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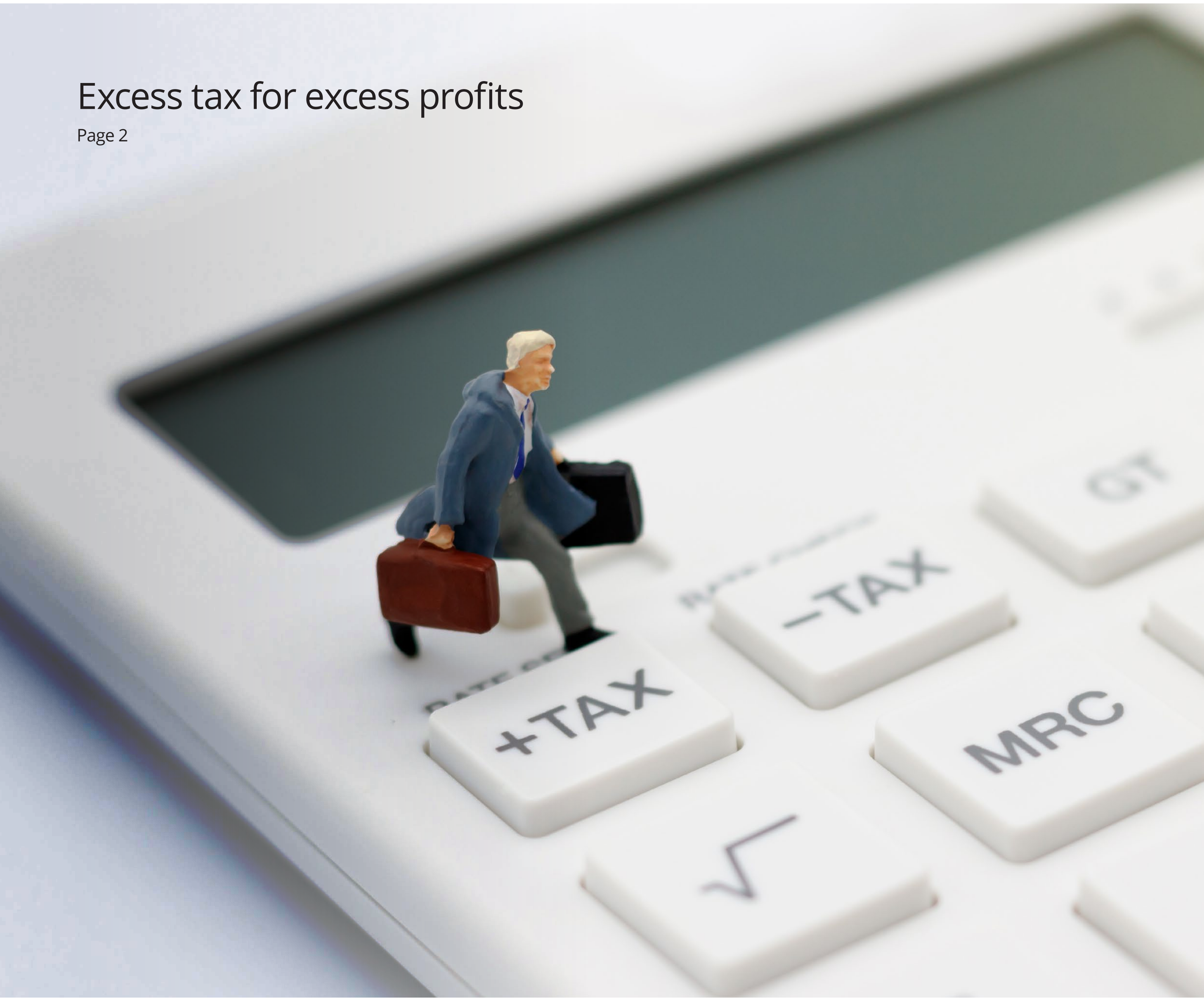
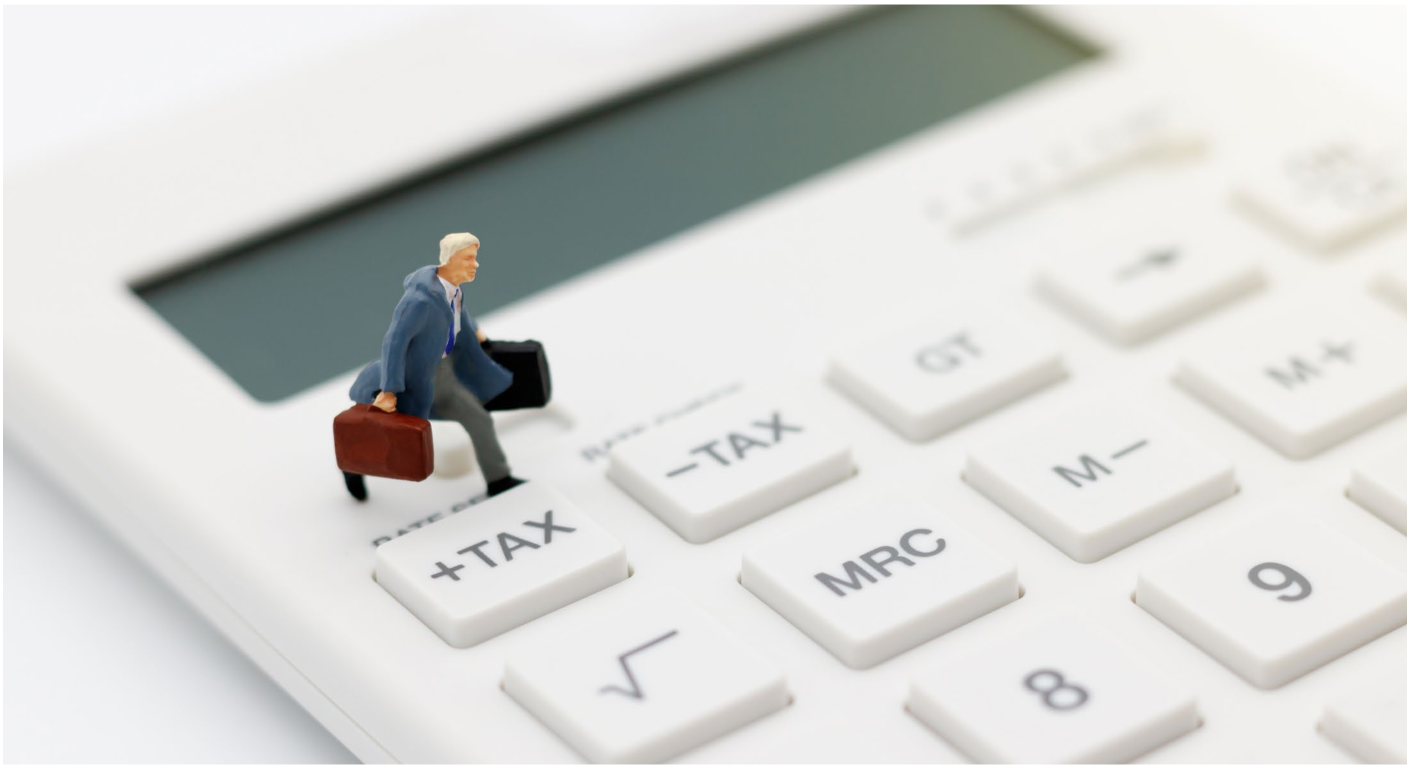
# Tax Alert

November 2022



# Excess tax for excess profits

By Robyn Walker and Patrick McCalman




While a capital gains tax is off the table for the Labour Party, and probably a wealth tax as well, the Green Party are back with a new proposal, an "excess profits tax". The benefit of an excess profits tax is that it's not directly levied on voters, instead businesses are the intended recipient of this new tax.

The Green Party has issued a discussion document in order to start a conversation about tax. There is an opportunity for anyone to comment, albeit there is no stated closing date for comments. This seems likely to be something that develops further into an official tax policy for Election 2023, so comments are best provided in 2022.

The discussion document sets the problem definition as "*Successive governments have failed to ensure we have a fair tax system, which in turn means there is not enough revenue to provide the standard of public services New Zealanders deserve. ... The aim of excess profits taxes is to level the playing field, so that big businesses are not able to profit in excess when so many people are struggling. ... The Green Party considers that record profits during a time of economic hardship for many New Zealanders are immoral and unsustainable.*"

### What is proposed?

The precise nature of any proposed excess profits tax is left deliberately open, with the intention being to get feedback to determine the precise parameters. The inference from the discussion document is that the tax would be targeted toward "big business", but similarly comments are invited on whether the company tax rate should simply be increased for all businesses.

**Some options included within the paper are:**

- Applying the tax to specific sectors that have been making "record profits" and/or having issues with competitiveness. The document notes that this could include banks, fuel companies, supermarkets, building product suppliers, and energy generators/retailers (gentailers).
- An "excess profit" could be determined by comparing current profits to pre-COVID-19 years or looking at a business's return on equity or total assets and comparing it with a benchmark rate for the industry. Both options could be available in order to not penalise a new business.
- The rate of tax could be set at 11% to bring the company tax rate in line with the top personal tax rate, or it could be 50% of the excess profit.
- For simplicity, the tax could be applied industry-wide for all companies over a threshold size.
- The tax could be retrospective to ensure that the tax is covering the period when excess profits have been made.
- There would be a complementary incentive to invest in emissions-reducing infrastructure or public benefit research and technology.
- The document notes that if the company tax rate were permanently raised back up to 33%, an additional $3 billion of annual tax revenue could be collected.

### Comment

The discussion document provides an opening to discuss company taxes. On the flipside to the proposed increase in company taxes, what are some counter-arguments?

- At 28%, the current company tax rate is higher than many other countries (with Australia a notable exception) and well above the OECD average of around 22%. While in the past there have been references to a "race to the bottom" when it comes to company taxes, recent proposals around BEPS are likely to put an end to very low company tax rates.
- Company taxes are something which attract or detract investment to New Zealand. When mobile capital is looking for a home, the company tax rate is something that is considered as it materially impacts the necessary return on investment required. When there is worldwide demand for infrastructure investment and skills shortages, a high company tax rate will impact the level of capital which comes to New Zealand, with a flow-on impact on jobs, productivity and prosperity. The Inland Revenue in its recent Long-Term Insights Briefing looked at New Zealand's tax settings and noted: *"Compared to other OECD countries, New Zealand appears to have relatively high taxes on inbound investment. These taxes are likely to mean higher costs of capital (or hurdle rates of return) for investment into New Zealand than for investment into most other OECD countries. High taxes on inbound investment have the potential to reduce economic efficiency and be costly to New Zealanders by reducing New Zealand's capital stock and labour productivity. OECD analysis suggests that New Zealand is an outlier with some of the highest costs of capital in the OECD."*
- International investors seek certainty and stability in investment locations. Variable and retrospective tax changes are not viewed positively.
- Accounting profits and taxable income are not equal. The Income Tax Act already contains many provisions which increase taxes on businesses, for example by denying interest deductions or depreciation on buildings, requiring costs which may be an expense for accounting to be capitalised etc. In some cases, the effective tax rate on companies is already in excess of 28%.
- Now is the time that businesses need to have strong balance sheets to invest in new technologies to reduce carbon emissions and drive a transformation to a cleaner future. Additional taxes will not assist with this; it was positive to see consideration given in the discussion document to incentives for such investments. Designing parameters for qualifying investments is likely to be tricky.
- Higher taxes may result in businesses reducing the size of their operation in New Zealand to ensure that only the bare minimum (non-mobile) profit is allocated to New Zealand. This could have the unintended consequence of higher taxes actually reducing taxes as businesses react to the incentive to move profits or activities offshore.
- In a domestic context, company tax is in substance a withholding tax as ultimately profits are taxed to the shareholder at their marginal rate. How does a 50% company tax sit when shareholders have a less than 50% tax rate (the top personal tax rate is 39%)? The risk is that such a level of tax acts as a disincentive for investors to invest in a productive economy.
- Some of the largest shareholders in companies are superannuation schemes, so dividends paid out to shareholders will be contributing to KiwiSaver accounts for many New Zealanders.

When taxes are targeted toward voters, politicians often get a clear view of the acceptability of a proposal, but there is also the risk that the feedback, in this case, could be "higher taxes are good … if someone else is paying it". The problem with targeting the company tax rate is the potential for unintended consequences for jobs, investment, productivity and prosperity.

It's always good to see some challenge to the status quo, and the Green Party should be commended for putting a proposal on the table for feedback. Now is the time to provide that feedback.

International investors seek certainty and stability in investment locations. Variable and retrospective tax changes are not viewed positively.

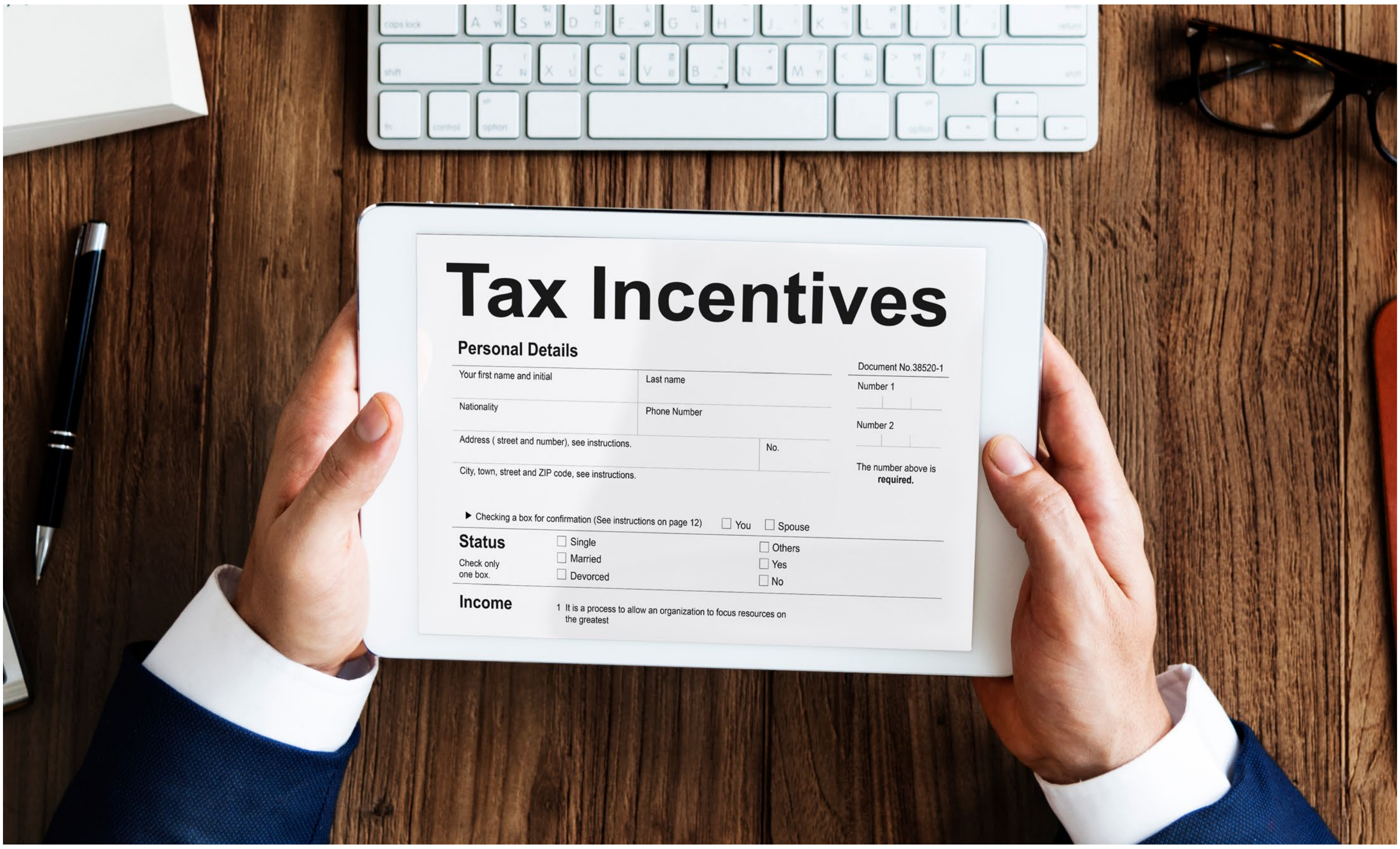
### Contact

**Robyn Walker**
**Partner**
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

**Patrick McCalman**
**Partner**
Tel: +64 4 495 3918
Email: pmccalman@deloitte.co.nz

# Cash-flow pressures to be helped by R&D Tax Incentive improvements

By Simon Taylor, Brendan Ng and Harry Lynskey




### In-year payments of the R&D Tax Incentive tax credit

One issue for many taxpayers engaging with the R&D Tax Incentive (RDTI) regime has been the time taken to receive the cash benefit of the credit, leaving a funding gap for R&D undertaken by the organisation.

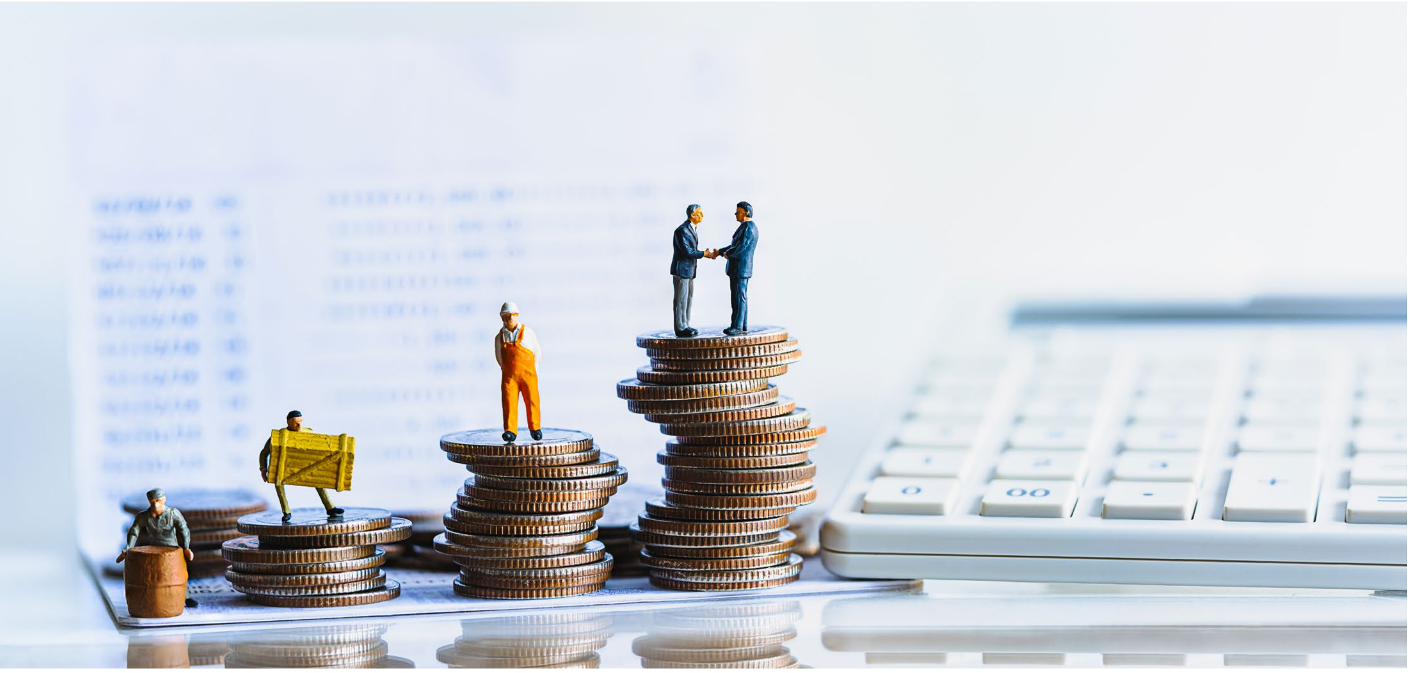
This lag between applications being submitted and the benefit being received should soon be minimised, easing cash flow pressures for many businesses, as the Ministry of Business, Innovation and Employment (MBIE) have recently announced that they have partnered up with Tax Management NZ to deliver in-year payments for businesses performing eligible R&D activities under the RDTI regime.

The introduction of an in-year payment scheme should reduce cash flow pressures for businesses and more directly link the benefit being received with the R&D activity being undertaken, hopefully incentivising more R&D where the timing of the funding is critical to its performance. Uncertainty of the funding outcome and timing are key concerns for claimants, and in-year payments will help by allowing businesses to know when they will be receiving payments and the amounts, assisting with planning and the ability to continue funding their R&D activity.

Currently all that has been announced is that the in-year payments will be paid to businesses as an interest-free loan, repayable when the corresponding R&D tax credit is available (it is assumed there will be some sort of wash up completed at the end of each period).

While much of the detail of the in-year payment scheme is still to be announced, we do know that businesses will be eligible for in-year payments for money that they spend on eligible R&D activities if they have submitted their General Approval applications (i.e. the write ups describing their R&D activity), and their anticipated tax credit is not offset by (reduced) provisional tax payments.

Businesses are encouraged to apply now for General Approval on eligible R&D activities, so that they are in a position to qualify for in-year payments once the



scheme goes live. This is particularly true for any R&D activity occurring in the 2023 income tax year that is currently being undertaken by businesses, where they would benefit from faster access to the benefit. It is also important that applications are submitted on time, as it is unlikely that the previous COVID-19 related extensions to due dates will continue.

If you have any questions about General Approval or in year payments, please reach out to us or your Deloitte advisor.

### Transitional Support Payments

In another previously announced measure to address an R&D funding gap, some businesses will be eligible for a 'top up' payment, aimed at helping businesses who were recipients of the Callaghan Innovation Growth Grant to maintain investment in R&D while moving to the RDTI regime. This was covered in a previous Deloitte Tax Alert article.

The application deadlines for the Transition Support Payment have been extended and the new dates are:

- 30 June 2023 for the 2019/20 income year
- 30 June 2023 for the 2020/21 income year
- 24 April 2024* for the 2021/22 income year

* This date may be extended depending on processing times.

Eligibility for the top up payment requires businesses to meet a number of criteria, including undertaking a calculation to determine whether there is a 'gap' in funding, by considering a business' eligible RDTI expenditure, the business' average Growth Grant expenditure over the last three years, and the business' expected Growth Grant expenditure in the year being claimed.

It is important to note that when you apply for the Transition Support Payment, businesses will be asked to provide a Directors' Attestation that:

- you have accurately assessed your Growth Grant eligible R&D expenditure, and
- made a good faith attempt to participate in the RDTI.

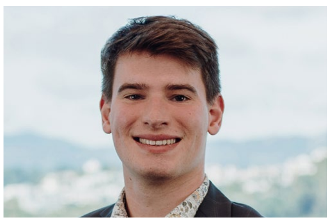
Please contact us if you require further explanation of what a "good faith RDTI attempt" means, but it generally requires you to have included on your RDTI application all R&D activities that you reasonably consider to be eligible for the RDTI.

There are a number of considerations when preparing to claim the transition support payment and if you think your business is eligible, we recommend you get in touch with us or your Deloitte advisor, to ensure that you are not leaving anything on the table.

### Contact


**Simon Taylor**
**Director**
Tel: +64 9 953 6094
Email: sitaylor@deloitte.co.nz

**Brendan Ng**
**Associate Director**
Tel: +64 4 495 3915
Email: brng@deloitte.co.nz



**Harry Lynskey**
**Consultant**
Tel: +64 483 22890
Email: hlynskey@deloitte.co.nz

# Trading in crypto? Prepare to be reported!

By Sam Kettle, Vicky Yen and Troy Andrews


We are living in a digitised world where crypto-assets are becoming more popular by the day. Tax authorities have struggled to get visibility over crypto-related income, but now have a solution: to introduce the new Crypto-Asset Reporting Framework ("CARF"), and expand the scope of the existing Common Reporting Standard ("CRS") regime. The goal is to allow tax authorities around the world to collect and share information on persons who are trading and transacting in digital assets.

We expect that Inland Revenue and the Government will be looking at adopting CARF and the CRS amendments in due course, particularly as they are likely to be an OECD minimum standard. What might this mean for you?

## CARF

CARF will operate similarly to the existing FATCA and CRS regimes, requiring certain service providers to collect information on their account holders and report to tax authorities, who then share the information with the overseas jurisdictions where the account holders are tax resident. The OECD has published a set of model rules for CARF, which is expected to be a global minimum standard adopted by all OECD member countries.

***Which crypto-assets will be captured?***
In addition to cryptocurrencies, the regime will also capture stablecoins, derivatives issued in the form of crypto-assets, and certain non-fungible tokens (where they can be used for payment or investment purposes or are traded on a marketplace). There are certain exclusions for some limited lower-risk crypto-asset.

***Who will have obligations under CARF?***
"Reporting Crypto-Asset Service Providers" will be any entities or individuals that as a business, provide services effectuating exchange transactions of relevant crypto assets for or on behalf of customers. This broad definition includes crypto-asset exchanges and anyone else that makes a trading platform available for users, including brokers, dealers, and operators of crypto-asset ATMs.

***I think I'm captured as a service provider under CARF – what will I need to do?***
Reporting Crypto-Asset Service Providers will need to complete similar due diligence procedures as the existing CRS requirements and AML/KYC obligations, i.e. obtain self-certifications from account holders to verify their identity and tax residence.

To incentivise cooperation, service providers must stop transfers if a valid self-certification is not provided by the account holder within certain timeframes.

Relevant account holders that are tax resident in a foreign (non-New Zealand) jurisdiction will need to be reported to Inland Revenue annually. The reportable information will include personal details (name, address, tax identification number, tax residence, and date of birth), along with transactional information aggregated by crypto-asset type (amounts paid/received, number of units and number of transactions, on aggregate acquisitions and disposals).

# The new rules may significantly impact customer experience. How will you communicate with your customers and undertake due diligence outreach campaigns with minimal disruption?

The transactions covered include exchanges between crypto and fiat currencies, exchanges between different forms of crypto-assets, and transfers of crypto-assets.

### A modernised CRS

The CRS amendments are aimed at bringing in new, digital financial products within scope, including e-money products, Central Bank Digital Currencies, and crypto-asset investments that are held as investments through a custodian. Some coordination provisions have been included to avoid double-reporting between CRS and CARF.

Amendments have also been announced to improve CRS due diligence and reporting procedures (these largely include additional data points for reporting, further alignment with Financial Action Task Force (FATF) recommendations, tie-breaker tests no longer being relevant, and clarification around acceptance of certification when a TIN number is not provided).

### What are the next steps?

Although any adoption of these rules may not be until 2025 or later, there is much to consider and affected persons should start preparing now to be ready in time for post adoption Day-1 obligations.

The new rules may significantly impact customer experience. How will you communicate with your customers and undertake due diligence outreach campaigns with minimal disruption?

What existing data and processes do you have on hand that could possibly be leveraged?

Is an additional budget required to invest in technology and staff?

What build/buy/outsource decisions will need to be made?

Our Deloitte Global Information Reporting team have prepared a more detailed summary of the CARF framework and CRS amendments here. If you would like to discuss these changes and how they might impact you, please reach out to your usual Deloitte tax advisor, or Troy Andrews (New Zealand subject matter lead).

### Contact

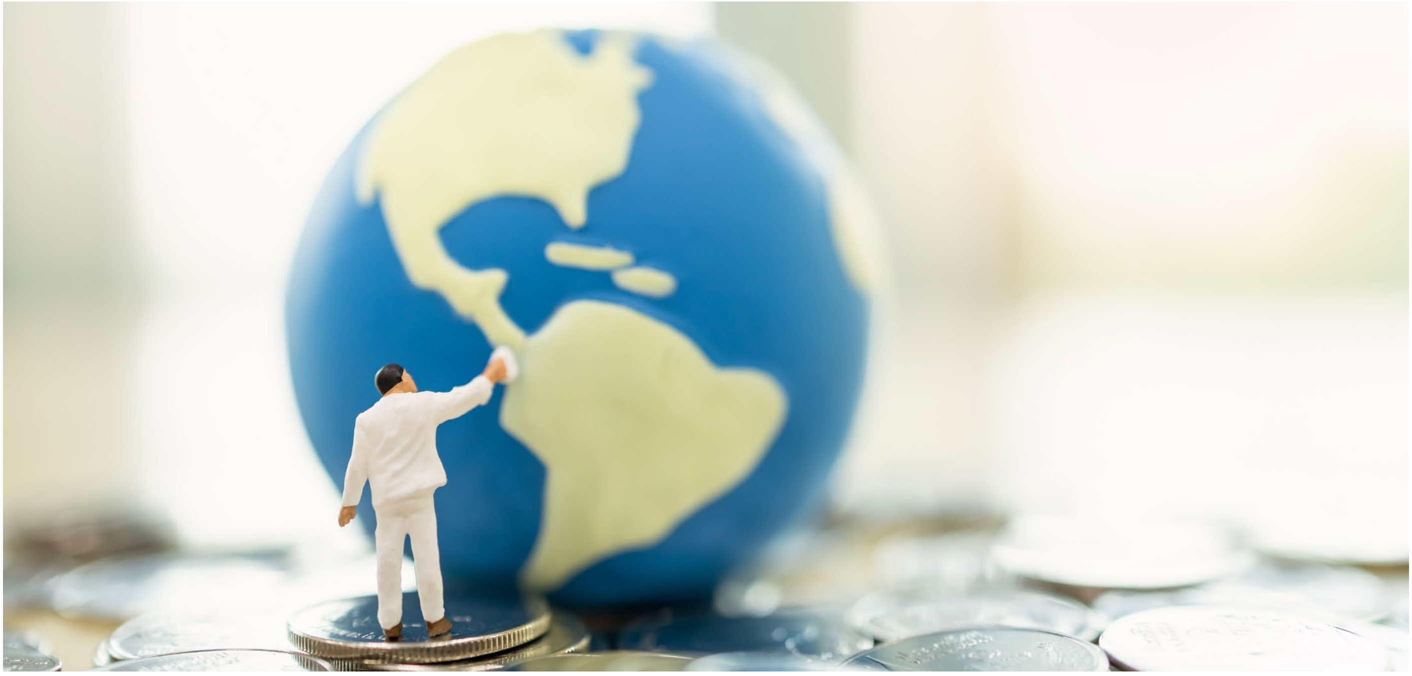
**Troy Andrews**
**Partner**
Tel: +64 9 303 0729
Email: tandrews@deloitte.co.nz

**Vicky Yen**
**Associate Director**
+64 9 975 8610
Email: vicyen@deloitte.co.nz

**Sam Kettle**
**Consultant**
Tel: +64 9 953 6194
Email: skettle@deloitte.co.nz

# The missing link between Sustainability & Climate and Tax

By Pippa Caldwell and Ian Fay



Deloitte New Zealand recently participated in in the inaugural Deloitte Sustainability & Climate (S&C) Learning Week (September 26-30), a global initiative to increase the knowledge and skills of our 415,000 people around the world. As part of this week of learning, Deloitte New Zealand facilitated a discussion session focussed on Environment, Social and Governance (ESG) tax related issues that are relevant to New Zealand businesses. In this article we share some examples of the ways in which S&C issues intersect with tax and the important role that tax professionals can play as businesses transform their organisations and find new sustainable solutions.

One key theme that came out of these discussions was that compared other countries tax administrators (including the ATO), Inland Revenue are much more reluctant to use tax policy to influence behaviour on key S&C areas. Instead, CFOs are typically responsibility for embedding S&C transformation into their organisations. Deloitte have just published the 2022 CFO Sustainability Snapshot Survey, in collaboration with the Sustainable Business Council and Toitū Tahua: Centre for Sustainable Finance. This year's survey report noted that education, connection, and communication are essential for progressing on the journey, but the key is aiming for progress, not perfection.

## Key current and emerging areas

***Tax Transparency and Governance***

So, to start off with, what is tax transparency? There are two main areas of tax transparency, the first is reporting what your contributions are to taxes and the second is reporting your tax governance, i.e. what you are doing about tax risk. In New Zealand, Inland Revenue encourages large taxpayers to include a note in their annual report on tax governance. However, unlike Australia, New Zealand doesn't have mandatory tax transparency reporting. Many companies may wish to explore doing this voluntarily and report on how much tax they're paying in the different tax areas (direct and indirect taxes). New Zealand listed companies are required to make climate related disclosures from 2023 through an ESG or sustainability report. Tax paid could be included in those reports.

***Tax Policy***

As described in the Government's tax policy work programme for 2021-22, *"[t]he Government is committed to improving the environment, and tax settings that promote a sustainable economy are a key part of that"*. However, the focus is still on neutrality, i.e. reviewing existing tax provisions to ensure they are not biased against environmentally-friendly investment and behaviour. This differs from the approach taken in Australia, where their government appears to be actively influencing people towards more sustainable options by setting tax policies like a complete exemption from FBT for electric vehicles. The recent proposal in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) to exempt FBT on public transport subsidies was initially opposed by Inland Revenue but pushed through by the Government.

### *Supply Chain*
Many multinationals are having to re-think their global supply chains, both in response to vulnerabilities highlighted through the pandemic but also due to the environmental and social impacts.
As these changes are made, they are likely to impact transfer pricing and customs duties, so the tax implications of the changes will need to be reviewed.

### *Employee Benefits*
Employers are looking at the benefits that they provide to employees to ensure they continue to be relevant and reflect employee expectations, particularly considering the trend to flexible working. A CBD "on-premises" carpark that is exempt from FBT may be a tax efficient benefit but doesn't align with sustainable commuting options such as public transport or ridesharing, and may sit empty when employees are working remotely. However, contributing to the cost of an employee's e-bike has tax implications that need to be worked through.

### *Sustainability Linked Loans*
Sustainabilty linked loans are a good example of one of the ways that capital markets have responded to ESG issues, by essentially developing a product where the interest rate can change and be either discounted or have a penalty applied (possibly between one and 10 basis points) depending on meeting a range of verified social or environmental criteria. Many large businesses, like Deloitte, are starting to use these types of loans. However, these products are also now becoming available to business banking more generally, with Kiwibank providing sustainable business loans to fellow B:Corps and banks such as ASB and BNZ making them available to farmers. We have worked through several considerations with regards to how the financial arrangement rules apply to these types of loans and predict that as the KPIs that influence the loan get more complex the tax outcome may follow suit.

### *Donated trading stock*
Another example of where the Government has made tax policy changes that help people 'do good' is with respect to donated trading stock. Introduced as a COVID-19 exemption, there is currently a measure (through to 31 March 2023) to remove the tax obligations that arise under section GC 1 of the Income Tax Act 2007 to treat the donations of trading stock as a sale at market value. Amongst other things, this concession ensures there isn't a tax incentive to send obsolete stock to the landfill.

## The Missing Link
So, what is the missing link between S&C and Tax issues? Deloitte believes that collaboration between tax professionals, CFOs and Inland Revenue would be a good place to start. So, put S&C on your next meeting agenda with your Deloitte Tax Advisor.

## Five ways tax leaders can help achieve sustainability goals
Deloitte global research reveals that tax departments are actively helping their companies with sustainability initiatives through compliance and Environmental, Social, and Governance (ESG) reporting, with a majority feeling they are on top of sustainability for the moment. Deloitte surveyed 335 tax leaders globally finding that while tax departments are supporting their business' sustainability efforts through compliance and ESG reporting, they can do more to help their organization accelerate their sustainability goals and address a central business issue. The report provides five easy steps for tax leaders to take to optimize business sustainability performance. You can download the report here.

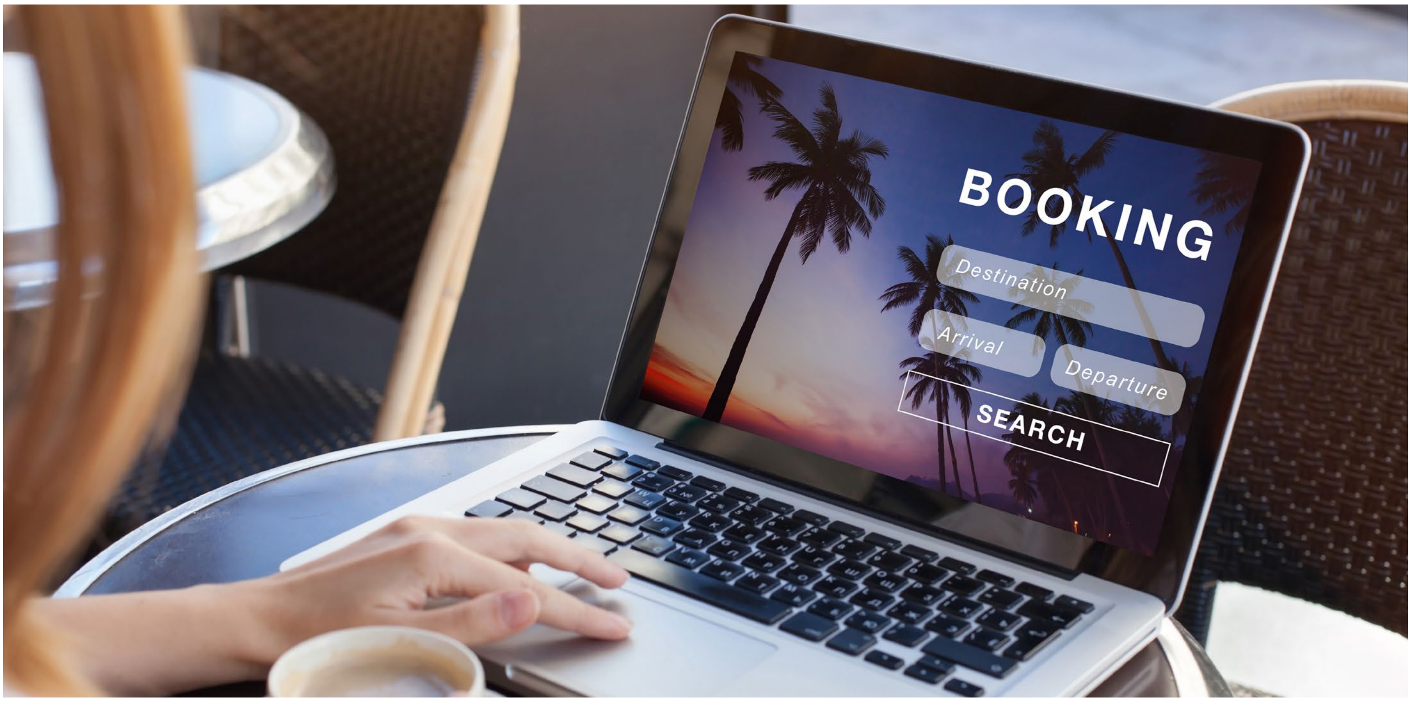
## Contact

**Pippa Caldwell**
**Associate Director**
Tel: +64 9 303 0973
Email: picaldwell@deloitte.co.nz

**Ian Fay**
**Partner**
Tel: +64 4 470 3579
Email: ifay@deloitte.co.nz

# Evening the playing field – GST changes coming for holiday accommodation

By Tafadzwa Marerwa and Sarah Kennedy




It can be random good luck as to whether you pay GST when you rent a holiday home under the current GST rules. It all depends on whether the owner of the accommodation is GST registered or not. However, from 1 April 2024 this will change as the Government is proposing legislative changes that will mean GST will be payable on short-term accommodation bookings made through online platforms, regardless of whether the owner of the property is GST registered or not. GST is proposed to be charged on short-term stays in New Zealand that are booked through an "electronic marketplace" (as defined) and will include the nightly rental fee as well as other "closely related services", such as cleaning and booking fees.

### You occasionally rent out your holiday home, but you are not GST registered, what will these changes mean for you?

Under the proposed laws, if you advertise your holiday home for rent on an online platform for short-stay accommodation, the platform will charge GST on the nightly rental (and any other fees charged) on each booking made on or after 1 April 2024. This will apply even if your total supplies of accommodation are under the current GST registration threshold of $60,000 per year.

The GST will be collected and paid to the Inland Revenue directly by the platform without you having to register for or file GST returns. As you are not GST registered you won't be able to claim any GST input tax credits for expenses incurred, like you would if you were filing your own GST returns. Instead, the platform will provide you with a "flat-rate credit" of 8.5%. This is a fixed amount that Inland Revenue has determined as generally matching the level of GST on expenses that a short-stay accommodation provider has. The new rules mean that Inland Revenue receives a net 6.5% of the GST charged to your guests. The platform will be the party that must claim the 8.5% credit from Inland Revenue, and the platform can only make this claim if the platform passes the 8.5% credit back to you as the non-GST registered owner of the property.

While the supplies of the accommodation and other related services will be subject to GST, these rules do not bring the property itself into the GST net. This means that you will not be required to charge or return GST on any future sale of the holiday home.

### Should I register for GST myself?

You need to consider how the introduction of GST will impact your pricing. Should you increase your nightly rate, or will you bear the GST cost? If you are expecting to undertake any major renovations or have a large number of business expenses relating to the rental property, voluntarily registering for GST might make more economic sense than relying on the fixed 8.5% credit. But it is important to remember that claiming

In addition to the changes for GST through platforms, the government is amending the GST rules to provide GST registered owners an opportunity to take their existing property out of the GST net.

input tax credits on costs in relation to property improvements will also mean that the property is subject to GST if it is ever sold, or you change the use of the property. If you do register, then the rules in the next section will apply to you.

As the proposed rules are currently drafted, if you exceed $60,000 of supplies (even if all supplies are made through a platform) you will still be required to register for GST.

### You are already GST-registered – what will the changes mean for you?

Online platforms will charge your guests 15% on the nightly rental (and any other fees charged) in the same way that they will for non-GST registered owners. As the GST output tax is being returned directly by the platform, you must treat that income as a zero-rated supply in your own GST return.

You will continue to claim the GST input tax credits on actual expenses through your GST returns as normal. This means that your GST returns may be in a refund position and you may wish to consider filing more frequently to access refunds quicker. You will need to tell the platform that you are GST registered so they know that you don't receive the 8.5% flat-rate credit. Make sure you check your remittance information from the platform carefully, if you do receive it, Inland Revenue will expect you to repay the full amount received and may charge penalties.

There is a limited ability to opt-out of the rules and return the GST yourself, but this is restricted to suppliers who are listing more than 2,000 accommodation nights on a platform (this opt-out is designed for large commercial operators, not small-scale owners).

Any future sale of the property is treated in the same way it is currently, i.e. it will either be a zero-rated sale if it is to a GST registered person or subject to GST at 15% if the property is sold to a non-registered person.

### But I don't want my property caught by GST when I sell!

In addition to the changes for GST through platforms, the government is amending the GST rules to provide GST registered owners an opportunity to take their existing property out of the GST net.

From 1 April 2023, Inland Revenue is proposing to allow GST registered suppliers who have not claimed a GST input tax credit on the purchase of a property to elect to treat the sale of certain assets that were acquired predominately for private or exempt use, as exempt. This election may be attractive for people whose main purpose was personal use and who only rented out their properties for a few months in the year. Currently, the proposed election is restricted to people who did not acquire or use the property with the principal purpose of making taxable supplies i.e. the principal purpose was personal use.

There is a financial cost to making this election, which requires you to return any GST inputs claimed in relation to the underlying property. If the property was zero-rated at purchase, the nominal amount of GST that would have been charged to you by the vendor if you were not GST registered should also be returned. This election and payment must be completed within the transitional period of 24 months, from 1 April 2023 to 1 April 2025.

### I haven't bought a property yet – what do I need to think about?

If your property is purchased after 1 April 2023, you will need to consider whether you want to be GST registered. Being GST registered does allow you to claim GST on all related expenses incurred; however, it also means that you will be subject to GST on sale of the underlying property (unless your principal purpose is non-business use and you have made the election described above, before 1 April 2025). If you do have a principal purpose of private use, you can keep the asset out of the GST net on sale by not claiming any input tax deductions in relation to the property and making the election as discussed above. The sale of the underlying property would be an exempt supply when sold.

If you require further information on the matter, or you require advice on how these rules will apply to your specific situation please contact your usual Deloitte adviser.

### Contact

**Tafadzwa Marerwa**
**Senior Consultant**
Tel: +64 37415914
Email: tmarerwa@deloitte.co.nz

**Sarah Kennedy**
**Director**
Tel: +64 4 470 3590
Email: sakennedy@deloitte.co.nz

# Snapshot of recent developments

## Tax Legislation and Policy Announcements

### Farm-level split-gas pricing system on agricultural emission proposed

On 11 October 2022, the Government released its pricing agricultural emissions consultation document, including a world-first proposal to impose a farm-level split-gas pricing system on farmers' agricultural emissions.

If the levy system is not implemented by 1 January 2025, the Climate Change Response Act 2002 requires that agricultural emissions be priced under the NZ Emissions Trading Scheme, however, the Government is considering (to be decided in 2023) introducing an interim, processor-level levy in 2025, where agricultural processors and importers and manufacturers of fertilisers pay for the emissions based on volumes they process, import or manufacture.

Submissions on the proposals close on **18 November 2022**. The Government will then publish a further report by 31 December 2022, introduce an implementation bill into Parliament in 2023 and develop statutory regulations in 2024.

## Inland Revenue statements and guidance

### Case Summary: Veronica Anne Hoeberechts v Commissioner of Inland Revenue [2022] NZHC 2200

On 3 October 2022, Inland Revenue released Case Summary 22/04. This summarises the outcome in a case involving the application of tax to backdated ACC weekly compensation payments. The decision in the case affirms that an individual who received backdated ACC weekly compensation is taxed on a cash basis (i.e. in the year of receipt) and should not be spread back across the years the compensation related to and taxed on an accrual basis.

### IR Public Guidance Work Programme 2022-23

On 5 October 2022, the Inland Revenue published an updated Public Guidance Work Programme 2022-23. The work programme summarises all of Inland Revenue's Public Guidance projects based on their current progress status, with a link to further information on each item.

### Operational Statement: Charities and donee organisations

On 10 October 2022, Inland Revenue published OS22/04 – Charities and donee organisations (Part 1 and Part 2). This operational statement outlines the tax treatment and obligations that apply to charities and donee organisations and how the CIR will apply the relevant legislation. Part 1 covers charities and Part 2 donee organisations.

### Technical Decision Summary: Deemed acceptance of shortfall penalties and liability to evasion shortfall penalty

On 12 October 2022, Inland Revenue published a technical decision summary TDS 22/17 on deemed acceptance of shortfall penalties and the evasion shortfall penalty. The taxpayer had been issued with several default assessments and imposed shortfall penalties. The taxpayer issued a Notice of Proposed adjustment and through the disputes process, it was agreed the taxpayer would no longer dispute the core tax that was in issue, but would dispute the application of shortfall penalties. The TDS summarises the reasons behind the decision for shortfall penalties being rightfully imposed.

### Binding Ruling: ANZ Bank New Zealand Limited

On 17 October, Inland Revenue released BR Prd 22/11 and BR Prd 22/12. Both rulings relate to an arrangement where Australia and New Zealand Banking Group Limited (ANZBGL) shareholders will exchange their ANZBGL ordinary shares for shares in a non-operating holding company, as part of a reorganisation of ANZBGL and its subsidiaries.

BR 22/11 applies only to certain ANZBGL shareholders who either hold their shares on capital account, or are portfolio investment entities, and BR 22/12 applies to New Zealand tax resident employees of ANZBGL and its subsidiaries as at the date of the reorganisation who are participants in the ANZBGL employee share schemes.

### Determination: Foreign investment fund

On 18 October 2022, the Inland Revenue published FDR 2022/02 - *A type of attributing interest in a foreign investment fund for which a person may not use the fair dividend rate method (iShares Green Bond Index Fund – NZD Share class).*

Any investment by a New Zealand resident investor in shares in the iShares Green Bond Index Fund —NZD Share Class 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 not use the FDR method to calculate FIF income for the interest. The policy intention is that the FDR method of calculating FIF income should not be applied to investments that provide an NZ resident investor with a return like a New Zealand dollar-denominated debt investment.

The determination applies for the 2022–2023 income year and subsequent income years. However, under section 91AAO(3B) of the Tax Administration Act 1994, this determination does not apply to a person and an income year beginning before the date of the determination unless the person chooses that the determination applies to the income year.

### Technical Decision Summary: Whether weathertightness payments by the Crown are subject to GST

On 25 October 2022, the Inland Revenue released TDS 22/19. Inland Revenue determined that weathertightness payments received by the Taxpayer, a GST-registered body corporate, were payments in the nature of a grant or subsidy which are therefore deemed to be a consideration for a supply that was subject to GST.

### QWBA: Payments to private schools and donation tax credits

On 27 October 2022, Inland Revenue published two QWBAs (accompanied by a Fact Sheet) to assist with clarifying when a parent's payment to their child's private school qualifies for donation tax credit, and the corresponding GST treatment of such payments. These QWBAs complement earlier published QWBAs for parents with children attending state schools (QB 18/10) and state-integrated schools (QB 18/11).

### Interpretation Statement: Loss carry-forward – continuity of business activities

On 28 October 2022, the Inland Revenue published IS 22/06 - Loss carry-forward – continuity of business activities. This statement explains how the main aspects of the business continuity test in s IB 3 of the ITA 2007 apply. The main rule in s IB 3 provides that a tax loss may be carried forward despite an ownership continuity breach if no major change in the nature of the business activities carried on by the company occurs during the business continuity period, other than a permitted change.

### Interpretation Statement: Company losses – ownership continuity, sharing and measurement

On 28 October 2022, the Inland Revenue published IS 22/07 - Company losses – ownership continuity, sharing and measurement. This statement considers the rules applying to company losses, including carrying forward losses, sharing losses and the measurement of ownership interests.

## OECD Updates

### Tax challenges of digitalisation: OECD invites public input on latest progress report

As part of the ongoing work to implement the Two-Pillar Solution to address the tax challenges arising from the digitalisation and globalisation of the economy, the OECD are seeking public input on the Progress Report of the Administration and Tax Certainty Aspects of Amount A of Pillar One.

Interested parties are invited to send written comments on this document by **11 November 2022.**

### Consultation on the Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One

On 6 October 2022, the OECD released a new report, Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One, for public consultation. The report includes the rules on the administration of the new taxing right under Pillar One, including the tax-certainty related provisions and follows the release of the first progress report in July. Interested parties are invited to send their comments on this discussion draft no later than **Friday, 11 November 2022.**

### Tax Incentives and the Global Minimum Corporate Tax

On 6 October 2022 the OECD published Tax Incentives and Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GLoBE Rules. Pillar Two establishes a global minimum effective tax rate of 15% for large MNEs which has important implications for the use of tax incentives around the world. This report provides a number of concrete considerations for countries to take into account as they prepare for the implementation of Pillar Two.

### Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13

The Inclusive Framework on BEPS has delivered several items of guidance and handbooks to assist and give greater certainty to tax administrations and MNE groups alike on the implementation and operation of country-by-country reporting under BEPS Action 13. This recently updated guidance will assist tax administrations and taxpayers on questions of interpretation to ensure consistent implementation of the standard.

### Country-by-Country Reporting – Compilation of 2022 peer review reports

Under the Action 13 Minimum Standard, jurisdictions have committed to foster tax transparency by requesting the largest MNE Groups to provide the global allocation of their income, taxes and other indicators of the location of economic activity. The fifth annual peer review report reflects the outcome of the review which considered all aspects of implementation. It contains the review of 134 jurisdictions that provided legislation or information pertaining to the implementation of CbC reporting.

### Tax Report to G20 Finance Ministers and Central Bank Governors

On 6/7 October 2022, delegates to the Inclusive Framework met to take stock of progress made in international tax reform to date. This report sets out the latest developments in international tax reform, including on the Two-Pillar Solution and major developments in tax transparency efforts, together with a new roadmap on tax and development, and updates on other important work including the implementation of the BEPS minimum standards and on tackling tax and crime.

### Tax Report to G20 on Inclusive Forum on Carbon Mitigation Approaches

In prior years, there have been discussions on the possibility of coordinating on climate mitigation measures. This is because G20 countries account for around 80% of greenhouse gas emissions and, without coordination, the diversity of mitigation policies adopted by countries based on their individual level of development and circumstances may result in negative spill overs. This report, presented to G20 Finance Ministers and Central Bank Governors at their meeting, provides an update on the establishment of the Inclusive Forum on Carbon Mitigation Approaches.

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

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Queries or comments regarding Alert including joining our mailing list, can be directed to the editor, Amy Sexton, ph +64 (9) 953 6012, email address: asexton@deloitte.co.nz.



The Editor, Private Bag 115033, Shortland Street, Auckland, 1140.
Ph +64 (0) 9 303 0700.
Fax +64 (0) 9 303 0701.

## New Zealand Directory

**Auckland** Private Bag 115033, Shortland Street, Ph +64 (0) 9 303 0700, Fax +64 (0) 9 303 0701
**Hamilton** PO Box 17, Ph +64 (0) 7 838 4800, Fax +64 (0) 7 838 4810
**Rotorua** PO Box 12003, Rotorua, 3045, Ph +64 (0) 7 343 1050, Fax +64 (0) 7 343 1051
**Wellington** PO Box 1990, Ph +64 (0) 4 472 1677, Fax +64 (0) 4 472 8023
**Christchurch** PO Box 248, Ph +64 (0) 3 379 7010, Fax +64 (0) 3 366 6539
**Dunedin** PO Box 1245, Ph +64 (0) 3 474 8630, Fax +64 (0) 3 474 8650
**Queenstown** PO Box 794 Ph +64 (0) 3 901 0570, Fax +64 (0) 3 901 0571
**Internet address** http://www.deloitte.co.nz