessary to hold a valid tax invoice to claim an input tax deduction and details of what you need to provide your customers in relation to sales are changing. You don't need to change your existing practices, but you may find that you get different looking documents from your suppliers for purchases you make.

For more details on these changes, see the September 2022 Tax Alert article.

- **UOMI rate increase**

Inland Revenue use of money interest rates have shot up recently, currently sitting at 9.21% for underpayments of tax. If we see further rises in the OCR, we can expect that the Inland Revenue rates may also increase further. This high-interest rate makes it much more attractive to make use of tax pooling to minimise your overall interest cost. If you have provisional or terminal tax payments to make, and do not already use tax pooling, we urge you to look into this. The tax pooling process not only minimises your interest cost, it can also provide the flexibility to make your tax payments at times that suit your own cashflow patterns.

For more on this topic see the February 2023 Tax Alert article.

Navigating all of the tax rules and obligations can be a nuisance for people who understandably just want to focus on running their businesses. If you have questions or would like help managing your end-of-year tax affairs, please get in touch with your usual Deloitte advisor.

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Director and Board fees under the GST microscope

By Robyn Walker and Allan Bullot

When it comes to Inland Revenue tax interpretations we're often unsurprised at published positions, because they've invariably been put out in draft form and consulted on. However, for many people, their level of interest in a draft tax interpretation is negligible and the only real concern is to know what the final interpretation is if it is something that impacts them.

Now is the time to stop and understand how the GST rules apply to Directors and Board Members as Inland Revenue has just finalised guidance and require some taxpayers to deregister from GST effective from 30 June 2023.

Read on if you are a Director or Board Member, or you pay Directors or Board Members and you're being invoiced for a GST inclusive amount.

What has been released?

Inland Revenue has released a series of three public rulings:

1. Public Ruling BR Pub 23/01: Goods and Services Tax – Directors' fees
2. Public Ruling BR Pub 23/02: Goods and Services Tax – Fees of Board Members not appointed by the Governor-General or Governor-General in Council
3. Public Ruling BR Pub 23/03: Goods and Services Tax – Fees of Board Members appointed by the Governor-General or Governor-General in Council

The three rulings are collated with a shared commentary which applies to all three rulings here. Given many people just want the answer and not 44 pages of detail, a more concise fact sheet has been produced and is available here and Inland Revenue's operational position for Directors/Board Members who now find them on the wrong side of GST interpretation is available here.

What do the rulings say?

What follows may seem a little unintuitive, but it needs to be read knowing that the Goods and Services Tax Act 1985 (GSTA) contains a raft of very specific and prescriptive rules, including in relation to whether director and board services are part of a "taxable activity".

1. If a Director/Board Member is registered for GST because they have a taxable activity separate from any role as a Director/Board Member (such as some form of consulting services), GST should be charged on Director/Board services if the office is accepted in carrying on the taxable activity (i.e. there must be some corelation between the business run by the taxpayer and why they have been appointed as a Director/Board Member).
2. If a Director/Board Member does not have a taxable activity that is separate from the activity of being a Director/Board Member (even if there

are multiple directorships / board memberships), the Director/Board Member is ineligible to be registered for GST. This analysis also applies if there was previously a separate taxable activity that has since ceased. For example, an individual carries on a taxable activity of being an accountant and accepts some directorships (which are offered because of their accounting skills); the accountant retires from public practice (and does not provide any ongoing services such as consulting services) but continues to hold some directorships; then the accountant is unable to remain GST registered if the only activity undertaken is directorships in their personal name.

3. If a Director/Board Member is appointed in their capacity as an employee of a third-party or a partner in a partnership, then the employee/partner does not charge GST, but if the employer or partnership is registered for GST then they should charge GST. The expectation is that any fee paid goes to the employer/partnership. This includes situations where a Director/Board Member might have a personal services company that bills for the individual's services as a Director/Board Member, even if the personal services company does not charge the other companies for anything other than the individual's services as a Director/Board Member.
4. If a Board Member is appointed by the Governor-General or the Governor-General in Council, GST should never be charged. All such services are precluded from forming part of a taxable activity.

The Public Rulings contain a number of examples which help explain some of the concepts above, we paraphrase some of the examples below and note that the examples are useful for illustrating the concepts involved, but are often not directly related to the actual types of situations we come across in corporate situations:

Example 1a – Eriksen runs a GST-registered business (Danes-R-Us) as a sole trader (not through a company) selling sports gear and Danes-R-Us supports a local football club. The football club asks Eriksen to join the board because of the support he/his business provides. Danes-R-Us should charge GST on board fees, as there is a link between the ongoing GST taxable activity of Eriksen and the board membership.

Example 1b – A variation on example 1a, Danes-R-Us does not have any business involvement with the football club, but Eriksen does have a personal involvement with the football club and Eriksen is asked to join the board. There is no link between Danes-R-Us and the activities of Eriksen in a personal capacity as a board member and therefore no GST should be charged.

Example 3 – Claudius is an employee of a company. The company asks him to become a director and pays a separate fee for this. Claudius cannot register for GST.

Example 4 – Ophelia is a GST registered HR consultant as a sole trader (not through a company). Ophelia accepts a board role on an Employment Council and charges fees. Ophelia should charge GST on her fees, as there is a link between the ongoing GST taxable activity of Ophelia and the Employment Council role.

Example 5 – Polonius Ltd is a GST-registered financial management company. It supplies one of its employees, Marcellus, to be a director of Osric Ltd. Marcellus does not have a taxable activity and cannot register for GST as a result of being a director. Polonius Ltd should charge GST to Osric for the directors fees. Technically, Polonius Ltd is not engaged as the director (Marcellus is), so Polonius Ltd is not charging directors' fees but is charging for Marcellus' services.

Example 7 – Guildenstern Ltd allows one of its employees, Laertes, to take up a directorship with an unrelated firm Thebard Ltd on the proviso that Laertes accounts for the fees received to Guildenstern Ltd. There is no contract between Guildenstern Ltd and Thebard Ltd. Guildenstern Ltd is treated as making a supply to Thebard Ltd and should charge GST to Thebard Ltd.

Example 8 – Gertrude is a partner in a GST-registered legal partnership. Gertrude is elected to the Board of a client. The directorship services are deemed to be supplied by the partnership and GST should be charged by the partnership.

What if a Director/Board Member no longer needs to be GST registered?

Inland Revenue has released an operational position that will apply to any Directors/Board Members who are GST registered in relation to these activities when they should not be. Inland Revenue is not proposing that any retrospective adjustments need to be made, rather than the Director/Board Member should look to deregister from GST. The Inland Revenue has set a date of 30 June 2023 for this to be undertaken.

When a taxpayer deregisters from GST, they are essentially deemed to sell themselves any goods and services they held as part of the taxable activity. This deemed transaction takes place at market value. So, for example, if a Director had claimed back GST on a laptop or car used for providing directorships then GST needs to be returned on the market value of those assets.

It is likely that any Directors/Board Members that operate through a personal services company and charge over $60,000 per year will still have to remain GST reqistered.

For more information please contact your usual Deloitte advisor.

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Tax treatment of Working From Home and Telco Allowances confirmed again

By Robyn Walker and Jess Wheeler

Since the 2020 lockdowns, employers and employees have continued to evolve how they work, with remote working being a trend that is here to stay. With more employees enjoying the convenience of not battling peak hour traffic and employers downsizing office spacing and not physically having enough office space for all workers, it raises a question of whether employers should be compensating employees for their increased costs… and if so, what are the tax consequences?

During the original COVID-19 lockdowns, Inland Revenue came to the party with a determination that set safe harbour amounts for employers to pay employees without tax and without having to collect copious amounts of supporting documentation. That determination was known as EE002. It expired and was reissued again as EE002A, then expired and was reissued as Determination EE002B, then expired and was reissued as EE003 (and now incorporated another Determination EE001 on telecommunication allowances). Determination EE003 is due to expire on 31 March 2023, and Inland Revenue is consulting on its replacement Determination EE004, which will apply from 1 April 2023 for an indefinite period.

Determination EE004 is very similar to EE003, but with some useful updates.

We summarise the key tax considerations for employers setting up employees to work from home and explain how EE004 will apply.

Home office setups

For many employees, working from home meant having to set up a home office. Practically, this may have happened in one or more of the following ways:

1. The employee may have taken home office equipment belonging to the employer; or
2. The employee may be reimbursed for the cost of buying new office equipment which will belong to the employer; or
3. The employee may be reimbursed for the cost of buying new office equipment which will belong to the employee; or
4. The employee may use existing home office equipment they already own.

Employer-owned equipment

Under the first two options, where the employer owns the office equipment, no adverse tax implications should arise. Reimbursement by the employer for the cost of new office equipment can be made tax-free to the employee. GST can be claimed by the employer in the usual way provided a valid tax invoice is provided by the employee. This is because the employee has acted as an agent of the employer in incurring the cost. It is acceptable for the tax invoice to be made out in the employee's name.

The cost to the employer will be deductible up front if the value is under the low-value asset threshold of $1,000. Incidental private use of the office equipment by the employee will not be subject to FBT provided the assets are business tools used primarily for work purposes and cost less than $5,000 including GST.

Employee-owned equipment
Reimbursement of the cost of new or existing office equipment (including telecommunications equipment) that is owned by the employee is not so straightforward. The tax treatment may vary depending on the level of work versus private use of the assets, the cost of the assets and the date they are/were acquired. Recognising that employers could face significant compliance costs in making such assessments, Determination EE004 provides some safe harbour options for employers. It is important to note that applying Determination EE004 is optional - employers can use other methods to determine the tax-free amount of payments to employees provided they are reasonable and supported with evidence.

The 'safe harbour' option allows employers to treat an amount of up to $400 paid to an employee for all furniture and/or equipment costs as exempt income. It is important to note there is an additional $400 that employers can pay as exempt income to also cover all telecommunications equipment. This essentially gives you a total of $800 if needed, provided you can show the split between the two.

It is important to note that applying Determination EE004 is optional - employers can use other methods to determine the tax-free amount of payments to employees provided they are reasonable and supported with evidence.

No evidence is required to be kept regarding the payment, what was purchased or the expected degree of personal use of the equipment. Inland Revenue has also clarified that this is a one-off payment and does not refresh on a regular or annual basis, once you have made this payment you cannot treat any future allowance or reimbursement payment for subsequent furniture/equipment (including telecommunications equipment) made by the employee as exempt income.

Under the 'reimbursement' option, an amount paid by an employer will be either wholly or partially exempt income where it is for new or existing furniture or equipment purchased by the employee, provided it is equal to, or less than, the deduction the employee could have claimed for the depreciation loss on the asset (but for the employment limitation).

How much of this payment is exempt income under the reimbursement option will depend on the extent to which the employee uses the asset as part of their employment. If the asset is used exclusively for employment purposes, reimbursement of up to 100% of the depreciation loss of the asset (or cost if it is a low-value asset) will be exempt income of the employee. If the asset is used principally for employment purposes, only reimbursement of up to 75% of the depreciation loss or cost will be exempt income. Finally, where the asset is not principally used for employment purposes, only reimbursement of up to 25% of the depreciation loss or cost is exempt income.

Where the reimbursement option is selected, employers will need to know the cost of the asset and/or the relevant depreciation rate (depreciation rates can be found here). They will also need to determine the extent to which the asset is used for employment purposes. A written statement such as an email or expense claim from the employee will be sufficient evidence of the level of employment use.

In these scenarios, no GST should be claimed by the employer as the employee has not acted as an agent for the employer, even if the employee provides a tax invoice in support of their expense claim.

Reimbursing employees for using their own telecommunication devices

Determination EE004 sets out guidance relating to telecommunication reimbursements paid to employees for using their own devices or usage plans, again you don't need to follow this if you don't want to, providing you keep supporting evidence to justify treating the payments you are making as tax-free. It is important to note that Determination EE004 will apply regardless of whether employees are working from home or not, providing they are using their own devices or usage plans in the course of their employment.

The starting point is that if the reimbursement only covers the business use of the device, then the payment will be fully exempt. If the employee uses their telecommunications device for both business and personal use the Determination sets out three categories for allocating the reimbursement payments between business and private use:

- The principally business use category: employers can treat any reimbursement of up to 75% of the amount of the affected employee's total usage plan bill as exempt income of the employee.
- The principally private use category: employers can treat any reimbursement of up to 25% of the amount of the affected employee's total usage plan bill as exempt income of the employee;
- De minimis category: 100% exempt where the amount reimbursed is $7 a week (up from $5 under EE003).

Under the first two categories, an amount of depreciation loss on existing telecommunications assets can be reimbursed to the employee tax-free (see the above guidance for employee-owned new assets for either 'safe harbour' or reimbursement options).

The Commissioner allows you to make a reasonable estimate to determine what category of use an employee falls within, noting that businesses need to demonstrate reasonable judgement in determining whether the principal use is for employment and recommend this be based on time spent or signed declarations from employees confirming principal use. Additionally, the Commissioner expects any estimate to be reviewed periodically to check the level of use is consistent. With periodically meaning a review every two years is adequate, unless you have a signed declaration from an employee that telecommunication tools will be principally used for employment purposes, in which case you only need to review if there has been a material change to the employee's circumstances.

As with payments for employee-owned equipment, no GST should be claimed by the employer on reimbursements or allowances for telecommunication or other working from costs as the employee has not acted as an agent for the employer, even if the employee provides a tax invoice in support of their expense claim.

Reimbursing employees or paying an allowance to cover household expenses

With employees home throughout the day working, many will be seeing an increase in their utility bills from running heating and lighting during the day when they would normally be at work. Employees may also experience other additional costs, such as tea and coffee, light snacks & soap and toilet paper that would ordinarily be provided at work. As a result of this employers may look to pay their employees an allowance to assist with the increase in their household expenses while working from home.

Under proposed Determination EE004, an employer can pay its employees up to $20 per week (up from $15 under EE003) to cover these expenses, and this will be treated as exempt income. Employers will not be required to collect any evidence as to what the employees use these payments for; albeit an allowance can only be paid tax-free if an employee is actually working from home on a more than minor basis. The payments do not have to be paid weekly, and can instead be made fortnightly or monthly to align with the employee's regular payday (i.e. $40 per fortnight).

These payments can be combined with payments made under the telecommunications tools and/or usage plan payments outlined above as well.

The determination will cease to apply to these reimbursements (other than telecommunication costs) when an employee stops working from home.

What next?

Determination EE004 is out for consultation until 17 March 2023, and we expect it will be finalised by its 1 April 2023 application date. While it is proposed that Determination EE004 does not have an expiry date, it does note "the Commissioner will continue to monitor the amount of variable expenditure typically incurred by employees and will periodically update the amounts in this determination as appropriate".

If you would like to discuss the issues raised here further, please contact your usual Deloitte advisor.

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Post reflection of Frucor: Inland Revenue releases finalised IS 23/01 to quell our questions on what permissible tax advantages are

By Ian Fay, Christina Thompson and Kelly Kim

Inland Revenue has, at last, finalised its Interpretation Statement on tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (IS 23/01). This statement replaces the previous equivalent statement issued in 2013 (IS 13/01) and provides clarifications and guidance around the application of the GAAR framework in light of the Supreme Court *Frucor* decision in September 2022 (which we have covered in our October 2022 Tax Alert article).

For those seeking to get to the crux of the lengthy 137-page document, Inland Revenue has provided an accompanying nine-page Fact Sheet that distils the key points and takeaways from the Interpretation Statement.

Inland Revenue has also issued two Questions We've Been Asked (QB 23/01 and QB 23/02) to update its analysis in relation to tax avoidance scenarios previously contained in IS 13/01, QB 14/11 and QB 15/11. The reasoning and conclusions in the new QBs are unchanged, reaffirming that an arrangement will be respected if the commercial and economic reality of the arrangement is consistent with Parliament's purpose for the relevant provisions.

In this article, we briefly discuss our observations on the Commissioner's refined approach to section BG 1 and comment on scenarios in the refreshed Questions We've Been Asked (QBs).

Our observations

Overall, the content has remained largely unchanged following the consultation, with a few refinements to the Commissioner's approach to section BG 1 (see our February 2021 article if you want to read more on the draft Statement).

IS 23/01 affirms that the proper and authoritative approach to applying section BG 1 is answering the "ultimate question" under the Parliamentary contemplation test. That is:

...whether the impugned arrangement, viewed in a commercially and economically realistic way, makes use of the specific provision in a manner that is consistent with Parliament's purpose.

This requires both identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement, as well as understanding the commercial and economic reality of the arrangement, as a whole, having regard to the factors identified by the Courts.

The Commissioner has highlighted the following interrelated factors to be of significant importance when considering both Parliament's purpose for specific provisions and the arrangement's purposes, tax effects and commercial economic reality as a whole:

- the presence or absence of artificiality, contrivance or pretence;
- the veracity of the arrangement's commercial or private purposes (in contrast to the clarity or otherwise of the arrangement's tax advantages);
- whether or not the use or circumvention of the relevant specific provisions is consistent with Parliament's purposes for the provision.

Taking into account the above, one should consider, *"does the arrangement when viewed as a whole and in a commercially and economically realistic way, use (or circumvent) the specific provisions in a manner that is consistent with Parliament's purpose for those provisions?"* If the answer is no, the next step is to apply the merely incidental test and consider whether the tax avoidance purpose or effect flows naturally from, or is subordinate or subsidiary to, another purpose.

Does the arrangement when viewed as a whole and in a commercially and economically realistic way, use (or circumvent) the specific provisions in a manner that is consistent with Parliament's purpose for those provisions?

Comments on changes

A welcomed revision to IS 23/01 is the inclusion of examples from cases to illustrate factors identified by the courts that are taken into consideration when examining the commercial and economic reality of the arrangement.

Greater emphasis is placed on the 'commercial or private purposes' of the arrangement (previously referred to as 'non-tax avoidance purposes') when considering the factors identified by the Courts, and in particular, assessing whether the 'commercial and economic reality' of the arrangement is explicable from a commercial or private point of view. This is a significant shift in the Commissioner's approach in IS 13/01, noting the Commissioner previously disagreed that non-tax avoidance purposes were relevant to the Parliamentary contemplation test (IS 13/01, para 362).

However, less emphasis is placed on identifying the facts, features or attributes of specific provisions. Whilst examining facts, features and attributes was previously seen as a requisite, IS 23/01 frames it more as a useful/practical tool for determining Parliament's purpose. We understand that this change is to clarify that it is Parliament's purpose for the specific provisions that are relevant, and that facts, features or attributes are an optional way of considering them in the context of the arrangement's commercial and economic reality. Although based on the Commissioner's approach to the scenarios in the QBs, these factors still play a significant role in the Commissioner's approach to section BG 1.

As a final comment, IS 23/01 confirms the merely incidental test remains applicable where the arrangement does not have tax avoidance as its sole purpose or effect. Although, given the emphasis on commercial or private purposes of an arrangement as part of the Parliamentary contemplation test, if it is concluded that an arrangement uses (or circumvents) a specific provision in a manner that is outside Parliament's purpose, it is less likely that the merely incidental test would be satisfied.

QB scenarios

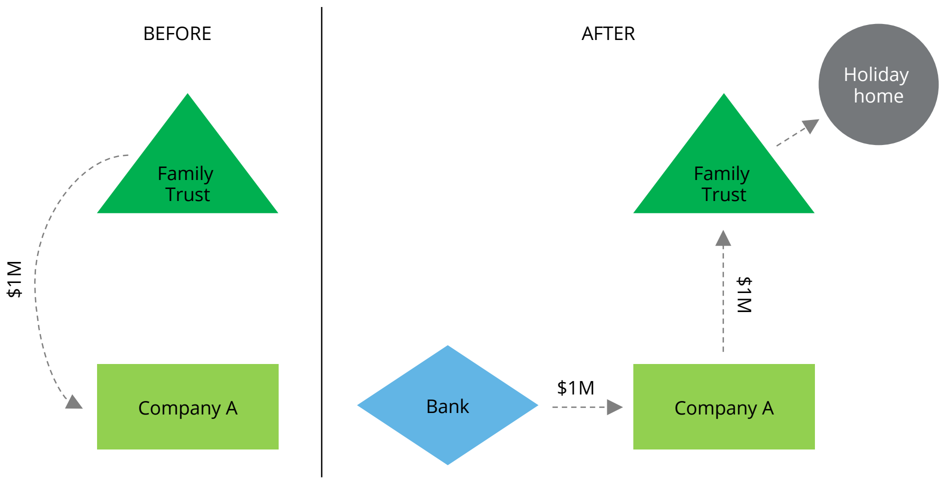
As was the case in the previous draft Statement, the new Statement still lacks practical examples of the application of the general anti-avoidance provisions. Additionally, the accompanying QBs unhelpfully only cover one scenario where the Commissioner considers section BG 1 would apply.

Below we have commented on some of the Commissioner's scenarios:

Refinancing with a private element

The first scenario involves the tax treatment of interest deductions on borrowings used to repay shareholder loans, which are ultimately used by the shareholder for private purposes.

This scenario outlines that Parliament's purpose for the specific provision governing interest deductions is satisfied where the loan capital relating to that interest is used in a business. Although the arrangement had a private purpose of allowing the family trust to reinvest its funds in a holiday home, it also had a commercial purpose of refinancing debt to continue its business operations.



Viewing the arrangement as a whole and in a commercially and economically realistic way, there was no private use of funds used in the business. Therefore, the arrangement does not use or circumvent specific provisions in a manner outside Parliament's contemplation. The scenario reemphasizes that the Commissioner cannot postulate "counterfactual" arrangements or "economic equivalence" when applying section BG 1 (noting they may consider these factors when applying section GA 1).

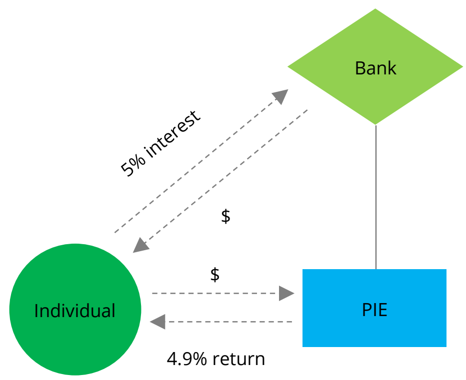
PIEs

In one scenario, the Commissioner reaffirms that a taxpayer with a marginal rate of 39% investing in a PIE to benefit from the rate of 28% would not constitute tax avoidance. This is because investing is a PIE to secure the tax advantage of the maximum prescribed investor rate of 28% is within Parliament's contemplation.

On the contrary, borrowing funds from a bank and investing in a PIE sponsored by the same bank at a lower return rate, would be regarded as a tax avoidance arrangement.

The facts, features or attributes indicate that the taxpayer is essentially borrowing to invest in a fund that returns less than the cost of borrowing, leading to a pre-tax negative/post-tax positive outcome. As a result, the facts, features or attributes do not align with the commercial and economic reality of the arrangement – the PIE was not part of the taxpayer's savings and investment activities and uses specific provisions for a tax arbitrage in a manner outside Parliament's contemplation.

This scenario also notes that if section BG 1 applies, the Commissioner may apply section GA 1 to reconstruct the arrangement to achieve tax neutrality.



Discretionary trusts

This scenario reaffirms that taking into consideration the tax profile of a beneficiary when distributing income from a discretionary trust does not, without more, constitute a tax avoidance arrangement. Provided the distributions are made in accordance with the terms of the trust deed, the Trusts Act 2019, and general law, and there is no suggestion the beneficiaries are not, in reality, entitled under the trust, or that they will not benefit from the distribution of income to them.

The Commissioner sets out factors that may give rise for concern and notes that a resolution to pay beneficiaries by crediting their account and retaining those funds for use within the trust would not, on its own, be a problem. However, if in commercial and economic reality, there is no realistic prospect of the beneficiaries

While the updated Interpretation Statement provides guidance on the Commissioner's approach, when considering the potential application of section BG 1, it is still concerning to us that there are not enough practical examples that address grey areas.

ever benefiting from the income allocated to them, this would be outside Parliament's purpose for the relevant provisions.

Final comments

While the updated Interpretation Statement provides guidance on the Commissioner's approach, when considering the potential application of section BG 1, it is still concerning to us that there are not enough practical examples that address grey areas. For instance, there is no discussion on the debt capitalisation scenario where debt forgiveness is not pro-rata to ownership interests.

As the potential application of section BG 1 is an intensely fact-based inquiry, it is important to always look at the overall arrangement being entered into and consider whether any tax advantages arise. If so, consider whether those advantages could be viewed as being outside Parliament's contemplation. You may also want to consider applying for a binding ruling to obtain certainty from Inland Revenue as a safeguard before implementing certain arrangements or structures. Please contact your usual Deloitte advisor if you have any further queries.

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Is GST a bread and butter issue?

By Harry Lynskey, Hana Straight and Allan Bullot

Given the current cost of living crisis and the forever increasing prices of food in New Zealand, questions are being raised about how to make food more affordable. A common response, that is raised on a regular basis, is to remove GST from "food".

Is removing GST from food a possible partial temporary solution to the cost-of-living issue? In short, yes, but as ever in tax, the position is more complex. While it may make some difference, it is likely not the best use of Government funds to tackle the current situation.

OECD jurisdictions such as the United Kingdom, Australia and Canada have regimes where tax is not applied to particular food items. However, the introduction of such a measure would be complex in nature and may not be an efficient tool to ultimately and quickly reduce the cost of food in New Zealand. Recent studies of overseas changes to VAT rates have also shown that a significant portion of any GST rate cuts are not passed on to the end consumers. When you also consider spending patterns, any reductions that are passed onto consumers would provide the greatest dollar benefit to the highest-earning households who spend more.

New Zealand GST

GST is a broad-based tax on consumption in New Zealand, imposed at 15% across the vast majority of goods and services, with only a few exemptions. Notably, New Zealand has one of the broadest GST bases in the world, with GST being introduced in 1986 in conjunction with a reduction in personal income tax rates and excise duties. As a result of this broad base, and simple premise for taxation, GST makes up a significant portion of the total tax collected by Inland Revenue. In 2022 GST revenue was $24.7 billion and accounted for 25% of New Zealand's taxation revenue. Food and drink, according to the Tax Working Group in 2018, made up GST revenues of $2.6 billion (from a total of $18.7 billion of GST collected by the Government at that time). These figures highlight that the potential cost of any GST change would be significant.

As with any potential changes to the tax mix, if there was a reduction in the total amount of GST being collected, then the Government would have to consider several options as a result of the reduced tax take. They would need to cut Government spending by that same amount, raise the same amount from other taxes, or borrow more. There is no free lunch, if the GST on food is currently

being used to indirectly fund operations in a hospital and that GST was no longer collected, there would still be a need to find some way to fund the operations, or the operations could not go ahead.

How would we determine what items of food should be subject to GST?

If the financial impact of removing GST off all food and drink is too great, should we consider only removing GST from "healthy foods" such as bread, butter, eggs, milk, fruit, and vegetables? This gives rise to interpretative issues. For example, if milk is to be exempted, what about milk powder or dairy milk alternatives? If fruit is exempted, what about fresh fruit juices, canned fruits, frozen fruit, or fruit spreads?

Drafting a coherent framework to distinguish GST treatments for "good food" would be an onerous task and would likely require constant revision which may offset any savings that individuals may gain from the removal of GST on food items.

GST systems have been modified in some jurisdictions, like Australia and the United Kingdom, to achieve policy objectives, such as promoting the consumption of healthy products. This results in an arbitrary and blurred line between what is subject to tax and what isn't. In the United Kingdom we've seen cases to determine whether a Jaffa Cake is a biscuit or a cake, or whether a Pringle is a potato chip, and in Ireland, whether Subway uses 'bread'.

Applying these sorts of rules to New Zealand, a chocolate chip cookie would likely not be subject to GST as the chocolate chips are included in the dough before baking. However, a plain biscuit with the base dipped in chocolate would be subject to GST as the biscuit is partly decorated with chocolate.

Ultimately creating distinctions like this would create more work for GST specialists, food technologists and lawyers, which will indirectly add to the cost of food. So, while it may be good for our businesses to take GST off food, we question if it would make GST better in the overall tax mix for New Zealand.

A current private member's bill by Rawiri Waititi proposes to remove GST from all food and non-alcoholic beverages. While this in theory is easier from a classification perspective, there are still potential issues – "food" is defined consistently with the Food Act 2004, which is wide in interpretation. Additionally, it only removes GST from sales to consumers which would potentially exclude suppliers such as restaurants and supermarkets. This could result in supermarkets needing the ability to determine whether a customer is a consumer (no GST), or whether they're a café/restaurant working picking up extra milk or eggs for the business (subject to GST at 15%).

Who would benefit the most from GST being removed from food?

GST is seen as a regressive tax, which means it has a greater impact on lower-income households.

The Tax Working Group noted in 2018 that expenditure on food and drink represented approximately 20% of the weekly household expenditure of a decile 1 household compared to 14% for a decile 10 household.

While removing GST from food benefits all households, it would have a much greater dollar benefit on wealthier households who spend more money on food (even though it is a smaller percentage of their spending).

If GST is taken off all food, then while there would be no GST on a bottle of milk, making a modest dollar value change, GST would also not apply to airfreighted imported caviar or truffles at a much higher dollar impact, and not what could be considered an "essential food".

Given this, it needs to be considered if more targeted tools could be used which could result in a more efficient outcome at a lower overall cost to the Government.

While the removal of GST on foods would butter the bread of accountants, its unlikely be an efficient method of reducing the cost of food for individuals and households. If GST was removed from all food, it would result in a significant loss of tax take which would need to be recouped by other methods.

Would removing GST from food decrease the price of food?

The general assumption with removing GST from items of food is that it would provide individuals with savings of around 15% (the standard rate of GST in New Zealand), in practice in practice it is likely this would not happen.

Research has shown that the removal of GST or VAT often doesn't result in an equivalent reduction in price. When the UK removed VAT on tampons there was an overall decrease in cost to consumers of 1-1.5% when the applicable VAT rate was 5%.

Other issues include:

- Would a manufacturer/producer lower the price if the market has been paying more?
- What stops artificial inflation in price prior to the removal of GST to give the appearance of a reduction?
- What about the impact of common "price points", i.e. $0.99?
- Would the reduction of GST on food increase pressure on the Government to reduce/remove GST on other goods and services, such as medicine, education, and public transport? If so, what would the cost to the Government be?
- Would any reduction in the cost of food from GST changes actually have an indirect inflationary impact on the wider economy?

In summary, while the removal of GST on foods would butter the bread of accountants, its unlikely be an efficient method of reducing the cost of food for individuals and households. If GST was removed from all food, it would result in a significant loss of tax take which would need to be recouped by other methods. From looking at other jurisdictions, the guidelines on the GST treatment of foods are arbitrary in nature and come to distinctions that do not make practical sense. If the purpose of removing GST from foods is to assist lower-income households through the current economic landscape, in our opinion resources would be better spent exploring other options.

If you have any questions on GST, please contact the authors.

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Stop Press: Tax Bill Progresses

By Robyn Walker

The Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) ("the Bill") has been the subject of public submissions and Finance and Expenditure Committee ("FEC") scrutiny and now is ready to continue its journey through Parliament.

Introduced to Parliament on 8 September 2022, as summarised in our September Tax Alert, the major tax changes included in the Bill were:

- Introducing OECD information reporting rules for certain digital platforms.
- Requiring accommodation and ride-sharing platforms to charge GST on behalf of suppliers (effectively imposing GST on supplies made by small suppliers below the $60,000 GST registration threshold).
- Fixing practical issues for non-residents working in New Zealand, including proposed changes to non-resident contractors tax ("NRCT") which were supplemented by an extensive information reporting requirement.
- Reducing the negative tax consequences for dual resident companies.
- Simplifying the GST apportionment rules.
- Legislating for GST to apply to all Government charges and levies.
- Introducing an exclusion from the interest limitation rules for build-to-rent properties.
- Introducing a range of remedial changes to the bright-line test and interest limitation rules.
- Exempting public transport from fringe benefit tax ("FBT").
- Allowing more trusts to elect to be 'non-active' and therefore excluded from the trust disclosure rules.

The Bill received more than its fair share of submissions, with over 800 submissions made. Of these submissions, a significant number were expressing opposition to the GST and platform proposals and submitted that the public transport exemption from FBT should be extended to include an exemption for bicycles.

The FEC considered all the submissions made and ultimately made several recommended changes to the Bill, including:

- Reducing the immediate scope of the OECD information reporting rules to platforms facilitating accommodation and personal services and deferring the application to platforms facilitating the sale of goods and rental of vehicles.
- Minor tweaks to the application of GST to accommodation and ride-sharing platforms, but leaving the substance of the rules as originally proposed.
- Removing the NRCT information reporting and single-payer-view changes from the Bill so Officials can undertake more consultation.
- Future-proofing the types of public transport which will be exempt from FBT. The submissions to exempt bicycles were declined.

When it comes to tax, the devil is in the detail, and there are over 400 pages of detail in the Officials' Report on submissions. This report outlines each of the submissions made and the recommended action by Inland Revenue officials. A good proportion of submissions were accepted, so there are a large number of technical changes being made to improve the Bill.

From here the Bill returns to Parliament and awaits its second reading, committee of the whole house and third reading. While Parliamentary progress of legislation can be unpredictable, when it comes to tax legislation containing the "annual rates" of tax (as this one does), it is imperative that the legislation is enacted before 31 March 2023; so we can expect to see these final steps completed in March.

For more information about the Bill please contact your usual Deloitte advisor.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

January Flooding Events/Cyclones Hale and Gabrielle

The following Orders have been issued:

- 25 January 2023: Cyclone Hale declared an emergency event for purpose of Use of Money Interest remission rules for Northland, Gisborne, Wairarapa, Coromandel, Wairoa and other regions that received localised flooding and damage.
- 2 February 2023: January Flood Events declared a medium-scale adverse event for the purposes of the income equalisation scheme for Northland, Auckland, Waikato and the Bay of Plenty.
- 8 February 2023: January Flood Events declared an emergency event for purpose of Use of Money Interest remission rules for taxpayers significantly adversely affected.
- 15 February 2023: Cyclone Gabrielle declared a large-scale adverse event for the purposes of the income equalisation scheme for Northland, Auckland, Waikato, Bay of Plenty, Gisborne and Hawke's Bay regions Tararua District.
- 20 February 2023: Cyclone Gabrielle declared an emergency event for purpose of Use of Money Interest remission rules for Northland, Auckland, Waikato, Bay of Plenty, Gisborne, Hawke's Bay regions, Tararua District and other regions that received localised flooding and damage.

R&D Tax Credit filing date extension

On 20 February 2023, the Tax Administration (Research and Development Tax Credit Deadlines for Taxpayers Affected by Weather Events) Order 2023 (SL 2023/11) was notified. The Order extends the filing deadlines under ss 33E, 68CB and 68CC of the Tax Administration Act 1994 in the period starting 28 January 2023 and ending 7 March 2023. Filings must be made on or before 31 March 2023. The Order applies to taxpayers whose ability to meet filing deadlines is significantly affected by either or both the January flooding and February cyclone events.

Government extends cost of living support

On 1 February 2023, the Government announced an extension to the reduced fuel excise duty and road user charges. The following measures were announced:

- 25 cents per litre petrol excise duty cut is extended to 30 June 2023
- The Road User Charge discount will be re-introduced and continue through until 30 June 2023
- Half-price public transport fares are extended to the end of June 2023, and
- Half-price public transport will be made permanent to around one million Community Service Card holders, including tertiary students, from 1 July 2023.

Inland Revenue statements and guidance

Technical Decision Summary: Extra pay period write-off

On 6 December 2022, Inland Revenue published TDS 22/22. The Tax Counsel Office (TCO) determined that a Taxpayer's final tax liability could not be written off under s 22J and cl 1(c) of sch 8, part B of the Tax Administration Act 1994 (TAA). TCO also held that the correct interpretation of the words "amount of tax" in s 22J and cl 1(c) was that they prescribed the full amount of a person's final tax liability for a tax year and not a part of the liability. Therefore, since the Taxpayer's final tax liability for the year was a composite amount (i.e., not all of the Taxpayer's final tax liability arose solely because of an extra pay period), the TCO concluded that none of the taxpayer's final tax liability for the year could be automatically written off under s 22J and cl 1(c).

Technical Decision Summary: Whether settlement payments were taxable employment income

On 20 February 2023, Inland Revenue published TDS 23/01. The Tax Counsel Office (TCO) determined that the settlement payments were not in the nature of payments for hurt and humiliation and the Record of Settlement was not a sham to the extent of the description of settlement payments.

Determination: A type of attributing interest in a foreign investment fund for which a person may use the fair dividend rate method

On 25 January 2023, Inland Revenue published FDR 2023/01 - *A type of attributing interest in a foreign investment fund for which a person may use the fair dividend rate method (Units in the Plato Global Macro Equity Fund– Class Z)*. Inland Revenue found that any investment by a New Zealand resident investor in units in the Plato Global Macro Equity Fund– Class Z, (previously Two Trees Global Equity Macro Fund -Class Z) to which none of the exemptions in sections EX 29 to 43 of the Income Tax Act 2007 apply, is a type of attributing interest for which the investor may use the Fair Dividend method to calculate the interest of foreign investment fund income.

Public Guidance Work Programme Update

On 8 February 2023, Inland Revenue issued its first work programme for 2023.

- Projects IR expect to begin consulting on next
  - PUB00417 - Income tax – Land – Deductibility of holding costs of land
  - PUB00397 - Income tax – Land – income tax obligations of renting to flatmates
  - PUB00429 - Income tax – Land – Main home exclusion and secondees
  - PUB00436 - GST – Disposal of an interest in a joint venture involving land
  - PUB00445 - Reissue of BR Pub 20/01-20/05 – Investing into a US Limited Liability Company – NZ tax consequences – series of 5 rulings

Determination EE 23/01 – Declaration of January flood events/Cyclone Gabrielle as an emergency event for the purpose of family scheme income

On 27 February 2023, Inland Revenue issued *Determination* EE 23/01 *Declaration of January flood events, beginning 26 January 2023 and Cyclone Gabrielle, which crossed the North Island of New Zealand during the period of 12 February 2023 to 16 February 2023, as emergency events for the purposes of family scheme income.* The determination is made under s 91AA5 of the Tax Administration Act 1994 and for the purposes of s MB 13(2)(r)(i) of the Income Tax Act 2007 which is used in the calculation of a person's Working for Families Tax Credit entitlement. Section MB 13(2)(r)(i) excludes certain payments from being included in family scheme income. A payment made between 26 January 2023 and 31 August 2023 (inclusive) to relieve the adverse effects of the January flood and Cyclone Gabrielle will not be included in a person's family scheme income.

National standard costs for specified livestock determination 2023

On 24 February 2023, IR issued NSC 2023, which lists the national standard costs for specified livestock, pursuant to s EC 23 of the ITA.

Tax Information Bulletin Vol 35, No 1 February 2023

Inland Revenue has published a Tax Information Bulletin for February 2023 covering:

- New Legislation
  - SL2022/295 - Order in Council – Tax Administration (Regular Collection of Bulk Data) Regulations 2022
  - SL2022/306 - Order in Council – Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2022
  - SL2022/315 - Order in Council – Taxation (Use of Money Interest Rate) Amendment Regulations (No 3) 2022
  - SL2022/316 - Order in Council – Student Loan Scheme (Repayment Threshold for 2023–24 Tax Year and Subsequent Tax Years) Regulations 2022
  - SL2022/342 - Order in Council – Tax Administration (Extension of Deadline for Research and Development Loss Tax Credit Statements) Order 2022
- Ruling
  - BR Prd 22/14: Bank of New Zealand
- Determination
  - TRU 22/01: Variation to s 59BA(2) of the Tax Administration Act 1994 for trustees of certain trusts that derive a small amount of income
- Revenue alert
  - RA 22/01: Consequences of acquiring, possessing or using electronic sales suppression tools
- QWBA's
  - QB 22/10: Can a close company deduct interest on a shareholder loan account where the amount is not known until after balance date
- Technical decision summaries
  - TDS 22/20: GST – taxable activity
  - TDS 22/21: Whether subdivision was a profit-making undertaking or scheme and a taxable activity
- Legal Decisions – Case Summaries
  - CSUM 22/05: Supreme Court confirms Frucor's tax avoidance and finds shortfall penalties apply
  - CSUM 22/06: Court of Appeal confirms High Court order that backdating of child support liability was invalid

OECD Updates

Tax revenues rebounded as economies recovered from the COVID-19 pandemic

On 30 November 2022, the OECD published the Revenue Statistics 2022. The report shows that the OECD average tax-to-GDP ratio rose by 0.6% to 34.1% in 2021. This is the second strongest year-on-year increase since 1990. The report also shows that in OECD countries for which 2021 data on tax revenues was available, tax-to-GDP ratios increased in 24 countries, declined in 11 and remained unchanged in one. The recovery in tax revenues in 2021 was driven by corporate income tax and value-added tax. The report also includes a special feature examining the changes in revenues from

different tax types in 2020 and 2021.

OECD release BEPS Action 14 documents

On 24 January 2023, the OECD released several documents in relation to BEPS Action 14. This includes:

- A New BEPS Action 14 Peer Review Assessment Methodology;
- MAP Statistics Reporting Framework; and APA Statistics Reporting Framework

Public comments released on the design elements relating to the simplification of transfer pricing rules

On 30 January 2023, the OECD published the public comments it received on the design elements of Amount B under Pillar One relating to the simplification of transfer pricing rules.

OECD releases manual on the handling of multilateral mutual agreement procedures and advance pricing arrangements

On 1 February 2023, the OECD published a *Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements* (MoMA) as part of the Forum on Tax Administration's tax certainty agenda. The MoMA aims to provide guidance on multilateral mutual agreement procedures and advance pricing arrangements for both taxpayers and tax administrators. It outlines different approaches based on the practices of various jurisdictions but does not impose binding rules. The MoMA allows tax administrators to determine if procedures are appropriate for their own programs and offers suggestions on how to incorporate them into their domestic guidance. The Manual also outlines the expected actions and cooperation from taxpayers to allow for multilateral consideration of these cases. This is part of the work done within the FTA MAP Forum. Further information on dispute resolution can be found on the OECD website.

OECD releases technical guidance for implementation of the global minimum tax

On 2 February 2023, the OECD released technical guidance to assist governments with implementation of the 15% minimum tax rate for multi-national enterprises (MNEs). The Agreed Administrative Guidance for the Pillar Two GloBE Rules aims to ensure coordinated outcomes and greater certainty for businesses as they move to apply the global minimum corporate tax rules from the beginning of 2024. Together with the release of Safe Harbours and Penalty Relief and public consultation on the GloBE Information Return and Tax Certainty, the release finalises the Implementation Framework as set out in the October 2021 Statement *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitisation of the Economy.*

Inaugural Meeting of the Inclusive Forum on Carbon Mitigation Approaches (IFCMA)

On 9 February 2023, the inaugural meeting of the new OECD forum was held to discuss the challenges facing governments accelerating the low-carbon transition, and the role that IFCMA could play in supporting improved data and information sharing, evidence-based mutual learning and multilateral dialogue. A replay of the forum and more information can be found here.

New horizons in capacity building for tax transparency

This report presents the capacity-building and outreach activities carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes throughout 2022, in support of the global implementation of the tax transparency standards (exchange of information on request and automatic exchange of financial account information).

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

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